



OFFICE OF
INSURANCE COMMISSIONER

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Information about the Terrorism Risk Insurance Program Reauthorization Act of 2007

Background

The Terrorism Risk Insurance Act of 2002 (the Act) was adopted by Congress to provide a temporary federal shared loss program for losses resulting from certain acts of terrorism. The intent of the Act was to protect American businesses by minimizing market disruptions and ensuring the widespread availability and affordability of property and casualty insurance for terrorism risk. The Act federal law provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. Congress has extended the Act twice by passing the Terrorism Risk Insurance Extension Act of 2005 and, more recently enacting the Terrorism Risk Insurance Program Reauthorization Extension Act of 2007. Congress has now reauthorized the Act through December 31, 2014.

Important Changes to the Act

Several parts of the Act, as amended by the Terrorism Risk Insurance Extension Act of 2005, have changed under the Terrorism Risk Insurance Extension Act of 2007. These changes include:

- Revising the definition of a “certified act” of terrorism to remove the requirement that individual(s) must be acting on behalf of a 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 billion 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 million 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 billion.
- 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 in one year.
- 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 in 180 days.

- 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 first Act, as amended by the Terrorism Risk Insurance Extension Act of 2005, remain unchanged.

Certified Loss

The most significant change to the Act that affects rate, rule or form filings is the elimination of the requirement that individual(s) must act on behalf of a foreign person or foreign interest. In short, this means that acts formerly referred to as “domestic” terrorism may be certified as an act of terrorism under TRIA. This may require some insurers or rating organizations to amend their rates, rules or forms.

Issues Related to Terrorism Coverage

- **Washington is a Standard Fire Policy state.** The requirements for fire coverage are established in Chapter 284-20 WAC and must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived, and are not preempted by the Act. Thus, a business cannot voluntarily waive this mandated coverage.
- **“Concurrent causation” exclusions are not permitted in the State of Washington.** If an insurer covers the “efficient proximate cause” of the loss, the insurer may not exclude coverage for later events, even if they are the “causes-in-fact” of the loss.
- The State of Washington does not allow exclusions of coverage for acts of terrorism that fail to be *certified losses* solely because they fall below the \$5 million threshold in Section 102(1)(B) on any policy that provides coverage for *certified losses*.
- Insurers may submit language containing coverage limitations for *certified losses* that exceed \$100 billion in the aggregate.
- The Act defines acts of terrorism for *certified losses*. Policies requirements should also define what constitutes an act of terrorism for *non-certified losses*. For *non-certified losses*, Washington will accept the following definition, or one that is more liberal to policyholders:

The phrase “non-certified act of terrorism” means a violent act or an act that is:

1. 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
2. Is not certified as a terrorist act under the Federal Terrorism Risk Insurance Act of 2002, as extended by the Terrorism Risk Insurance Extension Act of 2005 and Terrorism Risk Insurance Extension Act of 2007.

Rate, Rule and Form Filings

If a rating organization (bureau) files rates, rules, or forms on behalf of an insurer, the insurer must make a filing only if it wants to deviate or not adopt the bureau filing. Independent programs require specific filings by each insurer.

If an insurer relies on an advisory organization to file loss costs and related rating plans on its behalf, no rate filing is required unless an insurer changes the loss cost multiplier that is currently on file for coverage for *certified losses*. Similarly, no additional rate filing is required unless the insurer decides to change an approved rate or rating plan already on file.

If an insurer decides to change a loss cost multiplier or independently filed rates or rules, the insurer must submit a rate/rule filing. The filing must provide enough information for the analyst to determine:

- What price will be charged to a business seeking to cover *certified losses*; and
- That the rates are not excessive, inadequate or unfairly discriminatory.

We will accept filings that charge a specified percentage of premium for coverage for *certified losses*. Insurers may 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 plan.

Insurers subject to policy form regulation must file any new policy forms. The policy must cover *acts of terrorism* and both *certified losses* and *non-certified losses* in ways that are consistent with the Act, state law and these guidelines.

The State of Washington has “use and file” laws that apply to commercial lines rates, rules and forms (except medical malpractice insurance and surety forms)¹. This means that new rates, rules and forms subject to the Act can be used before they are filed with the Office of Insurance Commissioner (OIC). OIC must receive filings within 30 days of the effective date of the first policy issued with the revised rate, rule or form. The filings remain subject to review under current state law and must be corrected if disapproved.

Since Washington is a “use and file” state, the EXPEDITED TRANSMITTAL DOCUMENT is not applicable. Insurers must submit filings in the normal way with the key word “TERRORISM” in the filing description area of the transmittal form. This word will help identify filings for internal OIC priority procedures. See the OIC webpage for filing procedures and forms at: <http://www.insurance.wa.gov/industry/mainpropertycasualty.asp>.

Disclosure Notices

Insurers are not required to file Disclosure Notices in the State of Washington unless they are made a part of the policy. Any disclosures should comply with the requirements of the Act and should be consistent with the policy language and rates filed by the insurer.

¹ Medical malpractice rates, rules and forms and surety rates and rules are prior approval; surety forms are not subject to filing requirements.