INFORMATIONAL MEMORANDUM
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Office of Insurance Regulation
Kevin M. McCarty
Commissioner

All Property and Casualty Insurers

Terrorism Risk Insurance Extension Act of 2005

The purpose of this Memorandum is to notify Florida property and casualty insurers of changes to the Terrorism Risk Insurance Act of 2002 (TRIA), Public Law 107-297, 16 Stat. 2322 (2002), brought about by the Terrorism Risk Insurance Extension Act of 2005 (2005 Amendments), Public Law Number 109-144, 119 Stat. 2660 (2005), which was signed into law on December 22, 2005.

Effect of the Act – In General

The 2005 Amendments extend the Terrorism Risk Insurance Program (TRIP) established in TRIA through December 31, 2007. In addition, the 2005 Amendments further limit the lines of insurance that participate in TRIP, which is administered by the Secretary of the United States Department of the Treasury (Treasury). For program years four and five, the 2005 Amendments increase the insurer deductible and the industry aggregate retention amount. They also establish a program trigger and amend the Federal share of compensation for insured losses. Furthermore, the 2005 Amendments codify Treasury regulations relating to litigation management and require the President's Working Group on Financial Markets to analyze and produce a report on the long-term availability and affordability of insurance for terrorism risk.

Definition of Certified Acts of Terrorism

The 2005 Amendments do not change the definition of Certified Acts of Terrorism.

Mandatory Availability

The 2005 Amendments extend insurers' obligations to make coverage available for Certified Acts of terrorism that occur during each program year, to include program years four and five.

Changes to the Program

In addition to the lines of insurance that were previously exempt from the definition of commercial property and casualty insurance contained in Section 102(12)(b) of TRIA, the 2005 Amendments also exclude the following lines of business:

- Commercial Automobile
- Burglary and Theft

- Surety
- Professional Liability - the 2005 Amendments explicitly distinguish it from Directors and Officers Liability Insurance
- Farmowners Multiple Peril.

As a result of these additional exclusions, the above lines are no longer required to participate in the Terrorism Risk Insurance Program.

The 2005 Amendments increase the insurer deductible: for the 2006 program year to 17.5% of the prior calendar year direct earned premiums; and for the 2007 program year to 20% of the prior calendar year direct earned premiums. (The insurer deductible for the 2005 program year was 15% of the prior program year's direct earned premium.)

The 2005 Amendments increase the industry aggregate retention amount to: (1) the lesser of $25 billion and the aggregate amount of insured losses for all insurers, for the 2006 program year; and (2) the lesser of $27.5 billion and the aggregate amount of insured losses for all insurers, for the 2007 program year. (The industry aggregate retention for the 2005 program year was $15 billion.)

For the 2006 program year, the 2005 Amendments establish a program trigger of $50 million in aggregate industry insured losses resulting from Certified Acts occurring after March 31, 2006. For the 2007 program year, the 2005 Amendments establish a program trigger of $100 million in aggregate industry insured losses resulting from Certified Acts occurring during the 2007 program year.

Subject to the new program trigger, the 2005 Amendments maintain the Federal share of compensation under the program at 90% of the portion of the amount of insured losses exceeding the applicable deductible for the 2006 program year, while reducing the Federal share to 85% of the portion of the amount of insured losses exceeding the applicable deductible for the 2007 program year.

The 2005 Amendments maintain the annual cap on insured losses at $100 billion for both the 2006 and 2007 program years.

Effect of the Act on Forms

Insurers are advised to review their policy forms to determine if revisions will be necessary.

Effect of the Act on Rates and Rules

Insurers are advised to review their assumptions about the frequency and severity of terrorist attacks and to consider recent experience and the details of the 2005 Amendments in establishing rates for the 2006 and 2007 program years. Rate and rule pages may need to be revised to reflect the extension of the TRIA beyond 2005. Insurers are advised to review their existing manual pages to determine if revisions are necessary.

Forms and Rates for Non-Certified Acts of Terrorism

The 2005 Amendments do not address non-certified acts of terrorism.

United States Department of the Treasury's Interim Guidance

On January 5, 2006, the Departmental Offices of the Treasury published notice in the Federal Register of Interim Guidance Concerning the Terrorism Risk Insurance Extension Act of 2005 (Interim Guidance), 71 Fed. Reg. 648-651 (Jan. 5, 2005), *available at* http://www.treasury.gov/offices/domestic-finance/financial-institution/terrorism-insurance/interim-guidance.shtml (last modified Jan. 10, 2006). The Interim Guidance provides insurers, policyholders, state insurance regulators and the public: (1) notice of the 2005 Amendments; (2) notice of the Treasury's intent to issue future regulations, in order to administer and implement TRIA, revised by the 2005 Amendments; and (3) guidance concerning compliance with mandatory availability requirements, revisions to the definition of commercial property and casualty insurance, and the operation of the new program trigger. To ensure compliance with TRIA, as amended, and existing Treasury regulations, insurers should review the Interim Guidance.

Additional questions regarding this Informational Memorandum may be directed to:

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