



Vermont . . .

Department of Banking, Insurance, Securities
and Health Care Administration

Insurance Division Bulletin 142

COMPLIANCE WITH THE PROVISIONS OF THE TERRORISM RISK INSURANCE ACT OF 2002, INCLUDING

- **VOLUNTARY EXPEDITED FILING PROCEDURES AND**
- **STATE POLICY ON ACTS OF TERRORISM
NOT COVERED BY THE TERRORISM RISK INSURANCE ACT OF 2002.**

Soon after the events of September 11, 2001, some reinsurers announced that they did not intend to provide coverage for acts of terrorism in future reinsurance contracts. This led to an effort on behalf of interested parties to seek a temporary federal backstop to enhance the ability of the insurance industry to cover these unpredictable and potentially catastrophic events.

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (the "Act"). The Act provides a federal backstop for losses from defined acts of terrorism and imposes certain obligations on insurers.

This bulletin advises you of certain provisions of the Act that may require you to submit a filing in this state and to inform you regarding a voluntary procedure for you to use to expedite the filing and timely review of the disclosure notices, policy language and the applicable rates that are discussed in the Act. This bulletin also advises you of the Department's approach to acts of terrorism not covered by the Act.

SUMMARY OF CERTAIN PROVISIONS OF THE FEDERAL ACT

The following summary is meant only to provide a context for the procedures and policies set out in this Bulletin. It is not an exhaustive analysis of the Act and insurers are expected to consult with their counsel in determining the application of the Act to them.

As a result of the Act's limited definition of terrorism, there are essentially two distinct types of losses that a business might face that result from terrorism, those covered by the Act's definition and those not. One type of loss is thus the *insured loss* covered by the provisions of the Act. These are referred to here as "certified losses," *i.e.*, those resulting from acts of terrorism certified as such by the Secretary of the Treasury. The second type of loss is one that does not fit within the definition of *insured loss* in the Act.

These are referred to here as “non-certified” losses.¹ The most significant difference between these losses is that the *certified losses* always involve a foreign person or foreign interest, while the *non-certified losses* may not.

“Terrorism” Under The Definition In The Federal Act

The Act defines an act of terrorism as an act that is “certified” as such by the Secretary of the Treasury. To be certified, an act of terrorism must be a violent act or an act that is dangerous to human life, property or infrastructure, must have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels, or at the premises of a United States mission; and must 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. In addition, an act will *not* be certified as terrorism if property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000 or if the act is committed as part of the course of a war declared by the Congress.

Lines Of Insurance To Which The Act Applies

The Act applies to “property and casualty insurance.” Under the Act “property and casualty insurance” means *commercial* lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance, and does *not* include crop or livestock insurance, private mortgage or title insurance, financial guaranty insurance issued by monoline financial guaranty insurance corporations, medical malpractice, health or life insurance including group life, flood insurance provided under the National Flood Insurance Act, or reinsurance or retrocessional reinsurance. For the purpose of this bulletin “Farmowners” coverage will be considered to be a commercial line.

Losses Covered By The Act

An “*insured loss*” under the Act is any loss (1) resulting from an act of terrorism as defined in the Act (including an act of war, in the case of workers' compensation), (2) that is covered by primary or excess commercial property and casualty insurance issued by an insurer, (3) if the loss occurs within the United States or to an air carrier (as described in 49 U.S.C. § 40102), or to a United States flag vessel or certain other vessels regardless of where the loss occurs, or at the premises of a United States mission. Insured losses exclude punitive damages awarded in a civil action.

Requirement To “Make Available” Coverage For Insured Losses Under The Act

All insurers, as defined in the Act, are required to participate in the Terrorism Insurance Program (the Program) and to make available coverage for *insured losses* in all of their covered commercial lines policies, coverage that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

¹ Certain forms submitted to the Department refer to non-certified losses and non-certified acts of terrorism as “other” losses and “other” acts of terrorism. Where the definition of “other” makes clear that “other” is equivalent to “non-certified” as used in this Bulletin, the terms may be used interchangeably.

Mandatory Participation By Insurers

Insurers to which the Act applies include any entity and affiliate thereof that is licensed or admitted to engage in the business of providing primary or excess insurance in any State or is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto or is approved by a Federal agency for the purpose of offering property and casualty insurance in connection with maritime, energy, or aviation activity or is a State residual market insurance entity or State workers' compensation fund and receives direct earned premium for any type of commercial property and casualty insurance coverage. This includes captive insurance companies, risk retention groups, and farm and county mutuals, if such entities are State licensed or admitted. The Secretary of the Treasury of the United States may extend the Act to other classes or types of captive insurers and other self-insured arrangements by municipalities and other entities as well as to group life insurance.

Prior Terrorism Exclusions Voided

Any terrorism exclusions in a contract for property and casualty insurance that is in force on the date of enactment of the Act are void to the extent they exclude losses that would otherwise be *insured losses*. The Act voids any state approved terrorism exclusion in a contract for commercial property or casualty insurance that is in force on the date of enactment, to the extent that it excludes losses that would otherwise be *insured losses*. The Act allows insurers to “reinstate a preexisting provision in a contract for commercial property and casualty insurance that is in force on the date of enactment of this Act and that excludes coverage for acts of terrorism only” if one of two conditions are met. The insurer must have received a written statement from the insured that affirmatively authorizes such reinstatement or if 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 such terrorism coverage.

VERMONT POLICY REGARDING CERTAIN TERRORISM PROVISIONS

Vermont will not allow terrorism exclusions in certain policies, as follows:

- No terrorism exclusion will be permitted in workers' compensation policies issued under Vermont law.
- No terrorism exclusion will be permitted in personal lines policies.
- No terrorism exclusion will be permitted in any life, annuity or health insurance policies or contracts.

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

Insurers required to file policy forms may submit language containing coverage limitations for *certified losses* that exceed the \$100 billion aggregate loss cap in the Act.

Filings For “Non-Certified” Acts Of Terrorism

The federal Act includes a definition of losses from acts of terrorism that is used in this Bulletin to mean *certified losses*. Policies subject to policy form filing requirements should also define what constitutes

an act of terrorism for *non-certified losses*. For *non-certified losses*, this state 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 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.

Vermont will allow some significant limitations that provide coverage for acts of terrorism under certain circumstances. For policies providing commercial property insurance coverage the following limitations apply to *non-certified losses*:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period;
- Exclusions for acts of terrorism are not subject to limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that 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.

For policies providing commercial liability insurance coverage the following limitations apply to *non-certified losses*:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
- Fifty or more persons sustain death or serious physical injury for related incidents that occur within a 72 hour period. For purposes of this provision 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 for acts of terrorism are not subject to limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that 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.

Effect On Workers’ Compensation Insurance Coverage

Treatment of workers’ compensation is slightly different than for other property and casualty insurance coverages. First, Section 102(1)(B)(i) provides that the federal program will share the risk of loss for workers’ compensation for acts of war in addition to acts of terrorism. This treatment occurs because of the statutory nature of the workers’ compensation program, which does not provide an exclusion for losses resulting from an act of war. Under Vermont law there is no exclusion for workers’ compensation

losses resulting from an act of war. There is no provision in the Act that would preempt the compulsory coverage aspects of workers' compensation insurance policies. In other respects, however, workers' compensation coverage is treated under the Act as any other covered line of insurance. Therefore, the notice requirements of Section 103(b)(2) and the mandatory "make available" requirements of Section 103(c) apply to workers' compensation policies. In this connection, workers' compensation insurers are required to separately state (the amount of) the estimated portion of the premium being charged a policyholder for acts of terrorism, as defined in the Act. 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 an exclusion. With regard to the filing and approval of rates and forms, workers' compensation insurers are also covered by the Act, specifically Section 106(a)(2)(B) that waives any state prior approval or time requirements for the first year of the Act. Such insurers shall therefore follow the alternative filing procedures established in this bulletin.

SUBMISSION OF RATES, POLICY FORM LANGUAGE AND DISCLOSURE NOTICES

Insurers are required to comply with the Act and with state law. The Act states that "during the period beginning on the date of enactment . . . and ending on December 31, 2003, rates and forms for terrorism risk insurance coverage 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 Act further notes that rates remain subject to subsequent regulatory review based on whether a rate is "excessive, inadequate, or unfairly discriminatory" and other applicable state law. Similarly, policy forms are subject to subsequent review based on all applicable laws and regulations. Thus, a system is created where insurers can immediately implement prospective rate changes for coverage of *insured losses* related to *certified acts of terrorism* as defined in the Act. Policy language for terrorism risk and insurance covered by the Act (granting coverage or excluding coverage for *insured losses*) is only exempt from prior approval or waiting periods to the extent that the policy language relates to *insured losses* as defined in the Act.

PLEASE NOTE that the preemption of Vermont's filing law applies *only* to contract language that is applicable to *certified losses*. Other policy language changes and related pricing remain subject to current applicable Vermont law.

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*. 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*. This state 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. The supporting documentation should be sufficient for the reviewer to determine if the rates are excessive, inadequate or unfairly discriminatory.

Insurers subject to policy form regulation must submit the policy language that they intend to use in this state within a reasonable time after they are implemented. This state considers 30 days to be a reasonable time for purposes of completing an expedited filing of policy language. The policy should define both *certified* and *non-certified acts of terrorism* and both *certified* and *non-certified losses* in ways that are consistent with the Act, Vermont 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.

The disclosure notices required by the Act to be sent to insureds should be filed with this Department for informational purposes, along with the 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 business owners in this state. The disclosures should comply with the requirements of the Act and should be consistent with the policy language and rates filed by the insurer. Details about the applicable requirements are contained in the following two paragraphs.

In-force business receives special consideration under the Act. As noted above, the Act voids any terrorism exclusion on existing policies to the extent that it excludes losses that would otherwise be *insured losses* as defined in the Act. It details a process for insurers and policyholders to reinstate the voided exclusions. Under that process, an insurer may reinstate a preexisting provision in a contract that is in force on the date of enactment of this Act and that excludes coverage for an act of terrorism *only if* the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement *or if* the insured fails to pay any increased premium charged by the insurer for providing such coverage and the insurer provided notice, at least 30 days before any such reinstatement.

There are also disclosures required under the Act for new business and renewal business. Although avoidance of contract language is not an issue, insurers must make certain disclosures to policyholders to remain in compliance with the Act. Section 103(b)(2) requires insurers to provide a clear and conspicuous disclosure to the policyholder of the premium charged for covered *insured losses* and advise that a federal program exists whereby the federal government will share significant portions of major *insured losses* with insurers.

Explanation And Instructions For Terrorism Rate And Form Review

The Act preempts any state prior approval law pertaining to rates or forms—including any law that imposes waiting periods—prior to use of a rate or form for purposes of terrorism coverage, *as defined by the Act*. This preemption remains in effect for the first year of the Act. Consistent with these requirements of the Act, this bulletin establishes a system for rates and forms, requiring insurers or advisory organizations to file their rates and forms no later than 30 days after their first date of use. The procedure for obtaining an expedited review of such rates and forms is set forth below. However, nothing in this bulletin shall be construed as establishing a rate or form filing review or approval requirement where one does not otherwise exist under this state's law.

Policy language changes and related pricing for *non-certified losses* remain subject to current applicable Vermont law.

Forms with Instructions

Attached to this bulletin is a uniform filing transmittal form that has been agreed upon by this state and other states. An insurer or advisory organization wishing to receive expedited treatment of its filing shall complete the EXPEDITED FILING TRANSMITTAL DOCUMENT—FOR TERRORISM RISK INSURANCE FORMS AND PRICING as directed. In addition, the insurer(s) or advisory organization submitting the filing must certify that the filing is consistent with this bulletin, state law and the provisions of the Act. Certification must be made by signing the transmittal form. Filings for policy language changes and related pricing for *non-certified losses*, which remain subject to current applicable

state law, may be made using the attached filing transmittal form. The attached expedited filing transmittal document replaces all otherwise applicable filing forms and filing transmittal forms for these filings.

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

1. A completed, certified Expedited Filing Transmittal Document for each insurer or advisory organization.
2. One copy of each policy form, endorsement, or rates that the insurer intends to use, unless the insurer has given an advisory organization authorization to file them on its behalf.
3. A copy of any disclosure notices that will be used to convey information to policyholders in this state.
4. The appropriate filing fees.
5. A postage-paid, self-addressed envelope **large enough to accommodate the return.**

If this filing is for multiple companies, please provide a copy of the transmittal header for each company and an extra copy for return to the company. (i.e. 7 companies = 8 copies)

FILING NOTE: Vermont is not a Standard Fire Policy state. Please do not make filings which reference the Standard Fire Policy or any related SFP rules.

EFFECTIVE DATE

This bulletin shall take immediate effect. The expedited filing process outlined herein shall expire on December 31, 2003. The remainder of the bulletin shall expire on December 31, 2005, unless Congress extends the duration of the Act.

Department Contact:

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As of
March 19, 2003

John P. Crowley, Commissioner

**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 <i>Certified Losses</i>
? Filing Related to <i>Non-Certified Losses</i>
? 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	

	<u>Component/Form Name</u> <u>/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:

- 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 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:

**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 <i>Certified Losses</i>
? Filing Related to <i>Non-Certified Losses</i>
? 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	01-01-02 (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.

	<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>Previous State Filing Number, if required by state</u>
01	Certified Loss Exclusion	CG XX XX 12 02	<input checked="" type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither	List form number of previous terrorism exclusion	
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.
- 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 of 2002 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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