

# Arkansas Insurance Department

Mike Beebe  
Governor



Julie Benafield Bowman  
Commissioner

February 1, 2008

**BULLETIN NO. 1-2008**

**TO: ALL LICENSED PROPERTY AND CASUALTY INURERS, THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND OTHER INTERESTED PARTIES**

**FROM: ARKANSAS INSURANCE DEPARTMENT**

**SUBJECT: FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS OF THE TERRORISM RISK INSURANCE PROGRAM RE-AUTHORIZATION ACT OF 2007**

Congress enacted and the President signed into law in November 2002, the Terrorism Risk Insurance Act of 2002 to provide a federal backstop for defined acts of terrorism. The Act was extended for a two-year period covering Program Years 2006 and 2007 and has now been extended for an additional seven years through December 31, 2014 with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007.

Several provisions of the initial Act have changed in the 2007 extension. Those changes include:

- Revising the definition of a certified act of terrorism to eliminate the requirement that the individual(s) are acting 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 one hundred billion dollar (\$100,000,000,000.00) cap.
- Fixing the insurer deductible at twenty percent (20%) of an insurer's direct earned premium, and the federal share of compensation at eighty-five percent (85%) of insured losses that exceed insurer deductibles.
- Fixing the program trigger at one hundred million dollars (\$100,000,000.00) 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 one hundred billion dollars (\$100,000,000,000.00).
- 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 Terrorism Risk Insurance Program Reauthorization Act of 2007.
- 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 one hundred eighty (180) days after the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007.

- 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, as amended by the Terrorism Risk Insurance Extension Act of 2005, remain unchanged. The intent of this bulletin is to advise you of certain provisions of the Act, as extended, that may require insurers to submit a filing in this state of the disclosure notices, policy language and the applicable rates as a result of the Act.

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

One of the changes made to the Act with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a revision to the definition of an act of terrorism that eliminated the requirement that an individual or individuals who carry out an act of terrorism be acting on behalf of a foreign person or foreign interest. In short, this means that acts 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) defines the term “act of terrorism” as any act that is certified by the Secretary of the Treasury, the Secretary of State, and the Attorney General of the United States:

1. To be an act of terrorism;
2. To be a violent act or an act that is dangerous to human life, property, or infrastructure;
3. To have resulted in damage within the United States (or outside the United States in the case of an air carrier, flag vessel, or premises of a United States mission); and
4. 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 that no act shall be certified by the Secretary of the Treasury as an act of terrorism if (a) 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 (b) aggregate property and casualty insurance losses resulting from the act do not exceed five million dollars (\$5,000,000.00). Sections 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.

The Terrorism Risk Insurance Act, as amended, contains in Section 103(1)(B) a program trigger of one hundred million dollars (\$100,000,000.00) in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered.

This state will not allow exclusions of coverage for acts of terrorism that fail to be *certified losses* solely because they fall below the five million dollars (\$5,000,000.00) threshold in Section 102(1)(B) on any policy that provides coverage for acts of terrorism that fail to be *certified*.

Insurers required to file policy forms may submit language containing coverage limitations for *certified losses* that exceed one hundred billion dollars (\$100,000,000,000.00) in the aggregate.

### **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*. This state will accept filings that contain a specified percentage of premium to provide for coverage for *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 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 this state. 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 Terrorism Risk Insurance Program Reauthorization Act of 2007 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 one hundred billion dollar (\$100,000,000,000.00) cap under Section 103(e)(2) at the time of offer, purchase and renewal of the policy.

The Insurance Commissioner requests that the disclosure notices be filed for informational purposes, along with the policy forms, rates and rating systems as they are an integral part of the process for notification of policyholders in this state and should be clear and not misleading to business owners in this state. 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.

The provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 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. Accordingly, with the exception of coverage for workers' compensation, this state will permit insurers and advisory organizations to place new rates, policy forms and disclosure notices into immediate use without receiving prior approval from the Insurance Commissioner.

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 this state. Completion of the Expedited Filing Transmittal will also relieve an insurer from having to complete any other filing form or supplemental exhibit that is normally required to accompany filings.

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, then it must submit a normal filing, subject to regular filing requirements, including any prior approval or waiting period.

**Miscellaneous**

This bulletin shall take immediate effect 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.

This bulletin is intended to, and hereby does, repeal Department Bulletin 13-2002.

Questions concerning this Bulletin should be directed to the Arkansas Insurance Department's Property and Casualty Division at (501) 371-2800 or via e-mail to [insurance.PnC@arkansas.gov](mailto:insurance.PnC@arkansas.gov).

(signed by Julie Benafield Bowman)

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**JULIE BENAFIELD BOWMAN  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS**

(February 1, 2008)

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**DATE**

**EXPEDITED FILING TRANSMITTAL DOCUMENT  
FOR TERRORISM RISK INSURANCE FORMS AND PRICING**

**This page applies to the following state(s)**

Indicate Type of Filing
☐ Filing Related to <i>Certified Losses</i>
☐ Filing Related to <i>Non-Certified Losses</i>
☐ Filing Applicable to Both Certified and Non-Certified Losses

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #

**Contact Info for Filer**

Name and address of Filer(s)	Telephone #	FAX #	e-mail

**Filing information**

<b>Line of Insurance</b> (see attachment)	
<b>Company Program Title</b> (Marketing title) (if applicable)	
<b>Filing Type</b> ** see note below	
<b>This application is used with:</b>	
<b>Effective Date Requested</b>	
<b>Filing date</b>	
<b>Company Tracking Number</b>	
<b>Date filing approved in domiciliary state, if applicable</b>	

	<u>Component/Form Name /Description/Synopsis</u>	<b>Form # or Rate Page Include edition date</b>	<b>Replacement Or withdrawn?</b>	<b>If replacement, give form # or rate page(s) it replaces</b>	<b>Previous State Filing Number, if required by state</b>
01			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document for each insurer or advisory organization.
- One copy of each endorsement, disclosure form or other policy language, unless the insurer has given an advisory organization authorization to file them on its behalf.
- A copy of the rates, rating systems and supporting documentation.
- The appropriate filing fees, if required
- A postage-paid, self-addressed envelope **large enough to accommodate the return.**

The insurer(s) submitting this filing certifies that it:

- Is in compliance with the terms of the Terrorism Risk Insurance Act, as amended, and the laws of this state; and
- Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Signature

Print Name:

Title: