DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Adam W. Hamm
Commissioner of Insurance

BULLETIN 2008-1

TO: All Property and Casualty Insurers Writing Commercial Lines Insurance Products
All Insurers on the NAIC Quarterly Listing of Alien Insurers

FROM: Adam W. Hamm, Commissioner

DATE: January 2, 2008

SUBJECT: Filing Procedures for Compliance with the Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007

The Terrorism Risk Insurance Act of 2002 (the Act) provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers. The Act was previously extended for a two-year period to cover 2006 and 2007. The Terrorism Risk Insurance Program Reauthorization Extension Act of 2007 has been approved and now extends the Act for an additional seven years through December 31, 2014.

The intent of this bulletin is to advise you of certain provisions of the Act, as extended, that may require an insurer to submit a filing in order to become compliant with the new provisions.

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 $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 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 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.

Certified Act of Terrorism Redefined

The definition of an act of terrorism has been changed. There is no longer a distinction between terrorism caused by foreign persons or interests and domestic acts. The new definition of a Certified Act of Terrorism includes both foreign and domestic acts. Refer to Section 102(1)(A) of the Act for the definition. Note: Section 102(1)(B) still requires a minimum of $5,000,000 in property and casualty insurance losses in order for an event to qualify to be certified by the Treasury.

Program Trigger for Industry Changed

Before federal reimbursement to companies for a certified act of terrorism could begin, aggregate insurance losses for the insurance industry must reach $100,000,000. Refer to Section 103(1)(B) of the Act.

Noncertified Acts Based Solely On a Failure To Reach Minimum Threshold.

North Dakota will not accept filings that contain exclusions for losses from acts of terrorism that have not been certified solely due to the fact the event did not meet the threshold of $5,000,000 in Section 102(1)(B) on any policy that otherwise provides acts of terrorism.

Limitation of Coverage If Certified Losses Exceed $100,000,000,000

North Dakota will accept filings that contain language limiting coverage when the certified loss exceeds an aggregate of $100,000,000,000.

Surplus Lines Insurers

North Dakota does not require surplus lines insurers to file rates, policies or forms.

Voluntary Expedited Filing Procedure for Admitted Insurers

To the extent that the changes in the Terrorism Risk Insurance Program Reauthorization Act of 2007 necessitate the filing of new or revised policies, forms or rates in order for a company to be compliant, the Department requests companies use the "Expedited Filing Transmittal Document For Terrorism Risk Insurance Forms and Pricing" Edition 12/19/07. A copy is attached to this bulletin.

Rate Filings – Commercial rate change filings can be made on a use and file basis. The filing is due in the Department within 30 days of implementation. All rate change filings must be properly documented with the exception of those changes of 5% or less, in which case the Department is waiving the requirement for supporting documentation. N.D.C.C. ch. 26.1-25.

Form Filings – For companies using the above expedited form, the Department will waive the 60-day waiting period for form filings. N.D.C.C. §§ 26.1-30-19 and 26.1-30-20.

Disclosure Notice Filings – The Act requires companies to issue new disclosure notices, while the Department does not normally require the filing of disclosure notices. For consistency with all other states, the Department asks that the disclosure notices be included and notices will be treated on an informational basis. Sample notices are attached.

North Dakota accepts all types of filings via SERFF. We strongly encourage companies to use SERFF to make the expedited filings as that will help reduce processing times.

The Department will accept the expedited form and will apply the above waivers until April 1, 2008.

Standard Fire Policy

North Dakota is a standard fire policy state; however, N.D.C.C. § 26.1-39-06(4) allows companies writing commercial policies to exclude loss by fire caused by terrorism.

Effective Date

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.

AWH/njb
Attachments

Adopted

Ed. 12/19/07

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 *Certified Losses*
☐ Filing Related to *Non-Certified Losses*
☐ 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

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

	Component/Form Name /Description/Synopsis	Form # or Rate Page Include edition date	Replacement Or withdrawn?	If replacement, give form # or rate page(s) it replaces	Previous State Filing Number, if required by state
01			[ ] Replacement [ ] Withdrawn [ ] Neither		
02			[ ] Replacement [ ] Withdrawn [ ] 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: _____

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COMPLETED SAMPLE FORM Ed. 12/19/07

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 *Certified Losses*
☐ Filing Related to *Non-Certified Losses*
☐ Filing Applicable to Both Certified and Non-Certified Losses

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #
ABC Insurance Company	NY	0000-99999	99-1234567

Contact Info for Filer

Name and address of Filer(s)	Telephone #	FAX #	e-mail
John Doe (Form Filing) Regulatory Compliance ABC Insurance Co. 12345 Fifth Ave New York, NY 10234	501-555-5555	501-555-5551	John.doe@abcins.com

Filing information

Line of Insurance (see attachment)	Commercial General Liability
Company Program Title (Marketing title) (if applicable)	General Liability Program
Filing Type ** see note below	Form (Endorsement)
This application is used with:	(Insert policy form number to which the application attaches)
Effective Date Requested	01-01-07 (Enter your desired effective date)
Filing date	(Date Company sends filing)
Company Tracking Number	ABC-EP-2001-01 (Enter your filing tracking number, if applicable)
Date filing approved in domiciliary state, if applicable	Not approved yet. Filed on same date as this filing.

	Component/Form Name /Description/Synopsis	Form # or Rate Page Include edition date	Replacement Or withdrawn?	If replacement, give form # or rate page(s) it replaces	Previous State Filing Number, if required by state
01	Certified Loss Coverage Form	CG XX XX 12 02	[X] Replacement [ ] Withdrawn [ ] Neither	List form number of previous terrorism exclusion	
02			[ ] Replacement [ ] Withdrawn [ ] 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 compliance with the terms of the Terrorism Risk Insurance Act, as amended, and the laws of this state;
☐ Is compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Signature _____ Print Name: _____ Title: _____

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Attachment _____
Property and Casualty Insurance (C) Committee
12/19/07

POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, that 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 concurrence with the Secretary of State, 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% 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

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Attachment _____
Property and Casualty Insurance (C) Committee
12/19/07

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 2007, 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 concurrence with the Secretary of State, 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% 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, 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: _____

DRAFTING NOTE: An insurer may choose not to use the acknowledgement section for workers compensation.

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