



COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF INSURANCE  
FRANKFORT, KENTUCKY

**Bulletin 2015-01**

**The following Bulletin is to advise the reader of the current position of the Kentucky Department of Insurance on the specified issue. The Bulletin is not legally binding on either the Department or the reader.**

**TO:** ALL PROPERTY AND CASUALTY INSURERS WRITING COMMERCIAL LINES INSURANCE PRODUCTS and ALL INSURERS ON THE NAIC QUARTERLY LISTING OF ALIEN INSURERS

**FROM:** SHARON P. CLARK, COMMISSIONER

**RE:** FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS OF THE TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2015

**DATE:** February 3, 2015

**Purpose**

The purpose of this bulletin is to alert you to changes of the Terrorism Risk Insurance Act as amended and extended, that may require insurers to submit filings in Kentucky of disclosure notices, policy language, and applicable rates as a result of the Reauthorization Act of 2015. Insurers are encouraged to review the Act as amended and extended.

**Background**

Uncertainty in the markets for commercial lines property and casualty insurance coverage arose following the substantial losses of lives and property experienced by the industry on September 11, 2001. Soon after these tragic events, many reinsurers announced that they would no longer provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a federal backstop to facilitate the ability of the insurance industry to continue to provide coverage for these unpredictable and potentially catastrophic events.

As a result, Congress enacted and the President signed into law in November 2002, the Terrorism Risk Insurance Act of 2002 (The Act). This federal law provided a federal backstop for defined acts of terrorism and imposes certain obligations on insurers. The Act was extended for a two-year period covering Program Years 2006 and 2007, and for an additional seven years through December 31, 2014 with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007. The Act has now been extended again with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015.

The Act, as recently amended and extended, made several changes. The changes include:

- Extending the Program through December 31, 2020.
- The Act, as amended and extended, changes the terms "program year" and "transition period" to "calendar year" throughout.

- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium of the preceding calendar year and the federal share of compensation at 85% of insured losses that exceed insurer deductibles until January 1, 2016, at which time the federal share shall decrease by 1 percentage point per calendar year until equal to 80%.
- Requiring the Secretary of the Treasury certify acts of terrorism in consultation with the Secretary of Homeland Security.
- An unmodified reference to "the Secretary" refers to the Secretary of the Treasury.
- Amending the program trigger to apply to certified acts with insured losses exceeding \$100,000,000 for calendar year 2015, \$120,000,000 for calendar year 2016, \$140,000,000 for calendar year 2017, \$160,000,000 for calendar year 2018, \$180,000,000 for calendar year 2019, and \$200,000,000 for calendar year 2020 and any calendar year thereafter.
- The mandatory recoupment of the federal share through policyholder surcharges increases to 140% (from 133%).
- The insurance marketplace aggregate retention amount being the lesser of \$27.5 billion (increasing annually by \$2 billion until it equals \$37.5 billion) and the aggregate amount of insured losses for the calendar year for all insurers. In the calendar year following the calendar year in which the marketplace retention amount equals \$37.5 billion, and beginning in calendar year 2020 it is revised to be the lesser of the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior 3 calendar years as such sum is determined by the Secretary of the Treasury by regulation.
- Requiring the Secretary of the Treasury, not later than 9 months after the date of enactment of the Act, to conduct and complete a study on the certification process, including the establishment of a reasonable timetable by which the Secretary must make an accurate determination on whether to certify an act as an act of terrorism.
- Requiring insurers participating in the Program to submit to the Secretary of the Treasury for a Congressional report to be submitted on June 30, 2016 and every June 30 thereafter, information regarding insurance coverage for terrorism losses in order to evaluate the effectiveness of the Program. The information to be provided includes: lines of insurance with exposure to terrorism losses, premiums earned on coverage, geographical location of exposures, pricing of coverage, the take-up rate for coverage, the amount of private reinsurance for acts of terrorism purchased and such other matters as the Secretary considers appropriate. This information may be collected by a statistical aggregator and in coordination with State insurance regulatory authorities.
- Requiring the Comptroller General of the United States to complete a study on the viability and effects of the Federal Government assessing and collecting upfront premiums and creating a capital reserve fund.
- Requiring the Secretary of the Treasury to conduct a study not later than June 30, 2017 and every June 30 thereafter to identify competitive challenges small insurers face in the terrorism risk insurance marketplace.
- Requiring the Secretary of the Treasury to appoint an Advisory Committee on Risk-Sharing Mechanisms to provide advice, recommendations and encouragement with respect to the creation and development of nongovernmental risk-sharing mechanisms. The Advisory Committee will be composed of 9 members who are directors, officers, or other employees of insurers, reinsurers or capital market participants.

#### Definitions and other Technical Changes

- Section 102(1) defines an *act of terrorism* for purposes of the Act. The revised Section 102(1)(a) states, "The term 'act of terrorism' means any act that is certified by the Secretary, in consultation with the Secretary of , Homeland Security, and the Attorney General of the United States – (i) to be an act of terrorism; (ii) to be a violent act or an act that is dangerous to –(I) human life; (II) property; or (III) infrastructure; (iii) to have resulted in damage within the United States, or outside the United States in the case of –(I) an air carrier or vessel described in paragraph (5)(B); or (II) the premises of a United States mission; and (iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion."
- Section 102(1)(B) states, "No act shall be certified by the Secretary as an act of terrorism if—(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.
- Section 102(1)(C) and (E) specify that the determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

### **Submission of Rates, Policy Form Language and Disclosure Notices**

If an insurer relies on an advisory organization to file loss costs and related rating systems on its behalf, no rate filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for coverage for *certified losses*. Insurers that develop and file rates independently may choose to maintain their currently filed rates or submit a new filing. The rate filing should provide sufficient information for the reviewer to determine what price would be charged to a business seeking to cover *certified losses*.

Insurers may also choose to use rating plans that take into account other factors such as geography, building profile, proximity to target risks, and other reasonable rating factors. The insurer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply. The supporting documentation should be sufficient for the reviewer to determine whether the rates are excessive, inadequate or unfairly discriminatory.

Insurers subject to policy form regulation must submit the policy language that they intend to use in this state. The policy should define *acts of terrorism* in ways that are consistent with the Act, as amended and state law. The definitions, terms and conditions should be complete and accurately describe the coverage that will be provided in the policy. Insurers may conclude that current filings are in compliance with the Act, as amended, and state law.

A change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a disclosure requirement for any policy issued after its enactment. Specifically, in addition to other disclosure requirements previously contained in TRIA, since 2007 insurers have had to provide clear and conspicuous disclosure to the policyholder of the existence of the \$100,000,000,000 cap under Section 103(e)(2), at the time of offer, purchase, and renewal of the policy.

Insurers shall file the disclosure notices for informational purposes, along with the policy forms, as they are an integral part of the process for notification to Kentucky policyholders. Disclosure notices should be clear and not misleading. The disclosures should comply with the requirements of the Act, as amended, and should be consistent with the policy language and rates filed by the insurer.

### **Expedited Filings**

Given that the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the provisions of TRIA, as amended and extended, Kentucky will permit insurers and advisory organizations to place new rates, policy forms and disclosure notices into immediate use without receiving prior approval from the commissioner.

We encourage filers to take advantage of this voluntary speed-to-market initiative for revised terrorism products by using the SERFF system to submit such filings. The following will alleviate the need to provide additional information in support of a request for expedited review:

- Use the term "TRIA2015" in the SERFF Product Name field or on the front of the filing to indicate the filing relates to the Terrorism...Act of 2015.

**The expedited filing procedures discussed in this document shall expire on March 31, 2015.**

### **Effective Dates**

This document shall take immediate effect and shall expire on December 31, 2020, unless Congress extends the duration of the Act.

**Reminder about Workers' Compensation Policies**

Workers compensation insurance coverage is statutorily mandated in Kentucky for all employers and policy exclusions are barred. Therefore, an employer cannot voluntarily waive terrorism coverage on workers compensation insurance nor can an insurer exclude terrorism risk from a primary or excess workers compensation policy.

***Signature on file with  
original document***

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Sharon P. Clark  
Commissioner  
Kentucky Department of Insurance

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Date