

COMMONWEALTH OF VIRGINIA

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BUREAU OF INSURANCE



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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

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Withdrawn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

January 7, 2008

Administrative Letter 2008-01

**To: All Property and Casualty Insurers and Rate Service Organizations
Licensed in Virginia**

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

Several provisions of the initial Terrorism Risk Insurance Act of 2002 and the Terrorism Risk Insurance Extension Act of 2005 have been amended in the 2007 extension and reauthorization. The intent of this letter is to advise you of certain provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("the 2007 Act") that may require insurers to submit a filing in this state to revise the policy forms and endorsements or associated rules and rates impacted by the Act.

One such provision is a change to the definition of a certified "act of terrorism" that eliminates the requirement that an individual or individuals that carry out an act of terrorism be acting on behalf of a foreign person or foreign interest. In short, this means that acts formerly considered "domestic" terrorism, or designated as "other acts of terrorism" or "non-certified acts of terrorism" may now be certified "acts of terrorism" under the 2007 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 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, 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) of the 2007 Act 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."

The 2007 Act also contains a program trigger of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is activated.

Another change introduced in the 2007 Act is a new disclosure requirement for any policy issued after enactment. Specifically, in addition to previous disclosure requirements, insurers must now also provide clear and conspicuous disclosure to the policyholder of the existence of the \$100 billion cap under Section 103(e)(2), at the time of offer, purchase, and renewal of the policy. Such disclosure notices are not subject to review or approval in Virginia and should not be submitted.

If an insurer relies on a rate service 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. No supporting documentation, other than a properly completed form COF-1, is required for such filings. Rule, rate, and loss costs multiplier filings will be accepted on a file-and-use basis, in accordance with § 38.2-1906 of the Code of Virginia.

However, notwithstanding the above paragraph, insurers electing to file independent workers' compensation rates for terrorism exposures that do not rely upon the approved loss costs filed on their behalf by the National Council on Compensation Insurance are subject to the 60-day prior filing requirements of § 38.1-1912 of the Code of Virginia and must include full actuarial support for their proposed rates.

Each insurer must submit for approval the policy language that it intends to use in this state to the extent that the insurer has not authorized a rate service organization to submit such filings on its behalf. Policy forms must define *acts of terrorism* in language consistent with the 2007 Act. Insurers should attempt to mirror, in their independent form filings, the language filed on their behalf by rate service organizations, to the extent possible, in order to expedite the review and approval of such filings. The definitions, terms and conditions should be complete and should clearly and accurately describe the coverage that will be provided in, or excluded from, the policy. Insurers must include language that clearly explains the limitations on coverage that may apply when certified losses exceed \$100 billion in the aggregate for all lines of insurance covered by the 2007 Act.

Insurers must withdraw or replace any currently-approved forms that are not in compliance with the 2007 Act, which would include any policy forms that make a distinction between acts of a foreign person or foreign interest and acts of a domestic person or domestic interest.

Given that the 2007 Act does not contain language that nullifies or preempts state laws regarding filing requirements, and in consideration of the time constraints in the 2007 Act, the Bureau has issued Administrative Order 11803, a copy of which is enclosed. This administrative order provides a temporary suspension of the 30-day prior approval provisions of § 38.2-317 of the Code of Virginia with respect to terrorism forms or endorsements developed in compliance with the 2007 Act. Such form filings will be accepted on a file-and-use basis until the administrative order expires on April 1, 2008. The Bureau reserves the right to require any necessary corrections after a comprehensive review of the forms has been completed. Terrorism form filings received

after April 1, 2008 will again be subject to the 30-day prior approval provisions of § 38.2-317 of the Code of Virginia.

Insurers and rate service organizations are encouraged to accelerate filing activity in order to achieve compliance with the 2007 Act. In order to assist in this effort, the Bureau will perform an expedited review and acknowledgment of any filings required by the 2007 Act, provided the attached Expedited Filing Transmittal Document is completed, signed, and attached to the submission. In order to make use of this voluntary speed to market initiative for revised terrorism-related forms, rules, and rates, insurers must certify on the form that the filing is in compliance with the terms of the Terrorism Risk Insurance Program Reauthorization Act of 2007 and the laws of this state. We encourage filers to take advantage of the SERFF system for submitting such filings; however, expedited handling will apply to both SERFF filings and paper filings if the Expedited Filing Transmittal Document is completed and attached.

The 2007 Act is effective until December 31, 2014, unless extended by Congress. The expedited filing procedures described in this administrative letter shall take immediate effect and shall expire on April 1, 2008.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alfred W. Gross".

Alfred W. Gross
Commissioner of Insurance

Enclosures (2)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
2008 JAN -8 P 2:28 BUREAU OF INSURANCE

AT RICHMOND, JANUARY 7, 2008
ADMINISTRATIVE ORDER NO. 11803

ORDER SUSPENDING THE REQUIREMENT FOR PRIOR APPROVAL
OF CERTAIN POLICY FORMS OR ENDORSEMENTS REQUIRED FOR
COMPLIANCE WITH THE TERRORISM RISK INSURANCE PROGRAM
REAUTHORIZATION ACT OF 2007 PURSUANT TO THE PROVISIONS
OF § 38.2-317 F OF THE CODE OF VIRGINIA

WHEREAS, it appearing to the Commissioner of Insurance that the requirement under § 38.2-317 A of the Code of Virginia that policy forms or endorsements be filed for approval at least 30 days prior to their effective date is not appropriate when such forms must be used by insurers at an earlier date in order to comply with the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("the 2007 Act"), and that such requirements should be temporarily suspended in order to assist insurers in their efforts to comply with the 2007 Act;

IT IS, THEREFORE, ORDERED that the 30-day prior approval requirements of § 38.2-317 A are hereby suspended by entry of this order, pursuant to the provisions of § 38.2-317 F of the Code of Virginia, with respect to the filing of policy forms or endorsements necessary for compliance with the 2007 Act. This suspension is effective immediately and shall expire on April 1, 2008.

IT IS FURTHER ORDERED that such forms must comply with all other applicable provisions of Title 38.2 of the Code of Virginia; and the Commissioner reserves the right to require any necessary amendments and corrections after such time as a comprehensive review of the exempted forms has been performed.

AN ATTESTED COPY HEREOF shall be sent to Mary M. Bannister, Deputy Commissioner of Insurance; to all licensed rate service organizations; and to all insurance companies that are affected thereby.

A True Copy
Teste:

Joel H. Peck
Clerk of the
State Corporation Commission

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

This page applies to the following state(s)

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|-------------------------|
| Indicate Type of Filing |
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|---------------------|
| Department Use only |
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|---|--------------------|---------------|---------------|
| Company Name(s) | Domicile | NAIC # | FEIN # |
| | | | |
| Name and address of Filer(s) | Telephone # | FAX # | e-mail |
| | | | |
| Line of Insurance (see checklists on Bureau website) | | | |
| Company Program Title (Marketing title, if applicable) | | | |
| Filing Type ** see note below | | | |
| | | | |
| Effective Date Requested | | | |
| Filing date | | | |
| Company Tracking Number | | | |

| | <u>Component/Form Name /Description/Synopsis</u> | <u>Form # or Rate Page Include edition date</u> | <u>Replacement Or withdrawn?</u> | <u>If replacement, give form # or rate page(s) it replaces</u> | <u>Other Comments</u> |
|----|--|---|--|--|-----------------------|
| 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.
- A copy of each endorsement or policy form being filed for approval in compliance with the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- A copy of the rules, rates, loss costs multiplier, or rating plan being filed in compliance with the 2007 Act.
- A postage-paid, self-addressed envelope **large enough to accommodate the acknowledgment or approval of the filing.**

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 administrative letter containing the voluntary expedited filing procedures.

Signature

Print Name:

Title:

Important Notes:

- **Please do not submit applications, as they are not subject to review or approval in Virginia.**
- **Please do not submit declarations pages that do not contain terms or conditions of coverage.**
- **Please do not submit the disclosure forms required by the 2007 Act, as we do not review or approve notices.**