

COMMONWEALTH OF VIRGINIA

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**Letter
Withdrawn
By Administrative
Letter 2015-03**

Administrative Letter 2002-15

TO: ALL LICENSED PROPERTY & CASUALTY INSURERS WRITING
COMMERCIAL LINES INSURANCE PRODUCTS

RE: FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS
OF THE TERRORISM RISK INSURANCE ACT OF 2002

Congress recently enacted, and the President has signed into law, the Terrorism Risk Insurance Act of 2002 (the Act). This federal law establishes within the Department of the Treasury the Terrorism Insurance Program, which provides a backstop for claims resulting from acts of terrorism, as defined in the Act, and imposes certain obligations on insurers.

The purpose of this letter is to advise you of certain provisions of the Act that may require insurers to submit filings in this state and to inform you regarding procedures insurers may use to expedite the filing process.

The Terrorism Insurance Program

All insurers, as defined in the Act, are required by the Act to participate in the Terrorism Insurance Program and to make available coverage for insured losses, as defined in the Act, resulting from an act of terrorism, as defined in the Act, in all of their property and casualty insurance policies, as defined in the Act. The Act further requires insurers to make available, in all property and casualty insurance policies, coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

Definition of Property and Casualty Insurance

The Act defines "property and casualty insurance" as commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance, but not including crop or livestock insurance, private mortgage or title insurance, financial guaranty insurance issued by monoline financial guaranty insurers, medical malpractice, individual or group health or life insurance, flood insurance provided under the National Flood Insurance Act, or reinsurance or retrocessional reinsurance.

Definition of Act of Terrorism

Section 102(1)(A) of the Act states, “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—(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 acting on behalf of any foreign person or foreign interest, 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.”

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

The Act includes a definition of acts of terrorism that is used to describe *certified losses*. Insurers’ policy forms and endorsements should also include a definition of acts of terrorism that constitutes *non-certified losses* that is in accordance with the provisions set forth in the section below. For *non-certified losses*, this state will accept the following definition, or one that is more favorable to policyholders:

The phrase “non-certified act of terrorism” means a violent act or an act that is dangerous to human life, property, or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the Federal Terrorism Risk Insurance Act of 2002.

Definition of Insured Loss

The Act defines “insured loss” as any loss resulting from an act of terrorism (including an act of war, in the case of workers’ compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—(A) occurs within the United States; or (B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

Certified vs. Non-Certified Losses

As a result of the definitions of “act of terrorism” and “insured loss” contained in the Act, there are essentially two distinct types of losses that a policyholder might face that result from terrorism. One type of loss is the *insured loss* that is defined within and covered by the provisions of the Act. For convenience, we will use the term “*certified loss*” to refer to losses resulting from certified acts of terrorism. The second type of loss is one that does not fit within the definition of *insured loss* as described in the Act. For convenience, we will use the term “*non-certified loss*” to refer to losses resulting from acts of terrorism that are not certified. The most significant difference between these losses is that *certified losses* will always involve an

act committed by, or on behalf of, a foreign person or foreign interest, while *non-certified losses* may not.

Please note that the Act's preemption of this state's prior-approval form-filing law (§ 38.2-317 of the Code of Virginia) applies only to contract language that is applicable to *certified losses*. Also, if an insurer intends to reinstate an exclusion on in-force policies as allowed under the Act, it may only reinstate an exclusion that previously existed on the policy. Insurers may not add new exclusions to in-force policies mid-term.

This state has approved, and will continue to approve, some significant limitations to coverage for *non-certified* acts of terrorism. For policies providing property insurance coverage, the following limitation applies with regard to exclusions of *non-certified losses*:

- Industry-wide insured losses must exceed \$25,000,000 for related incidents that occur within a 72 hour period;
- Exclusions applicable to non-certified acts of terrorism are not subject to this limitation if:
 - The act involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

In this state, the requirements for fire insurance coverage are established by law and, where applicable, coverage must meet or exceed the provisions of the Virginia Standard Fire Policy. These legal requirements cannot be waived, and are not preempted by the Act. Thus, a policyholder cannot voluntarily waive statutorily mandated coverage for fire losses ensuing from acts of terrorism.

For policies providing liability insurance coverage, the following limitations apply with regard to exclusions of *non-certified losses*:

- Industry-wide insured losses must exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
- Fifty or more persons must sustain death or serious physical injury for related incidents that occur within a 72-hour period. For purposes of such provisions, serious physical injury means:
 - Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions applicable to non-certified acts of terrorism are not subject to the above limitations above if;
 - The act involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

Submission of Rates and Policy Forms or Endorsements

Section 106(a)(2)(B) of the Act states that “during the period beginning on the date of enactment of this Act and ending on December 31, 2003, rates and forms for terrorism risk insurance covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable....” The subsection further provides that rates remain subject to subsequent regulatory review and may be invalidated if determined to be excessive, inadequate, or unfairly discriminatory. Similarly, the policy forms exempted from prior approval requirements for this period are subject to subsequent review based on all applicable laws and regulations not specifically preempted by the Act. It is important to note that only policy language granting or excluding coverage for *certified losses* is exempt from prior-approval waiting periods. Other policy language changes and related pricing remain subject to current applicable state law. However, to the extent possible, both types of filings will be processed by the Bureau in an expedited manner.

If an insurer relies on an advisory organization to file loss costs and related rating systems on its behalf, and the insurer intends to apply the same multiplier to loss costs for coverage for acts of terrorism, no rate filing is required if the insurer’s existing loss costs multiplier is filed to apply to both current and future loss costs filings. However, any rate or loss costs multiplier filings submitted must be accompanied by the required Virginia Rate Standards Certification Form (COF-1) and must provide sufficient information for the reviewer to determine what price would be charged to a policyholder seeking coverage for *certified losses*. Therefore, rates filed must be specific; ranges of rates, for example, would not be acceptable. Insurers are not required to submit supporting actuarial documentation for terrorism insurance rates with these filings. However, the Bureau reserves the right to request subsequent documentation sufficient to determine if the rates are excessive, inadequate or unfairly discriminatory. Any additional premiums charged for in-force policies must be pro-rated from the effective date of the additional coverage.

Except to the extent an insurer has authorized an advisory organization to file forms on its behalf, insurers must file any policy forms or endorsements that they intend to use to cover or exclude *certified losses* on or before the date they are effective. Forms should define *certified* and *non-certified losses* in a manner consistent with the Act. The definitions, terms and conditions should be complete and should accurately describe the coverage being provided or excluded.

The Act requires insurers to provide a clear and conspicuous disclosure to the policyholder of the premium charged for *insured losses* covered by the Program and the federal share of compensation for such losses. The required disclosure notices for in-force policies and new and renewal policies must comply with standards set forth in the Act; however, such disclosure notices are not required to be filed with, or approved by, the Bureau. Sample disclosure forms are available on the NAIC website at:

<http://www.naic.org/pressroom/releases/EmergencyResponse.htm>.

Please note that, for lines or subclassifications of insurance exempted from rate or form filing requirements by Virginia statutes or administrative orders, rates or forms for terrorism coverage associated with such lines or subclassifications are also exempt from filing requirements. The requirements of the Act, however, are not affected by such exemptions and continue to apply.

Effect on In-Force Policies

The Act voids any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of the Act to the extent that it excludes losses that would otherwise be *insured losses*. The Act also voids any state approval of any terrorism exclusion applicable to a contract for property or casualty insurance that is in force on the date of enactment of the Act to the extent that it excludes losses that would otherwise be *insured losses*. The Act allows insurers to reinstate such an exclusion in a contract that is in force on the effective date of the Act only if the insurer has received a written statement from the insured that authorizes reinstatement of the exclusion or the insurer has provided notice to the insured, at least 30 days before any such reinstatement, and the insured fails to pay any increased premium charged by the insurer for providing the coverage. Additional premiums for terrorism coverage may not be charged mid-term for in-force policies that were issued without terrorism exclusions.

Effect on Workers' Compensation Insurance Policies

Treatment of workers' compensation insurance under the Act is slightly different from other property and casualty insurance coverages, in that the federal program will share the risk of loss for workers' compensation for acts committed as part of the course of a war declared by the Congress in addition to certified acts of terrorism. This treatment occurs because of the statutory nature of the workers' compensation program, which does not permit an exclusion for losses resulting from acts of war or terrorism. In other respects, however, workers' compensation coverage is treated under the Act as any other covered line of insurance. Therefore, the disclosure and mandatory coverage requirements also apply to workers' compensation policies and insurers are required to separately state the premium charged for *certified losses* and the Federal share of compensation for such losses. With regard to the filing and approval of rates, workers' compensation insurers are also covered by the Act, including the preemption of any state prior approval requirements or waiting periods until December 31, 2003. As this state's workers' compensation law does not have any exclusions for terrorism or war, neither insurers nor policyholders may use the Act's procedures to create such exclusions. Also, since coverage for war and terrorism is not currently excluded, no additional premium for the coverage may be charged with respect to in-force workers' compensation policies.

If an insurer relies on an advisory organization to file workers' compensation loss costs and related rating systems on its behalf, no filing is required. Insurers filing independent rates for terrorism coverage that do not rely upon loss costs filed by an advisory organization must furnish supporting documentation sufficient for the reviewer to determine if the rates are excessive, inadequate or unfairly discriminatory. Since losses due to war or terrorism are an element of loss costs, and not an element of expense or profit, the cost of providing the coverage should not be reflected in an insurer's expense multiplier.

Information for SERFF Filers

For insurers using the SERFF system, there will be an expedited filing form in that system for your use.

Expedited Filing Transmittal Forms

Attached to this letter is a uniform filing transmittal form that has been agreed upon by this state and other states. An insurer wishing to receive expedited treatment of its filing should complete the EXPEDITED FILING TRANSMITTAL DOCUMENT—FOR TERRORISM RISK INSURANCE FORMS AND PRICING as directed. In addition, the insurer submitting the filing must certify that the filing is consistent with this letter, state law and the provisions of the Act. Certification is made by signing the appropriate blank on the transmittal form. Filings for policy language changes and related pricing for *non-certified losses*, which remain subject to current applicable state law, may also be made using the attached filing transmittal form. These filings will also be processed in an expedited manner to the extent possible. The cooperation of insurers in delaying other, non-essential or non-time-sensitive, filings during the next 90 days will be appreciated.

To be complete, an expedited filing must include the following for each insurer:

1. A completed, certified Expedited Filing Transmittal Document.
2. A copy of each policy form or endorsement that the insurer intends to use. (Please do not submit forms or endorsements already filed on your behalf by an advisory organization.)
3. A copy of the rates (or a completed VA-RFA-1 form for loss costs multiplier filings) and any applicable rules and a completed and signed COF-1 form. For workers' compensation independent rate filings, form DR (5/89) must be submitted.
4. An acknowledgment copy of the Transmittal Document and a postage-paid, self-addressed return envelope.

Filings must be submitted separately by line of insurance or insurance program.

Effective Date

These procedures are effective immediately. The expedited filing procedures will expire on December 31, 2003. The remainder of this Letter shall expire on December 31, 2005, unless Congress extends the duration of the Act.

Sincerely,



Alfred W. Gross
Commissioner of Insurance

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

This page applies to the following state(s) _____

Indicate Type of Filing
<input type="checkbox"/> Filing Related to <i>Certified Losses</i>
<input type="checkbox"/> Filing Related to <i>Non-Certified Losses</i>
<input type="checkbox"/> 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	
This application is used with:	
Effective Date Requested	
Filing date	
Company Tracking Number	
Date filing approved in domiciliary state, if applicable	

	<u>Component/Form Name /Description/Synopsis</u>	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			<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 for each insurer:

- A completed Expedited Filing Transmittal Document.
- One copy of each endorsement.
- A copy of any applicable rates, rules, or loss costs multipliers and appropriate certification forms.
- An acknowledgment copy of the Transmittal Document and a postage-paid, self-addressed return envelope.

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

- Is in compliance with the terms of the Terrorism Risk Insurance Act of 2002 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: