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December 27, 2007

Memorandum 2007-6R

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

**VIA: Licensed Rating Organizations**

**FROM: Gordon I. Ito, Deputy Insurance Commissioner**

**RE: VOLUNTARY EXPEDITED FILING PROCEDURES FOR COMPLIANCE  
WITH THE PROVISIONS OF THE TERRORISM RISK INSURANCE  
PROGRAM REAUTHORIZATION ACT OF 2007**

*This memorandum was prepared to expedite the delivery of a common message to insurers related to implementation issues that have developed as a result of the extension of the Terrorism Risk Insurance Act. Hawaii has followed the basic bulletin endorsed by the NAIC and has highlighted provisions based on the Hawaii Insurance Code.*

**Background**

There has been much uncertainty in the markets for commercial lines property and casualty insurance coverage in light of the substantial losses experienced by the industry on September 11, 2001. Soon after the tragic events, many reinsurers announced that they did not intend to 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 temporary federal backstop to calm market fears over future terrorist attacks and the ability of the insurance industry to allocate capital 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 (The Act or TRIA). This federal law provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers. The Act was extended for a two-year period covering Program Years 2006 and 2007. The Act has now been extended for an additional seven years through December 31, 2014, with the enactment of the Terrorism Risk Insurance Program Reauthorization Extension Act of 2007.

Several provisions of the initial Act have changed in the 2007 extension. Those changes include:

- Revising the definition of a certified act of terrorism to eliminate the requirement that the individual(s) are acting on behalf of any foreign person or foreign interest.
- Extending the program through December 31, 2014.
- Requiring clear and conspicuous notice to policyholders of the existence of the \$100,000,000,000 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 \$100,000,000 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 \$100,000,000,000.
- 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 not later than one year after the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- 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 not later than 180 days after the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- 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 Act, as amended by the Terrorism Risk Insurance Extension Act of 2005, remain unchanged.

The intent of this memorandum is to advise you of certain provisions of the Act, as extended, that may require insurers to submit a filing in this state and to inform you regarding a voluntary procedure for insurers to use to expedite the filing and timely review of the disclosure notices, policy language and the applicable rates as a result of the Act.

### **Definition of Act of Terrorism**

One of the changes made to TRIA with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a revision to the definition of an act of terrorism that eliminated 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 referred to as "domestic" terrorism may now be certified as an act of terrorism under TRIA.

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 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) 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 (D) 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.

The Act, as amended, contains in Section 103(1)(B) a program trigger of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered.

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.

### **Submission of Rates, Policy Form Language and Disclosure Notices**

If an insurer is a member of a rating/advisory organization that has prepared appropriate loss costs and related rating systems, an insurer may file for expedited review a statement certifying the use of its currently approved loss cost multiplier. 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*. 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. 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 memorandum. 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 memorandum. However, if policy forms make a distinction between acts of a foreign person or foreign interest and a domestic person or domestic interest, it is likely that a filing is required.

Another change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 is a new disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in TRIA, insurers must now also provide clear and conspicuous disclosure to the policyholder of the existence of the \$100,000,000,000 cap under Section 103(e)(2), at the time of offer, purchase and renewal of the policy.

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.

Given that the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of TRIA, this state will permit insurers and advisory

organizations to place new rates, policy forms and disclosure notices into immediate use without waiting for the tolling of the statutory waiting period.

If an insurer wants to take advantage of this voluntary speed to market initiative for revised terrorism products, it should complete the attached [Hawaii Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing](#), and certify on the form that it is in compliance with the terms of the Terrorism Risk Insurance Program Reauthorization Act of 2007 and the laws of this state. Completion of the [Hawaii Expedited Filing Transmittal](#) will also relieve an insurer from having to complete any other filing form or supplementary exhibit that is normally required to accompany filings.

This voluntary expedited filing system shall remain in place until April 1, 2008. If an insurer does not want to take advantage of the expedited filing system (or cannot file prior to April 1, 2008) then it must submit a normal filing, subject to regular filing requirements, including any prior approval or waiting period.

#### *Hawaii Insurance Code includes Standard Fire Policy and mandatory Motor Vehicle Policy*

In this state, the requirements for fire coverage and motor vehicle coverage are established by law and where applicable, must meet or exceed the provisions of the Standard Fire Policy and the mandatory motor vehicle policy. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive these statutorily mandated coverages.

#### **Forms with Instructions**

Attached to this memorandum is a filing transmittal form in a format similar to that endorsed by the NAIC. An insurer or rating/advisory organization wishing to receive expedited treatment of its filing shall complete the [HAWAII EXPEDITED FILING TRANSMITTAL DOCUMENT—FOR TERRORISM RISK INSURANCE FORMS AND PRICING](#) as directed. In addition, the insurer(s) or rating/advisory organization submitting the filing must certify that the filing is consistent with this memorandum, 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 filed [concurrent and apart](#) using the attached filing transmittal form. These filings will be processed in an expedited manner. 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 should include the following:

1. A completed, certified [Hawaii Expedited Filing Transmittal Document](#) for each insurer or advisory organization.
2. If at variation from a rating/advisory organization's filing, one copy of each policy form or endorsement demonstrating that it is in conformance with the Act and State law.
3. A copy of the rates and rating systems along with the supporting documentation.
4. A copy of any disclosure notices that will be used to convey information to policyholders in this state.
5. [The appropriate rate/rule filing fees, \\$50 per insurer.](#)
6. 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 two extra copies (i.e. 7 companies = 9 copies)

**Effective Date**

This memorandum shall take immediate effect and shall expire on December 31, 2014, unless Congress extends the duration of the Act. The expedited filing procedures discussed in this memorandum shall expire on April 1, 2008.

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

Indicate Type of Filing ( <u>select only one</u> )
<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 <i>Certified and Non-Certified Losses</i>

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 NAIC matrix)	
Subline (see NAIC matrix)	
Company Program Title (Marketing title) (if applicable)	
Filing Type mark all that apply	<input type="checkbox"/> Adopt by Reference <input type="checkbox"/> Forms <input type="checkbox"/> Rates <input type="checkbox"/> Rules
Effective Date Requested	
Filing date	
Company Tracking Number	
Date filing approved in domiciliary state, if applicable	

**Adoption of Rating/Advisory Organization Filing: Modifications must be accompanied by appropriate documentation.**

Name of Rating/Advisory Organization	
Forms - Reference Filing Number and descriptive title	
Loss Cost - Reference Filing Number and descriptive title	
Current Loss Cost Multiplier	
Proposed Loss Cost Multiplier	
Rules - Reference Filing Number and descriptive title	

	Component/Form Name /Description/Synopsis	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		

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 memorandum containing the voluntary expedited filing procedures.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title:

**Instructional—print for reference but do not mail**

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

- A completed Hawaii Expedited Filing Transmittal Document for each insurer or rating/advisory organization.
- If at variation from a rating/advisory organization's filing, one copy of each endorsement, disclosure form or other policy language, demonstrating that it is in conformance with the Act and State law.
- 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.**