



Oregon Insurance Division Bulletin INS 2015-1

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

DATE: MARCH 3, 2015

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

This bulletin supersedes INS 2008-1.

Regarding Terrorism Exclusion or Limitation Language in Other Lines for Oregon

Oregon will not allow terrorism exclusion or limitation language in Annuities, Life Insurance, Health Insurance, Personal Insurance, or Workers' Compensation Insurance products.

Background

Uncertainty in the markets for commercial lines property and casualty insurance coverage arose following the substantial loss of lives and property experienced on September 11, 2001. Soon after these tragic events, many reinsurers announced 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 imposed 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 for a period of 6 years with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015.

Several provisions of the initial Act have changed in the 2015 extension. Those changes include:

- Extending the program through December 31, 2020.

- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium of the preceding calendar year. Also, fixing 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 and the Attorney General of the United States.
- Amending the program trigger to apply to *certified acts* with insured losses exceeding \$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 increasing to 140 percent (from 133 percent) for terrorism loss risk-spreading premiums without regard to uncompensated insured losses for all insurers being greater than the insurance marketplace aggregate retention amount.
- The insurance marketplace aggregate retention amount being the lesser of; \$27.5 billion, increasing 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, 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 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 identified 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 from participating insurers and creating a capital reserve fund.
- Requiring the Secretary of Treasury to conduct a study not later than June 30, 2017 and every other 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.

The purpose 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 disclosure notices, policy language, and the applicable rates as a result of the Act.

Definition of Act of Terrorism

Section 102(1) defines an *act of terrorism* for purposes of the Act. Please note that the unmodified reference to “the Secretary” refers to the Secretary of the Treasury. The revised Section 102(1)(A) states, “The term “act of terrorism” means any 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 –
 1. human life;
 2. property; or
 3. infrastructure;
- (iii) to have resulted in damage within the United States, or outside the United States in the case of –
 1. an air carrier or vessel described in paragraph (5)(B); or
 2. 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.

Section 102(1)(D) was added in the 2015 reauthorization and states that “Not later than 9 months after the report required under section 107 of the Terrorism Risk Insurance Program Reauthorization Act of 2015 is submitted to the appropriate committees of Congress, the Secretary shall issue final rules governing the certification process, including establishing a timeline for which an act is eligible for certification by the Secretary on whether an act is an act of terrorism under this paragraph.”

The new Act changes the terms “program year” and “transition period” to “calendar year” throughout. The new Act defines the term “act of terrorism” as 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...”

The Terrorism Risk Insurance Act as amended, contains in Section 103(e)(1)(B) a program trigger of \$100 million in aggregate industry insured losses resulting from certified acts of terrorism before federal reimbursement is triggered in calendar year 2015. The trigger amount is increased by \$20 million annually until it reaches \$200 million in 2020, after which it remains fixed at \$200 million.

Other terms of the Act, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, remain unchanged.

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*. Oregon 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.

Given that the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 are already in effect, and insurers and rating organizations must accelerate filing activity in order to achieve compliance with the revised provisions of the Act, Oregon will review the filings of TRIA2015 new rates, policy forms, and disclosure notices on an expedited basis in SERFF. 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.

A change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a disclosure requirement for any policy issued after the enactment of the Act. This remains a requirement under TRIA2015.

The Oregon Insurance Commissioner requests that insurance company independent disclosure notices be filed for informational purposes, along with any company specific 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 Oregon business owners. 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. For those insurance companies who are members or subscribers of an authorized Rating Organization, and who have given that bureau filing authority on their behalf, an independent filing of those bureau approved TRIA forms, rules, or loss costs will not be necessary.

Filers should use the SERFF system for submitting their filings. Filers should use the term "TRIA2015" in the product name field in SERFF to indicate a filing related to terrorism. Oregon will provide expedited review of all TRIA2015 form filings. The SERFF system alleviates the need to provide a special transmittal form for expedited review.

Provision for Standard Fire

In Oregon, the requirements for fire coverage are established by law and where applicable, must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage. This requirement applies to any commercial insurance policy providing fire coverage, including commercial inland marine policy forms.

Provision for Oregon Workers' Compensation Policies

Workers compensation insurance coverage is statutorily mandated and exemptions are barred in Oregon. Thus, a business cannot voluntarily waive workers compensation coverage (or terrorism coverage provided by a workers' compensation insurance policy), nor can an insurer exempt terrorism risk from a workers compensation policy.

Effective Date

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

This bulletin is dated the 3rd of March, 2015, at Salem, Oregon.

A handwritten signature in black ink, appearing to read "Laura N. Cali", written over a horizontal line.

Laura N. Cali, Oregon Insurance Commissioner

POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM INSURANCE COVERAGE

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism, as defined in Section 102(1) of the Act. 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—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and 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.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES [85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020] OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS’ LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

Acceptance or Rejection of Terrorism Insurance Coverage

I hereby elect to purchase terrorism coverage for a prospective premium of \$_____.

I hereby decline to purchase terrorism coverage for certified acts of terrorism. I understand that I will have no coverage for losses resulting from certified acts of terrorism.

Policyholder/Applicant’s Signature
Insurance Company

Print Name
Policy Number

Date

POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM INSURANCE COVERAGE

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: 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—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and 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.

Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses [85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020] of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers’ liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is _____, and does not include any charges for the portion of losses covered by the United States government under the Act.

I ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE ACT, AS AMENDED, ANY LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT, AND MAY BE SUBJECT TO A \$100 BILLION CAP THAT MAY REDUCE MY COVERAGE, AND I HAVE BEEN NOTIFIED OF THE PORTION OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.

Policyholder/Applicant’s Signature

Print Name

Date

Name of Insurer: _____

Policy Number: _____