



**Vermont Department of Financial Regulation
Division of Insurance
Insurance Bulletin No. 183**

**FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS OF THE TERRORISM RISK
INSURANCE PROGRAM REAUTHORIZATION ACT OF 2015**

The purpose of this bulletin is to advise you of certain provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 amending and extending the Terrorism Risk Insurance Act of 2002 (**the Act**) by reauthorization, which may require insurers to submit a filing in this state of disclosure notices, policy language, and applicable rates as a result of the Act. For further details related to the Act, please consult the Act itself.

Background

Uncertainty in the markets for commercial lines property and casualty insurance coverage arose following the substantial loss of lives and property experienced on September 11, 2001. Soon after these tragic events, many reinsurers announced that they would no longer provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a federal backstop to facilitate the ability of the insurance industry to continue to provide coverage for these unpredictable and potentially catastrophic events. As a result, Congress enacted and the President signed into law in November 2002, the Terrorism Risk Insurance Act of 2002. This federal law provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. The Act was extended for a two-year period covering Program Years 2006 and 2007, and for an additional seven years through December 31, 2014 with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007. The Act has now been extended again with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015.

The reauthorized Act, as amended and extended, included several changes including:

- Extending the program through December 31, 2020.
- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium of the preceding calendar year and the federal share of compensation at 85% of insured losses that exceed insurer deductibles until January 1, 2016, at which time the federal share shall decrease by 1 percentage point per calendar year until equal to 80%.
- Requiring the Secretary of the Treasury certify acts of terrorism in consultation with the Secretary of Homeland Security.
- Amending the program trigger to apply to certified acts with insured losses exceeding \$100 million for calendar year 2015, \$120 million for calendar year 2016, \$140 million for calendar year 2017, \$160 million for calendar year 2018, \$180 million for calendar year 2019, and \$200 million for calendar year 2020 and any calendar year thereafter.
- The mandatory recoupment of the federal share through policyholder surcharges increasing to 140 percent (from 133 percent).
- The insurance marketplace aggregate retention amount being the lesser of \$27.5 billion, increasing annually by \$2 billion until it equals \$37.5 billion, and the aggregate amount of insured losses for the calendar year for all insurers. In the calendar year following the calendar year in which the marketplace retention amount equals \$37.5 billion, and beginning in calendar year 2020 it is revised to be the lesser of the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior three calendar years as such sum is determined by the Secretary of the Treasury by regulation.

- Requiring the Secretary of the Treasury, not later than nine months after the date of enactment of the Act, to conduct and complete a study on the certification process, including the establishment of a reasonable timetable by which the Secretary must make an accurate determination on whether to certify an act as an act of terrorism.
- Requiring insurers participating in the Program to submit to the Secretary of the Treasury for a Congressional report to be submitted on June 30, 2016 and every June 30 thereafter, information regarding insurance coverage for terrorism losses in order to evaluate the effectiveness of the Program. The information to be provided includes: lines of insurance with exposure to terrorism losses, premiums earned on coverage, geographical location of exposures, pricing of coverage, the take-up rate for coverage, the amount of private reinsurance for acts of terrorism purchased and such other matters as the Secretary considers appropriate. This information may be collected by a statistical aggregator and in coordination with State insurance regulatory authorities.
- Requiring the Comptroller General of the United States to complete a study on the viability and effects of the Federal Government assessing and collecting upfront premiums and creating a capital reserve fund.
- Requiring the Secretary of the Treasury to conduct a study not later than June 30, 2017 and every June 30 thereafter to identify competitive challenges small insurers face in the terrorism risk insurance marketplace.
- Requiring the Secretary of the Treasury to appoint an Advisory Committee on Risk-Sharing Mechanisms to provide advice, recommendations and encouragement with respect to the creation and development of nongovernmental risk-sharing mechanisms. The Advisory Committee will be composed of nine members who are directors, officers, or other employees of insurers, reinsurers or capital market participants.
- Changing the terms “program year” and “transition period” to “calendar year” throughout.

Definition of Act of Terrorism

Section 102(1) defines an *act of terrorism* for purposes of the Act. Please note that the unmodified reference to “the Secretary” refers to the Secretary of the Treasury. The revised Section 102(1)(A) states, “The term ‘act of terrorism’ means any act that is certified by the Secretary, in consultation with the Secretary of Homeland Security, 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) 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.” Section 102(1)(C) and (E) specify that the determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

Certified and Non-Certified Losses

As a result of the definition of insured loss contained in the Act, there are essentially two distinct types of losses that a business 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 adopt the term of “certified loss” to refer to losses resulting from certified acts of terrorism. The second type of loss that a business might face is one that does not fit within the definition of insured loss as described in the Act. For convenience, we will adopt the term of “non-certified loss” to refer to losses resulting from terrorism that is not certified.

Vermont encourages broad coverage for non-certified losses which an insurer could implement just by having no exclusions of non-certified losses, as in most of ISO’s Terrorism forms. Nonetheless, the state has allowed, and will continue to allow, some significant limitations in coverage for acts of terrorism under certain circumstances if the insurer chooses to do so.

For policies providing property insurance the following coverage 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 the limitations above if:
 - o 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;
 - o The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - o 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 liability insurance the following coverage 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:
 - o Physical injury that involves a substantial risk of death;
 - o Protracted and obvious physical disfigurement; or
 - o Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for acts of terrorism are not subject to the limitations above if:
 - o 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;
 - o The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - o 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, Policy Form Language and Disclosure Notices

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*. Insurers that develop and file rates independently may choose to maintain their currently filed rates or submit a new filing. 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 whether the rates are excessive, inadequate or unfairly discriminatory

This state 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) on any policy that provides coverage for acts of terrorism that fail to be *certified*. Insurers required to file policy forms may submit language containing coverage limitations for *certified losses* that exceed \$100 billion in the aggregate.

Insurers subject to policy form regulation must submit the policy language that they intend to use in this state. The policy should define *acts of terrorism* in ways that are consistent with the Act, as amended, state 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. Insurers may conclude that current filings are in compliance with the Act, as amended, state law and the requirements of this bulletin.

In particular, should an insurer elect to impose limitations on non-certified losses, this state would 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 Terrorism Risk Insurance Program Reauthorization Act of 2015.

Mandatory Disclosures

A change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in TRIA, insurers since 2007 have had to 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.

Moreover, TRIA as amended by the 2015 Reauthorization requires that insurers provide disclosures and offers that comply with TRIA no later than April 13, 2015.

The commissioner requests that the disclosure notices be filed 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, as amended, and should be consistent with the policy language and rates filed by the insurer.

Attached are NAIC Model disclosure notices, Disclosure No. 1 and Disclosure No.2, that insurers could use to meet the disclosure requirements. Disclosure 1 is meant to inform the consumer of their right to purchase terrorism coverage for an additional premium. Disclosure 2 is meant to inform the consumer that they have terrorism coverage included in their existing policy and identify the amount of premium attributable to the terrorism coverage

Vermont Specific Filing Instructions

First, TRIA forms, rates and rules filings shall not be bundled with any other filings for other purposes.

Second, to expedite the filing review and approval process, filers should use the SERFF system for submitting such filings. Filers should use the term “TRIA2015” in the **PRODUCT NAME** field in SERFF to indicate a filing related to terrorism made in connection with the Terrorism Risk Insurance Program Reauthorization Act of 2015.

- A signed "Expedited SERFF Filing Transmittal Document" is required to be forwarded with each filing containing forms, rules, or rates under this Bulletin. One form is sufficient for all rates, forms / rules being filed. The form is attached at the end of this Bulletin.
- Vermont is not a Standard Fire Policy state; please refrain from filing SFP forms or related rules.
- TRIA rates, forms and rules may be included in the same filing if desired.
- Multiple Companies may be included on one TRIA filing for a given line of business.

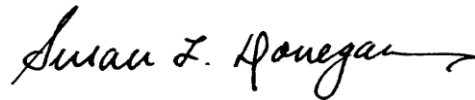
Provision for Workers' Compensation Policies

Workers' compensation insurance coverage is statutorily mandated for nearly all U.S. employers and exemptions are barred in all states. Thus, a business cannot voluntarily waive workers' compensation insurance (or terrorism coverage provided by a workers' compensation insurance policy), nor can an insurer exempt terrorism risk from a workers' compensation policy.

Effective Date

This bulletin shall take immediate effect and shall expire on December 31, 2020, unless Congress extends the duration of the Act.

For questions about this bulletin, interested parties should contact: Kevin Gaffney, Insurance Rates & Forms Assistant Director.



Dated this 18th day of February, 2015

Susan L. Donegan, Commissioner

Disclosure No. 1

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE**

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, 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 or acts that are certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, 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% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019 and 80% BEGINNING ON JANUARY 1, 2020, 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

Disclosure No. 2

**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 2015, 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 or acts that are certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, 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% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, 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 AND 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

Insurance Company

Print Name

Policy Number

Date

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

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

This abbreviated filing transmittal document should be used in conjunction with a SERFF filing only.

To be complete, a filing must include the following:

- A completed Expedited SERFF Filing Transmittal Document.
- One copy of each endorsement, disclosure form and/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, if applicable.
- The appropriate filing fees, if applicable

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

- Is in compliance with the terms of the Terrorism Risk Insurance Act, as amended, and/or the laws of this state; and
- Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Electronic Signature: [This would be replaced with a prompt for an Adobe electronic signature.]

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

Indicate Type of Filing
<input type="checkbox"/> Filing Related to <i>Certified Losses</i>
<input checked="" type="checkbox"/> Filing Related to <i>Non-Certified Losses</i>
<input type="checkbox"/> Filing Applicable to Both Certified and Non-Certified Losses

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Electronic Signature: [This would be replaced with an actual Adobe electronic signature.]