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Bulletin 400

Terrorism Risk Insurance Program Reauthorization Act of 2015 (Replaces Bulletins 317, 341, and 348)

Background

This Bulletin replaces Bulletin 348. This Bulletin's purpose is to advise property and casualty insurers doing business in Maine of provisions in the Terrorism Risk Insurance Program Reauthorization Act of 2015 (the "Reauthorization Act") that amend the Terrorism Risk Insurance Act of 2002 (the "Act"). These amendments might require insurers to submit filings relating to disclosure notices, policy language, and applicable rates. The Bulletin also provides guidance regarding rate and form filing procedures.

Uncertainty in the markets for commercial lines property and casualty insurance coverage arose following the substantial losses experienced by the industry on September 11, 2001. Soon thereafter, many reinsurers announced that they did not intend to cover 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, the federal government established the Terrorism Risk Insurance Program (the "Program") as a federal backstop for defined acts of terrorism. The Terrorism Risk Insurance Extension Act of 2005 amended and extended the Act for Program Years 2006 and 2007. The Terrorism Risk Insurance Program Reauthorization Act of 2007 extended the Act through December 31, 2014. Congress has now extended the Act through 2020.

The Reauthorization Act makes the following changes to the Act:

- Extending the Program through December 31, 2020.
- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium for the preceding calendar year.
- Maintaining the federal share of compensation for 2015 at 85% of insured losses that exceed insurer deductibles, and thereafter decreasing by 1 percentage point per calendar year, until it is equal to 80% in 2020.



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- Requiring the Secretary of the Treasury to consult with the Secretary of Homeland Security when deciding whether to certify an act of terrorism. This replaces a provision requiring concurrence by the Secretary of State.
- Amending the Program trigger to apply to certified acts having insured losses exceeding \$100 million for calendar year 2015, \$120 million for calendar year 2016, \$140 million for calendar year 2017, \$160 million for calendar year 2018, \$180 million for calendar year 2019, and \$200 million for calendar year 2020.
- Increasing policyholder surcharges from 133% to 140% for purposes of the mandatory recoupment of the federal share.
- Setting the insurance marketplace aggregate retention at \$27.5 billion for 2015, with annual increases of \$2 billion until it equals \$37.5 billion (in 2019).¹ In 2020, the aggregate retention will be the annual average of the sum of insurer deductibles for all participating insurers for the prior three calendar years, as the Secretary of the Treasury determines by regulation.
- Requiring the Secretary of the Treasury, within nine months after the date of enactment of the Act, to complete a study on the certification process, including establishing a reasonable timetable for determining whether to certify an act as an act of terrorism.
- Requiring insurers participating in the Program to submit information to the Secretary of the Treasury for an annual report to Congress regarding insurance coverage for terrorism losses, in order to evaluate the effectiveness of the Program. The Secretary's report must be submitted annually by June 30, beginning in 2016. This information will include 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 by 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 nine members who are directors, officers, or other employees of insurers, reinsurers, or capital market participants.

¹ The retention is calculated on an annual basis. If annual aggregate losses are less than the retention, there is no carryover to other years.

- Changing the terms “program year” and “transition period” to “calendar year” throughout.

Other terms of the Act remain unchanged.

Definition of “Act of Terrorism”

Section 102(1) defines which acts of terrorism fall within the scope of the Act. The revised Section 102(1)(A) states, “The term ‘act of terrorism’ means any act that is certified by the Secretary [of the Treasury], 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 [of the Treasury] 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 the insurer plans to use a different loss cost multiplier than is currently on file for coverage for *certified losses*. If an insurer develops and files rates independently, it may either maintain its currently filed rates or submit new rate filings. A 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 whether the rates are excessive, inadequate, or unfairly discriminatory.

An insurer subject to policy form regulation must submit the policy language that it intends 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 the policy will provide. An insurer may conclude that current filings comply 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.

An insurer required to file policy forms may submit language containing coverage limitations for *certified losses* that exceed \$100 billion in the aggregate. However, Maine does not permit a policy exclusion that is triggered by an act's failure to meet the \$5,000,000 threshold for *certified losses*. If an occurrence would be a covered loss under the policy if it were *certified*, the insurer may not exclude it solely on the basis that the aggregate loss is too small to *certify*.

Since 2007, in addition to other disclosure requirements previously contained in the Act, insurers have had to clearly and conspicuously disclose to the policyholder the existence of the \$100 billion cap under Section 103(e)(2), at the time of offer, purchase, and renewal of the policy.

The Superintendent requests that when insurers file policy forms, rates, and rating systems, they also file their disclosure notices for informational purposes. Disclosure notices are an integral part of the process for notification of policyholders in Maine and should be clear and not misleading. The disclosures must comply with the requirements of the Act, as amended, and must be consistent with the insurer's filed policy language and rates. 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.

Because the provisions of the Reauthorization Act are already in effect, insurers and advisory organizations should accelerate filing activity in order to comply with the Act's revisions. Filers should use the SERFF system for submitting such filings. Filers should use the term "TRIA2015" in the product name field in SERFF to indicate a filing related to terrorism made in connection with the Terrorism Risk Insurance Program Reauthorization Act of 2015.

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 will expire on December 31, 2020, unless Congress extends the duration of the Act.

February 17, 2015



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Superintendent of Insurance

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 rules and contact the Bureau of Insurance if additional information is needed.