

# Bulletin 348

## Terrorism Risk Insurance Program Reauthorization Act of 2007

### Background

This Bulletin replaces Bulletin 341. Its purpose is to advise insurers doing business in Maine of the updated coverage requirements relating to acts of terrorism in light of the Terrorism Risk Insurance Program Reauthorization Act of 2007 (the “Reauthorization Act”), and to provide guidance regarding rate and form filing procedures.

There has been much uncertainty in the markets for commercial lines property and casualty insurance coverage in light of the substantial losses experienced by the industry on September 11, 2001. Soon after those tragic events, many reinsurers announced that they did not intend to 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 temporary federal backstop to calm market fears over future terrorist attacks and the ability of the insurance industry to allocate capital to provide coverage for these unpredictable and potentially catastrophic events. As a result, in November 2002, Congress enacted and the President signed into law the Terrorism Risk Insurance Act of 2002 (the “Act”). This federal law provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers. The Terrorism Risk Insurance Extension Act of 2005 amended and extended the Act for a two-year period covering Program Years 2006 and 2007. The Act has now been extended for an additional seven years through December 31, 2014 with the enactment of the Reauthorization Act.

Several provisions of the initial Act have changed in the Reauthorization Act. Those changes include:

- Revising the definition of a certified act of terrorism to eliminate the requirement that the individual(s) acted on behalf of any foreign person or foreign interest.
- Extending the program through December 31, 2014.
- Requiring clear and conspicuous notice to policyholders of the existence of the \$100,000,000,000 cap.
- Fixing the Insurer Deductible at 20% of an insurer’s direct earned premium, and the federal share of compensation at 85% of insured losses that exceed insurer deductibles.
- Fixing the program trigger at \$100,000,000 for all additional program years.
- Requiring the U.S. Treasury to promulgate regulations for determining pro-rata shares of insured losses under the program when insured losses exceed \$100,000,000,000.
- Requiring the Comptroller General to study the availability and affordability of insurance coverage for losses caused by terrorist attacks involving nuclear, biological, chemical, or radiological materials and issue a report not later than one year after the enactment of the Reauthorization Act.
- Requiring the Comptroller General to determine whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism

insurance available and issue a report not later than 180 days after the enactment of the Reauthorization Act.

- Requiring the President’s Working Group on Financial Markets to continue an ongoing study of the long-term availability and affordability of terrorism risk insurance.
- Accelerating the timing of the mandatory recoupment of the federal share through policyholders surcharges.

Other terms of the Act remain unchanged.

### **Definition of Act of Terrorism**

The Reauthorization Act revised the definition of *an act of terrorism* by eliminating the requirement that an individual or individuals that carry out an act of terrorism be acting on behalf of a foreign person or foreign interest. In short, this means that an act formerly referred to as “domestic” terrorism may now be certified as an act of terrorism under the Act.

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 concurrence with the Secretary of State, 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.”

“The Secretary,” when no department is specified, refers to the Secretary of the Treasury.

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 (D) 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.

Section 103(1)(B) establishes a threshold of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered.

Insurers may establish coverage limitations for *certified losses* that exceed \$100 billion in the aggregate, provided that they are no more stringent than the corresponding limitations on reimbursement under the Act. However Maine will not allow insurers to exclude or limit

coverage for losses that are otherwise within the scope of the policy and fail to be *certified losses* solely because they result from events with aggregate losses that fall below the \$5,000,000 threshold in Section 102(1)(B).

### **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*. 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*. Maine will accept filings that contain a specified percentage of premium to provide for coverage for *certified losses*. An insurer 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 filing should state the basis for selection of the rates and rating systems that the insurer chooses to apply. The supporting documentation should be sufficient for the reviewer to determine if 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 Maine. The policy should define *acts of terrorism* in ways that are consistent with the Act, as amended, state law and the guidance provided in this bulletin. 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, state law, and the requirements of this bulletin. However, if policy forms make a distinction between acts of a foreign person or foreign interest and a domestic person or domestic interest, it is likely that a filing is required.

Another change introduced in the Reauthorization Act is a new disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in the Act, insurers must now also 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.

The Superintendent requests that, when they file policy forms, rates, and rating systems, insurers also file their disclosure notices for informational purposes, as they are an integral part of the process for notification of policyholders in Maine and should be clear and not misleading to business owners in Maine. The disclosures must comply with the requirements of the Act, as amended, and must be consistent with the policy language and rates filed by the insurer. The attached model disclosure forms represent examples of disclosure the Superintendent would find appropriate, subject to any modifications that might be necessary for consistency with the terms of coverage under the particular policy.

Given that the provisions of the Reauthorization Act are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of the Act, Maine will permit insurers and advisory organizations to place

new rates, policy forms, and disclosure notices into immediate use without receiving prior approval from the Superintendent

If an insurer wants to take advantage of this voluntary speed to market initiative for revised terrorism products, it should complete the attached Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing, and certify on the form that it is in compliance with the terms of the Terrorism Risk Insurance Program Reauthorization Act of 2007 and the laws of Maine. Completion of the Expedited Filing Transmittal will also relieve an insurer from having to complete any other filing form or supplementary exhibit that is normally required to accompany filings.

The Superintendent encourages filers to take advantage of the SERFF system for submitting such filings, and will permit any other requirement (e.g., filing forms, supplemental exhibits, etc.) to be similarly bypassed.

This voluntary expedited filing system shall remain in place until April 1, 2008. If an insurer does not want to take advantage of the expedited filing system (or cannot file prior to April 1, 2008) than it must submit a normal filing, subject to regular filing requirements, including any prior approval or waiting period.

### **Coverage for Fire Losses Resulting from Acts of Terrorism**

In Maine, the requirements for fire coverage are established by law and where applicable, must meet or exceed the provisions of the Standard Fire Policy pursuant to 24-A M.R.S.A. §§ 3002 and 3003. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage.

### **Effective Date**

The requirements described in this bulletin are effective immediately and shall expire on December 31, 2014, unless Congress extends the duration of the Act. The expedited filing procedures discussed in this bulletin shall expire on April 1, 2008.

January 14, 2008

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Acting Superintendent of Insurance

Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing - [PDF](#)  
Policyholder Disclosure 1 - [PDF](#)

Policyholder Disclosure 2 - [PDF](#)

NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties or privileges nor is it intended to provide legal advice. Readers should consult applicable statutes and regulations and contact the Bureau of Insurance if additional information is needed.