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MARSH

Marketwatch: Terrorism Insurance

Marsh's Property Practice

Interim Guidelines for the Terrorism Risk Insurance Extension Act of 2005

The U.S. Treasury Department recently issued a set of interim guidelines to help the insurance industry meet new requirements established under the Terrorism Risk Insurance Extension Act of 2005 (TRIA 2005). As reported in Marsh's December 2005 white paper, *Marketwatch: Terrorism Insurance 2005/Highlights of the TRIA Extension*, President Bush signed the Act into law on December 22, 2005. The Act provides for a two-year extension of the original TRIA program, subject to certain modifications, as outlined in our report. On December 29, 2005, the U.S. Treasury Department announced interim guidelines with respect to three areas of TRIA 2005—mandatory availability, types of coverage now excluded, and program trigger.

The full interim guidelines are available at: **http://www.treas.gov/trip**. Key issues in the guidelines include:

- Mandatory availability –

a. Insurers are required to continue to "make-available" coverage for insured losses resulting from an act of terrorism, as required by the original law, which was signed in November 2002.

b. If an insurer met the "make-available" provision at the inception of coverage in 2005 and the policyholder rejected the offer, then no further "make-available" provision applies for the remaining policy period in 2006.

c. For policies incepting in early January 2006, Treasury expects all insurers to make a good-faith effort to provide policyholders with an offer of appropriate terrorism insurance coverage as soon as possible, but no later than January 31, 2006.

- Types of coverage now excluded –

a. Treasury will use the National Association of Insurance Commissioners (NAIC) line of business definitions to determine which coverages are now excluded (auto, burglary, surety, professional liability, and farm owners multiple peril insurance).

b. Treasury has provided an interim definition, as "professional liability" is not a specific NAIC line of business.

c. Directors and officers (D&O) liability insurance was explicitly added to the definition of "property and casualty insurance" in the Act—to clarify that it is distinct from professional liability insurance—and remains covered by TRIA.

- Program trigger –

a. The extension added "program trigger" language, which stipulates the government will not pay any "certified losses" until the aggregate insured losses exceed $50 million for occurrences after March 31, 2006, or exceed $100 million for occurrences in 2007.

b. The trigger does not apply to occurrences prior to March 31, 2006. The application of the trigger is based on the date of occurrence—not on the date of certification of an act of terrorism.

c. Treasury is considering whether further rulemaking or guidance is necessary to address the potential difference between certified acts below the trigger and those above the trigger.

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You can find more information about terrorism risk, TRIA, and TRIA 2005 by going to **http://solutions.marsh.com/TRIA** or by contacting your Marsh representative or:

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