

109TH CONGRESS
1ST SESSION

H. R. 4314

To extend the applicability of the Terrorism Risk Insurance Act of 2002.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2005

Mr. BAKER (for himself, Mr. OXLEY, Mrs. KELLY, Ms. PRYCE of Ohio, Mr. SESSIONS, Mr. FERGUSON, Mr. RENZI, Mr. FOSSELLA, and Mr. DAVIS of Kentucky) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To extend the applicability of the Terrorism Risk Insurance Act of 2002.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Terrorism Risk Insur-
5 ance Revision Act of 2005”.

6 **SEC. 2. EXTENSION OF PROGRAM AND PROGRAM CHANGES.**

7 (a) IN GENERAL.—Title I of the Terrorism Risk In-
8 surance Act of 2002 (15 U.S.C. 6701 note) is amended—

9 (1) by striking sections 102 through 106 and
10 inserting the following new sections:

1 **“SEC. 102. DEFINITIONS.**

2 “In this title, the following definitions shall apply:

3 “(1) ACT OF TERRORISM.—

4 “(A) CERTIFICATION.—The term ‘act of
5 terrorism’ means any act that is certified by the
6 Secretary, in concurrence with the Secretary of
7 State, and the Attorney General of the United
8 States—

9 “(i) to be an act of terrorism;

10 “(ii) to be a violent act or an act that
11 is dangerous to—

12 “(I) human life;

13 “(II) property; or

14 “(III) infrastructure;

15 “(iii) to have resulted in damage with-
16 in the United States, or outside of the
17 United States in the case of—

18 “(I) an air carrier or vessel de-
19 scribed in paragraph (5)(B); or

20 “(II) the premises of a United
21 States mission; and

22 “(iv) to have been committed by an
23 individual or individuals as part of an ef-
24 fort to coerce the civilian population of the
25 United States or to influence the policy or

1 affect the conduct of the United States
2 Government by coercion.

3 “(B) LIMITATION.—No act shall be cer-
4 tified by the Secretary as an act of terrorism if
5 the act is committed as part of the course of a
6 war declared by the Congress, except that this
7 clause shall not apply with respect to any cov-
8 erage for workers’ compensation or group life
9 coverage.

10 “(C) DETERMINATIONS FINAL.—Any cer-
11 tification of, or determination not to certify, an
12 act as an act of terrorism under this paragraph
13 shall be final, and shall not be subject to judi-
14 cial review.

15 “(D) NONDELEGATION.—The Secretary
16 may not delegate or designate to any other offi-
17 cer, employee, or person, any determination
18 under this paragraph of whether, during the ef-
19 fective period of the Program, an act of ter-
20 rorism has occurred.

21 “(2) AFFILIATE.—The term ‘affiliate’ means,
22 with respect to an insurer, any insurer that owns, is
23 owned by, or is under common ownership with an-
24 other insurer.

1 “(3) CASUALTY INSURANCE.—The term ‘cas-
2 ualty insurance’ means—

3 “(A) insurance, including excess insurance
4 and surety insurance, against legal liability for
5 losses caused by the death, injury, or disability
6 of any person or for damage to property, with
7 provision for medical, hospital and surgical ben-
8 efits to the injured persons; and

9 “(B) for the purposes of this Act, does not
10 include any type of commercial automobile or
11 workers’ compensation insurance.

12 “(4) COVERED LINE OF INSURANCE.—The term
13 ‘covered line of insurance’ means—

14 “(A) commercial property insurance, com-
15 mercial casualty insurance, workers’ compensa-
16 tion insurance and group life insurance; and

17 “(B) does not include—

18 “(i) Federal crop insurance issued or
19 reinsured under the Federal Crop Insur-
20 ance Act (7 U.S.C. 1501 et seq.), or any
21 other type of crop or livestock insurance
22 that is privately issued or reinsured;

23 “(ii) private mortgage insurance (as
24 that term is defined in section 2 of the

1 Homeowners Protection Act of 1998 (12
2 U.S.C. 4901)) or title insurance;

3 “(iii) financial guaranty insurance
4 issued by monoline financial guaranty in-
5 surance corporations;

6 “(iv) insurance for medical mal-
7 practice;

8 “(v) health or life insurance, except
9 group life insurance;

10 “(vi) flood insurance provided under
11 the National Flood Insurance Act of 1968
12 (42 U.S.C. 4001 et seq.);

13 “(vii) reinsurance or retrocessional re-
14 insurance; or

15 “(viii) commercial automobile insur-
16 ance.

17 “(5) DIRECT EARNED PREMIUM.—The term ‘di-
18 rect earned premium’ means a direct earned pre-
19 mium for commercial property, commercial casualty,
20 workers’ compensation, or group life insurance
21 issued by any insurer for insurance against losses
22 occurring at the locations described in subpara-
23 graphs (A) and (B) of paragraph (10).

24 “(6) EXEMPT COMMERCIAL PURCHASER.—The
25 term ‘exempt commercial purchaser’ means any per-

1 son purchasing commercial insurance that meets the
2 following requirements:

3 “(A) The person employs or retains a
4 qualified risk manager to negotiate insurance
5 coverage.

6 “(B) The person meets at least two of the
7 following criteria:

8 “(i) The person possesses a net worth
9 in excess of \$10,000,000.

10 “(ii) The person generates annual rev-
11 enues in excess of \$25,000,000.

12 “(iii) The person employs more than
13 25 full time or full time equivalent employ-
14 ees per individual insured or is a member
15 of affiliated group employing more than 50
16 employees in the aggregate.

17 “(iv) The person pays annual aggre-
18 gate nationwide insurance premiums in ex-
19 cess of \$10,000 for covered lines of insur-
20 ance.

21 “(v) The person is a not-for-profit or-
22 ganization or public entity generating an-
23 nual budgeted expenditures of at least
24 \$10,000,000.

1 “(vi) The person is a municipality
2 with a population in excess of 30,000 per-
3 sons.

4 “(7) EXEMPT COMMERCIAL PURCHASER CER-
5 TIFICATION.—The term ‘exempt commercial pur-
6 chaser certification’ means a written certification
7 that the insurer offering a policy to an exempt com-
8 mercial purchaser has obtained, at least within the
9 previous 12 months, a certification signed by the
10 qualified risk manager, the chief executive officer, or
11 the chief financial officer of the exempt commercial
12 purchaser, certifying with respect to the insurance to
13 which the requirements of section 103(c)(1) apply to
14 that insurer that—

15 “(A) the purchaser has an employee that
16 meets the definition of a qualified risk manager
17 under this section;

18 “(B) the purchaser meets the definition of
19 an exempt commercial purchaser in accordance
20 with this section;

21 “(C) the purchaser is aware that the policy
22 being considered for purchase contains forms
23 and rates that are not subject to State regu-
24 latory review or approval;

1 “(D) the purchaser has or has retained the
2 necessary expertise to negotiate its own policy
3 language and rates; and

4 “(E) the purchaser agrees to the use of ex-
5 empted rates and forms by its insurer or insur-
6 ers.

7 “(8) GROUP LIFE INSURANCE.—The term
8 ‘group life insurance’ means an insurance contract
9 that provides term life insurance coverage, acci-
10 dental death coverage, or a combination thereof, for
11 a number of individuals under a single contract, on
12 the basis of a group selection of risks, but does not
13 include ‘Corporate Owned Life Insurance’ or ‘Busi-
14 ness Owned Life Insurance,’ each as defined under
15 the Internal Revenue Code of 1986, or any similar
16 product.

17 “(9) HOME STATE.—The term ‘home State’
18 means as follows:

19 “(A) In the case of a policy written for
20 commercial risks that are primarily located in a
21 State, such term means such State.

22 “(B) If subparagraph (A) does not apply,
23 such term means the State where the commer-
24 cial policyholder has its principal place of busi-
25 ness (such as where the policyholder’s head-

1 quarters are located, as determined by the pre-
2 dominant physical location in the United States
3 of the officers and senior management of the
4 policyholder).

5 “(10) INSURED LOSS.—The term ‘insured loss’
6 means any loss resulting from an act of terrorism
7 (including an act of war, in the case of workers’
8 compensation and group life insurance) that is cov-
9 ered by primary or excess property, casualty, work-
10 ers’ compensation, or group life insurance issued by
11 an insurer if such loss—

12 “(A) occurs within the United States; or

13 “(B) occurs to an air carrier (as defined in
14 section 40102 of title 49, United States Code),
15 to a United States flag vessel (or a vessel based
16 principally in the United States, on which
17 United States income tax is paid and whose in-
18 surance coverage is subject to regulation in the
19 United States), regardless of where the loss oc-
20 curs, or at the premises of any United States
21 mission.

22 “(11) INSURER.—The term ‘insurer’ means any
23 entity, including any affiliate thereof—

24 “(A) that is—

1 “(i) licensed or admitted to engage in
2 the business of providing primary or excess
3 insurance in any State;

4 “(ii) not licensed or admitted as de-
5 scribed in clause (i), if it is an eligible sur-
6 plus line carrier listed on the Quarterly
7 Listing of Alien Insurers of the NAIC, or
8 any successor thereto;

9 “(iii) approved for the purpose of of-
10 fering a covered line of insurance by a
11 Federal agency in connection with mari-
12 time, energy, or aviation activity;

13 “(iv) a State residual market insur-
14 ance entity or State workers’ compensation
15 fund; or

16 “(v) any other entity described in sec-
17 tion 103(f), to the extent provided in the
18 rules of the Secretary issued under section
19 103(f);

20 “(B) that receives direct earned premiums
21 for any type of covered line of insurance cov-
22 erage, other than in the case of entities de-
23 scribed in subsections (d) and (f) of section
24 103; and

1 “(C) that meets any other criteria that the
2 Secretary may reasonably prescribe.

3 “(12) INSURER DEDUCTIBLE.—The term ‘in-
4 surer deductible’ means—

5 “(A) for the Transition Period, the value
6 of an insurer’s direct earned premiums over the
7 calendar year immediately preceding the date of
8 enactment of this Act, multiplied by 1 percent;

9 “(B) for Program Year 1, the value of an
10 insurer’s direct earned premiums over the cal-
11 endar year immediately preceding Program
12 Year 1, multiplied by 7 percent;

13 “(C) for Program Year 2, the value of an
14 insurer’s direct earned premiums over the cal-
15 endar year immediately preceding Program
16 Year 2, multiplied by 10 percent;

17 “(D) for Program Year 3, the value of an
18 insurer’s direct earned premiums over the cal-
19 endar year immediately preceding Program
20 Year 3, multiplied by 15 percent;

21 “(E) for Program Year 4—

22 “(i) except as provided in clause (ii),
23 the value of an insurer’s direct earned pre-
24 mium for a covered line of insurance over

1 the calendar year immediately preceding
2 Program Year 4, multiplied by—

3 “(I) for workers’ compensation
4 insurance, 17.5 percent;

5 “(II) for group life insurance, 20
6 percent;

7 “(III) for property insurance, 20
8 percent; and

9 “(IV) for casualty insurance, 25
10 percent; and

11 “(ii) with respect to NBCR terrorism
12 coverage, the value of an insurer’s direct
13 earned premium for a covered line of in-
14 surance over the calendar year immediately
15 preceding Program Year 4, multiplied by
16 the following percentages which shall be
17 treated as sub-deductibles that apply in
18 lieu of the deductibles set forth in clause
19 (i) for NBCR terrorism losses—

20 “(I) for workers’ compensation
21 insurance, 7.5 percent;

22 “(II) for group life insurance, 7.5
23 percent;

24 “(III) for property insurance, 7.5
25 percent; and

1 “(IV) for casualty insurance, 7.5
2 percent; and

3 “(iii) if, for any covered line of insur-
4 ance, an insurer incurs insured losses
5 caused by NBCR terrorism, such NBCR
6 insured losses shall be applied against both
7 the deductible set forth in clause (i) and
8 the NBCR terrorism deductible set forth in
9 clause (ii) for that covered line of insur-
10 ance;

11 “(F) for any Additional Program Years—

12 “(i) except as provided in clause (ii),
13 the value of an insurer’s direct earned pre-
14 mium for a covered line of insurance over
15 the calendar year immediately preceding
16 that year, multiplied by the insurer deduct-
17 ible for each covered line of insurance for
18 the preceding calendar year plus an addi-
19 tional percentage, as follows—

20 “(I) for workers’ compensation
21 insurance, 2.5 percent;

22 “(II) for group life insurance, 2.5
23 percent;

24 “(III) for property insurance, 2.5
25 percent; and

1 “(IV) for casualty insurance, 5.0
2 percent; and

3 “(ii) with respect to NBCR terrorism
4 coverage, the value of an insurer’s direct
5 earned premium for a covered line of in-
6 surance over the calendar year immediately
7 preceding that year, multiplied by the
8 NBCR terrorism deductible for the pre-
9 ceding year for that covered line of insur-
10 ance plus the following additional percent-
11 ages, all of which shall be treated as
12 subdeductibles that apply in lieu of the
13 deductibles listed in clause (i) for NBCR
14 terrorism insured losses—

15 “(I) for workers’ compensation
16 insurance, 0.75 percent;

17 “(II) for group life insurance,
18 0.75 percent;

19 “(III) for property insurance,
20 0.75 percent; and

21 “(IV) for casualty insurance,
22 0.75 percent; and

23 “(iii) if, for any covered line of insur-
24 ance, an insurer incurs insured losses
25 caused by NBCR terrorism, such NBCR

1 insured losses shall be applied against both
2 the deductible set forth in clause (i) and
3 the NBCR terrorism deductible set forth in
4 clause (ii) for that covered line of insur-
5 ance;

6 “(G) notwithstanding subparagraphs (A)
7 through (F), for the Transition Period and any
8 other Program Year or other calendar year, if
9 an insurer has not had a full year of operations
10 during the calendar year immediately preceding
11 such Period or year, such portion of the direct
12 earned premiums of the insurer as the Sec-
13 retary determines appropriate, subject to appro-
14 priate methodologies established by the Sec-
15 retary for measuring such direct earned pre-
16 miums; and

17 “(H) if, in any calendar year, aggregate
18 industry insured losses exceed \$1,000,000,000,
19 the insurer deductibles for the next calendar
20 year shall be reduced by 0.1 percent for each
21 \$1,000,000,000 in insured losses that have oc-
22 curred during the preceding calendar year, ex-
23 cept that no insurer deductible shall be reduced
24 below 5 percent.

1 “(13) NAIC.—The term ‘NAIC’ means the Na-
2 tional Association of Insurance Commissioners.

3 “(14) OWNERSHIP.—An insurer ‘owns’ another
4 insurer if the insurer, directly or indirectly or acting
5 through one or more other persons, owns 25 percent
6 or more of any class of voting securities of the other
7 insurer.

8 “(15) NBCR TERRORISM.—The term ‘NBCR
9 terrorism’ means an act of terrorism involving nu-
10 clear, biological, chemical and, or, radiological reac-
11 tions, releases, or contaminations, to the extent any
12 insured losses are caused by any such reactions, re-
13 leases, or contaminations.

14 “(16) PERSON.—The term ‘person’ means any
15 individual, business or nonprofit entity (including
16 those organized in the form of a partnership, limited
17 liability company, corporation, or association), trust
18 or estate, or a State or political subdivision of a
19 State or other governmental unit.

20 “(17) PROGRAM.—The term ‘Program’ means
21 the Terrorism Insurance Program established by
22 this title.

23 “(18) PROGRAM YEARS.—

24 “(A) TRANSITION PERIOD.—The term
25 ‘Transition Period’ means the period beginning

1 on the date of enactment of this Act and ending
2 on December 31, 2002.

3 “(B) PROGRAM YEAR 1.—The term ‘Pro-
4 gram Year 1’ means the period beginning on
5 January 1, 2003 and ending on December 31,
6 2003.

7 “(C) PROGRAM YEAR 2.—The term ‘Pro-
8 gram Year 2’ means the period beginning on
9 January 1, 2004 and ending on December 31,
10 2004.

11 “(D) PROGRAM YEAR 3.—The term ‘Pro-
12 gram Year 3’ means the period beginning on
13 January 1, 2005 and ending on December 31,
14 2005.

15 “(E) PROGRAM YEAR 4.—The term ‘Pro-
16 gram Year 4’ means the period beginning on
17 January 1, 2006 and ending on December 31,
18 2006.

19 “(F) ADDITIONAL PROGRAM YEARS.—The
20 term ‘Additional Program Year’ means any ad-
21 ditional one-year period after Program Year 4
22 during which the Program is in effect, which
23 period shall begin on January 1 and end on De-
24 cember 31 of the same calendar year.

1 “(19) PROPERTY INSURANCE.—The term ‘prop-
2 erty insurance’ means—

3 “(A) except as provided in subparagraph
4 (B), insurance on real or personal property of
5 every kind, including excess insurance, against
6 loss or damage from any and all hazard or
7 cause and against loss consequential upon such
8 loss or damage, including business interruption
9 insurance, other than non-contractual legal li-
10 ability for such loss or damage; and

11 “(B) does not include any type of commer-
12 cial automobile or workers’ compensation insur-
13 ance.

14 “(20) QUALIFIED RISK MANAGER.—The term
15 ‘qualified risk manager’ means any person who
16 meets all of the following criteria:

17 “(A) The person is an employee of, or
18 third party consultant retained by, the commer-
19 cial policyholder.

20 “(B) The person provides skilled services
21 in loss prevention, loss reduction, or risk and
22 insurance coverage analysis, and purchase of in-
23 surance.

24 “(C) The person possesses at least 1 of the
25 following credentials:

1 “(i) A bachelor’s or higher degree in
2 risk management issued by an accredited
3 college or university.

4 “(ii) A designation as a Chartered
5 Property and Casualty Underwriter (in
6 this subparagraph referred to as ‘CPCU’)
7 issued by the American Institute for
8 CPCU/Insurance Institute of America.

9 “(iii) A designation as an Associate in
10 Risk Management (ARM) issued by Amer-
11 ican Institute for CPCU/Insurance Insti-
12 tute of America.

13 “(iv) A designation as a Certified
14 Risk Manager (CRM) issued by the Na-
15 tional Alliance for Insurance Education &
16 Research.

17 “(v) A designation as a Fellow in Risk
18 Management (FRM) issued by the Global
19 Risk Management Institute/Risk & Insur-
20 ance Management.

21 “(vi) At least 5 years of experience in
22 1 or more of the following areas of com-
23 mercial property insurance and/or commer-
24 cial casualty insurance:

25 “(I) Risk financing.

1 “(II) Claims administration.

2 “(III) Loss prevention.

3 “(IV) Risk and insurance cov-
4 erage analysis.

5 “(21) SECRETARY.—The term ‘Secretary’
6 means the Secretary of the Treasury.

7 “(22) STATE.—The term ‘State’ means any
8 State of the United States, the District of Columbia,
9 the Commonwealth of Puerto Rico, the Common-
10 wealth of the Northern Mariana Islands, American
11 Samoa, Guam, each of the United States Virgin Is-
12 lands, and any territory or possession of the United
13 States.

14 “(23) TRANSPARENT STANDARDS.—The term
15 ‘transparent standards’ means that any disapproval
16 of a rate or form filing for an applicable line of in-
17 surance—

18 “(A) is clearly stated in writing;

19 “(B) is based on specific standards that
20 are published in a State statute, rule, or regula-
21 tion (with general ‘public policy’ grounds alone
22 not being considered a specific standard unless
23 based on a good faith comprehensive actuarial
24 analysis by the State of a covered risk); and

1 “(C) if based on an interpretation, is based
2 on an identical or substantially similar interpre-
3 tation by majority of States with interpretations
4 of an identical or substantially similar provision
5 of a statute or regulation, if a substantial num-
6 ber of States has made such interpretation.

7 “(24) UNITED STATES.—The term ‘United
8 States’ means the several States, and includes the
9 territorial sea and the continental shelf of the
10 United States, as those terms are defined in the Vio-
11 lent Crime Control and Law Enforcement Act of
12 1994 (18 U.S.C. 2280, 2281).

13 “(25) WORKERS’ COMPENSATION.—The term
14 ‘workers’ compensation’ means insurance against
15 loss from liability imposed by law upon employers to
16 compensate employees and their dependents for in-
17 jury sustained by the employees arising out of and
18 in the course of the employment, irrespective of neg-
19 ligence or of the fault of either party.

20 “(26) RULE OF CONSTRUCTION FOR DATES.—
21 With respect to any reference to a date in this title,
22 such day shall be construed—

23 “(A) to begin at 12:01 a.m. on that date;

24 and

25 “(B) to end at midnight on that date.

1 **“SEC. 103. TERRORISM INSURANCE PROGRAM.**

2 “(a) ESTABLISHMENT OF PROGRAM.—

3 “(1) IN GENERAL.—There is established in the
4 Department of the Treasury the Terrorism Insur-
5 ance Program.

6 “(2) AUTHORITY OF THE SECRETARY.—Not-
7 withstanding any other provision of State or Federal
8 law, the Secretary shall administer the Program,
9 and shall pay the Federal share of compensation for
10 insured losses in accordance with subsection (e).

11 “(3) MANDATORY PARTICIPATION.—Each entity
12 that meets the definition of an insurer under this
13 title shall participate in the Program.

14 “(b) CONDITIONS FOR FEDERAL PAYMENTS.—No
15 payment may be made by the Secretary under this section
16 with respect to an insured loss that is covered by an in-
17 surer, unless—

18 “(1) the person that suffers the insured loss, or
19 a person acting on behalf of that person, files a
20 claim with the insurer;

21 “(2) the insurer provides clear and conspicuous
22 disclosure to the policyholder of the premium
23 charged for insured losses covered by the program
24 and the Federal share of compensation for insured
25 losses under the Program—

1 “(A) in the case of any policy that is
2 issued before the date of enactment of this Act,
3 not later than 90 days after that date of enact-
4 ment;

5 “(B) in the case of any policy that is
6 issued within 90 days of the date of enactment
7 of this Act, at the time of offer, purchase, and
8 renewal of the policy; and

9 “(C) in the case of any policy that is
10 issued more than 90 days after the date of en-
11 actment of this Act, on a separate line item in
12 the policy, at the time of offer, purchase, and
13 renewal of the policy;

14 “(3) the insurer processes the claim for the in-
15 sured loss in accordance with appropriate business
16 practices, and any reasonable procedures that the
17 Secretary may prescribe; and

18 “(4) the insurer submits to the Secretary, in ac-
19 cordance with such reasonable procedures as the
20 Secretary may establish—

21 “(A) a claim for payment of the Federal
22 share of compensation for insured losses under
23 the Program;

24 “(B) written certification—

25 “(i) of the underlying claim; and

1 “(ii) of all payments made for insured
2 losses; and

3 “(C) certification of its compliance with
4 the provisions of this subsection.

5 “(c) MANDATORY AVAILABILITY.—Each entity that
6 meets the definition of an insurer under section 102—

7 “(1) shall make available, in all of its covered
8 lines of insurance policies, coverage for insured
9 losses that does not differ materially from the terms,
10 amounts, and other coverage limitations applicable
11 to losses arising from events other than acts of ter-
12 rorism; and

13 “(2) shall make available, in any of its covered
14 lines of insurance policies that exclude coverage for
15 losses resulting from NBCR terrorism, coverage for
16 losses resulting from NBCR terrorism that may dif-
17 fer materially from the terms, amounts, and other
18 coverage limitations applicable to losses arising from
19 events other than NBCR terrorism.

20 “(d) STATE RESIDUAL MARKET INSURANCE ENTI-
21 TIES.—

22 “(1) IN GENERAL.—The Secretary shall issue
23 regulations, as soon as practicable after the date of
24 enactment of this Act, that apply the provisions of

1 this title to State residual market insurance entities
2 and State workers' compensation funds.

3 “(2) TREATMENT OF CERTAIN ENTITIES.—For
4 purposes of the regulations issued pursuant to para-
5 graph (1)—

6 “(A) a State residual market insurance en-
7 tity that does not share its profits and losses
8 with private sector insurers shall be treated as
9 a separate insurer; and

10 “(B) a State residual market insurance en-
11 tity that shares its profits and losses with pri-
12 vate sector insurers shall not be treated as a
13 separate insurer, and shall report to each pri-
14 vate sector insurance participant its share of
15 the insured losses of the entity, which shall be
16 included in each private sector insurer's insured
17 losses.

18 “(3) TREATMENT OF PARTICIPATION IN CER-
19 TAIN ENTITIES.—Any insurer that participates in
20 sharing profits and losses of a State residual market
21 insurance entity shall include in its calculations of
22 premiums any premiums distributed to the insurer
23 by the State residual market insurance entity.

24 “(e) INSURED LOSS SHARED COMPENSATION.—

25 “(1) FEDERAL SHARE.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graphs (B) and (C), the Federal share of com-
3 pensation under the Program to be paid by the
4 Secretary for insured losses of an insurer dur-
5 ing each Program Year shall be equal to that
6 portion of the amount of such insured losses for
7 each covered line of insurance that exceeds the
8 applicable insurer deductible required to be paid
9 during such Program Year, multiplied by a per-
10 centage based on aggregate industry insured
11 losses for a Program Year, which shall be as
12 follows:

13 “(i) 80 percent of the aggregate in-
14 dustry insured losses of less than
15 \$10,000,000,000;

16 “(ii) 85 percent of the aggregate in-
17 dustry insured losses between
18 \$10,000,000,000 and \$20,000,000,000;

19 “(iii) 90 percent of the aggregate in-
20 dustry insured losses between
21 \$20,000,000,000 and \$40,000,000,000;
22 and

23 “(iv) 95 percent of the aggregate in-
24 dustry insured losses above industry losses
25 above \$40,000,000,000;

1 and shall be prorated by insurer based on each
2 insurer's percentage of the aggregate industry
3 insured losses for that Program Year.

4 “(B) PROGRAM TRIGGER.—No compensa-
5 tion shall be paid by the Secretary under sub-
6 section (a) unless the aggregate industry in-
7 sured losses exceed—

8 “(i) \$50,000,000, with respect to in-
9 sured losses occurring in Program Year 4;

10 “(ii) \$100,000,000, with respect to in-
11 sured losses occurring in the Additional
12 Program Year beginning on January 1,
13 2007;

14 “(iii) an additional cumulative
15 \$100,000,000, with respect to each succes-
16 sive Additional Program Year that cov-
17 erage is provided under this program;

18 except that the applicable Program Trigger
19 amount shall be reduced by \$10,000,000 for
20 each \$1,000,000,000 in insured losses occurring
21 in any preceding year, provided that the Pro-
22 gram Trigger shall not be reduced below
23 \$50,000,000 for any year.

24 “(C) PROHIBITION ON DUPLICATIVE COM-
25 PENSATION.—The Federal share of compensa-

1 tion for insured losses under the Program shall
2 be reduced by the amount of compensation pro-
3 vided by the Federal Government to any person
4 under any other Federal program for those in-
5 sured losses.

6 “(2) TRIA CAPITAL RESERVE FUNDS.—

7 “(A) ESTABLISHMENT.—Any insurer may
8 establish a TRIA Capital Reserve Fund (in this
9 section referred to as a ‘CRF’) in which it may
10 hold funds in a fiduciary capacity on behalf of
11 the Secretary.

12 “(B) FUNDING.—An insurer may fund a
13 CRF by making an election, in advance, to
14 treat some or all of the premiums it has dis-
15 closed pursuant to section 103(b)(2) as TRIA
16 program fee charges imposed by the Secretary.
17 Any such premiums for which such an election
18 has been made must be maintained in seg-
19 regated accounts in a fiduciary capacity on be-
20 half of the Secretary. Such funds may be in-
21 vested in any otherwise legally permissible man-
22 ner but all interest, dividends, and capital accu-
23 mulations also shall be retained in such seg-
24 regated accounts on behalf of the Secretary.

1 “(C) USE.—Funds from a CRF shall be
2 collected and used by the Secretary to offset, in
3 whole or in part, the Federal share of com-
4 pensation provided to all insurers under the
5 Program as provided for in paragraph (1), ex-
6 cept that an insurer may first use the funds in
7 a CRF of that insurer to satisfy any one or
8 more of the following:

9 “(i) The applicable insurer deductibles
10 for the insurer.

11 “(ii) The portion of the insurer’s
12 losses that exceed the insurer deductible
13 but are not compensated by the Federal
14 share pursuant to paragraph (1).

15 “(iii) The insurer’s obligations to pay
16 for insured losses if the program trigger
17 established in paragraph (1)(B) is not sat-
18 isfied.

19 “(iv) Any risk sharing obligations the
20 insurer may have under any agreements
21 made pursuant to or in accordance with
22 paragraph (3).

23 “(D) TERMINATION.—

24 “(i) TERMINATION OF PROGRAM.—
25 Upon termination of the Program under

1 section 108(a), and subject to the Sec-
2 retary's continuing authority under section
3 108(b) to adjust claims in satisfaction of
4 the Federal share of compensation under
5 the Program as provided in paragraph (1)
6 of this subsection, 10 percent of each in-
7 surer's CRF funds shall be remitted to the
8 Secretary and the remainder shall be re-
9 mitted to the insurer. The Secretary shall
10 determine the manner in which the remit-
11 tance of such income to the insurer shall
12 be made.

13 “(ii) ELIMINATION OF FEDERAL
14 SHARE OF COMPENSATION.—If the Pro-
15 gram remains in effect but the Federal
16 share of compensation for insured losses
17 under the Program is eliminated from the
18 Program, the CRF funds shall be retained
19 and used for the purposes set forth in sub-
20 paragraph (C) of this paragraph. At such
21 time as an insurer's liability for insured
22 losses under the Program terminates, as a
23 consequence of the insurer's termination of
24 its business or otherwise, the insurer shall

1 remit any remaining CRF funds to the
2 Secretary.

3 “(3) RISK-SHARING MECHANISMS.—

4 “(A) FINDING; RULE OF CONSTRU-
5 TION.—Congress finds that it is desirable to en-
6 courage the growth of nongovernmental, private
7 market reinsurance capacity for protection
8 against losses arising from acts of terrorism.
9 Therefore, nothing in this title shall prohibit in-
10 surers from developing risk-sharing mechanisms
11 (including mutual reinsurance facilities and
12 agreements) to voluntarily reinsure terrorism
13 losses between and among themselves that are
14 not subject to reimbursement under this section
15 103.

16 “(B) ESTABLISHMENT OF ADVISORY COM-
17 MITTEE.—The Secretary shall appoint an Advi-
18 sory Committee to—

19 “(i) encourage the creation and devel-
20 opment of such mechanisms;

21 “(ii) assist the Secretary and be avail-
22 able to administer such mechanisms; and

23 “(iii) develop articles of incorporation,
24 bylaws, and a plan of operation for any

1 long-term reinsurance facility authorized or
2 created in the future.

3 “(C) MEMBERSHIP.—The Advisory Com-
4 mittee shall be composed of nine members who
5 are directors, officers, or other employees of in-
6 surers that are participating or that desire to
7 participate in such mechanisms, and who are
8 representative of the affected sectors of the in-
9 surance industry. In making these appoint-
10 ments, the Secretary shall solicit major trade
11 associations of the insurance industry to nomi-
12 nate lists of qualified individuals representative
13 of the commercial property insurance, commer-
14 cial casualty insurance, group life insurance,
15 and reinsurance industries.

16 “(4) CAP ON ANNUAL LIABILITY.—

17 “(A) IN GENERAL.—Notwithstanding para-
18 graph (1) or any other provision of Federal or
19 State law, if the aggregate insured losses exceed
20 \$100,000,000,000 during any Program Year
21 (until such time as the Congress may act other-
22 wise with respect to such losses)—

23 “(i) the Secretary shall not make any
24 payment under this title for any portion of

1 the amount of such losses that exceeds
2 \$100,000,000,000; and

3 “(ii) no insurer that has met its in-
4 surer deductible shall be liable for the pay-
5 ment of any portion of that amount that
6 exceeds \$100,000,000,000.

7 “(B) INSURER SHARE.—For purposes of
8 subparagraph (A), the Secretary shall deter-
9 mine the pro rata share of insured losses to be
10 paid by each insurer that incurs insured losses
11 under the Program.

12 “(5) NOTICE TO CONGRESS.—The Secretary
13 shall notify the Congress if estimated or actual ag-
14 gregate insured losses exceed \$100,000,000,000 dur-
15 ing during any Program Year and the Congress
16 shall determine the procedures for and the source of
17 any payments for such excess insured losses.

18 “(6) FINAL NETTING.—The Secretary shall
19 have sole discretion to determine the time at which
20 claims relating to any insured loss or act of ter-
21 rorism shall become final.

22 “(7) DETERMINATIONS FINAL.—Any deter-
23 mination of the Secretary under this subsection shall
24 be final, unless expressly provided, and shall not be
25 subject to judicial review.

1 “(8) FULL RECOUPMENT OF FEDERAL
2 SHARE.—The Secretary shall collect, for repayment
3 of the Federal financial assistance provided in con-
4 nection with all acts of terrorism (or acts of war, in
5 the case of workers’ compensation and group life in-
6 surance), terrorism loss risk-spreading premiums in
7 an amount equal to the total amount paid by the
8 Secretary in accordance with this section.

9 “(9) POLICY SURCHARGE FOR TERRORISM LOSS
10 RISK-SPREADING PREMIUMS.—

11 “(A) POLICYHOLDER PREMIUM.—Any
12 amount established by the Secretary as a ter-
13 rorism loss risk-spreading premium shall—

14 “(i) be imposed as a policyholder pre-
15 mium surcharge on all covered lines of in-
16 surance policies in force after the date of
17 such establishment;

18 “(ii) begin with such period of cov-
19 erage during the year as the Secretary de-
20 termines appropriate; and

21 “(iii) be based on a percentage of the
22 premium amount charged for covered lines
23 of insurance coverage under the policy.

24 “(B) COLLECTION.—The Secretary shall
25 provide for insurers to collect terrorism loss

1 risk-spreading premiums and remit such
2 amounts collected to the Secretary.

3 “(C) PERCENTAGE LIMITATION.—A ter-
4 rorism loss risk-spreading premium may not ex-
5 ceed, on an annual basis, the amount equal to
6 3 percent of the premium charged for covered
7 lines of insurance coverage under the policy.

8 “(D) ADJUSTMENT FOR URBAN AND
9 SMALLER COMMERCIAL AND RURAL AREAS AND
10 DIFFERENT LINES OF INSURANCE.—

11 “(i) ADJUSTMENTS.—In determining
12 the method and manner of imposing ter-
13 rorism loss risk-spreading premiums, in-
14 cluding the amount of such premiums, the
15 Secretary shall take into consideration—

16 “(I) the economic impact on com-
17 mercial centers of urban areas, includ-
18 ing the effect on commercial rents and
19 commercial insurance premiums, par-
20 ticularly rents and premiums charged
21 to small businesses, and the avail-
22 ability of lease space and commercial
23 insurance within urban areas;

24 “(II) the risk factors related to
25 rural areas and smaller commercial

1 centers, including the potential expo-
2 sure to loss and the likely magnitude
3 of such loss, as well as any resulting
4 cross-subsidization that might result;
5 and

6 “(III) the various exposures to
7 terrorism risk for different lines of in-
8 surance.

9 “(ii) RECOUPMENT OF ADJUST-
10 MENTS.—Any recoupment amounts not
11 collected by the Secretary because of ad-
12 justments under this subparagraph shall
13 be recouped through additional terrorism
14 loss risk-spreading premiums.

15 “(E) TIMING OF PREMIUMS.—The Sec-
16 retary may adjust the timing of terrorism loss
17 risk-spreading premiums to provide for equiva-
18 lent application of the provisions of this title to
19 policies that are not based on a calendar year,
20 or to apply such provisions on a daily, monthly,
21 or quarterly basis, as appropriate.

22 “(F) REPLENISHMENT OF TRIA CAPITAL
23 RESERVE FUNDS.—After any funds expended
24 directly from the United States Treasury are
25 fully repaid, the balance of the amounts col-

1 lected under this paragraph shall be used to
2 fully replenish all insurer CRFs used by the
3 Secretary in accordance with the provisions of
4 paragraph (2)(C) that were not used by the in-
5 surer to satisfy its obligations in accordance
6 with clauses (i) through (iv) of paragraph
7 (2)(C).

8 “(f) CAPTIVE INSURERS AND OTHER SELF-INSUR-
9 ANCE ARRANGEMENTS.—The Secretary may, in consulta-
10 tion with the NAIC or the appropriate State regulatory
11 authority, apply the provisions of this title, as appropriate,
12 to other classes or types of captive insurers and other self-
13 insurance arrangements by municipalities and other enti-
14 ties (such as workers’ compensation self-insurance pro-
15 grams and State workers’ compensation reinsurance
16 pools), but only if such application is determined before
17 the occurrence of an act of terrorism in which such an
18 entity incurs an insured loss and all of the provisions of
19 this title are applied comparably to such entities.

20 “(g) REINSURANCE TO COVER EXPOSURE.—

21 “(1) OBTAINING COVERAGE.—This title may
22 not be construed to limit or prevent insurers from
23 obtaining reinsurance coverage for insurer
24 deductibles or insured losses retained by insurers
25 pursuant to this section, nor shall the obtaining of

1 such coverage affect the calculation of such
2 deductibles or retentions.

3 “(2) LIMITATION ON FINANCIAL ASSISTANCE.—

4 The amount of financial assistance provided pursu-
5 ant to this section, including amounts from a CRF
6 used pursuant to subsection (e)(2)(C), shall not be
7 reduced by reinsurance paid or payable to an insurer
8 from other sources, except that recoveries from such
9 other sources, taken together with financial assist-
10 ance for the Transition Period or a Program Year
11 provided pursuant to this section, may not exceed
12 the aggregate amount of the insurer’s insured losses
13 for such period. If such recoveries and financial as-
14 sistance for the Transition Period or a Program
15 Year exceed such aggregate amount of insured losses
16 for that period and there is no agreement between
17 the insurer and any reinsurer to the contrary, an
18 amount in excess of such aggregate insured losses
19 shall be returned to the Secretary.

20 “(h) PERSONAL LINES STUDY.—

21 “(1) IN GENERAL.—The Comptroller General of
22 the United States, after consultation with the NAIC,
23 representatives of the insurance industry, and other
24 experts in the insurance field, including a cross-sec-
25 tion of insurers, independent insurance agents and

1 brokers, and policyholders, shall conduct a study
2 concerning the exposure of personal lines (including
3 homeowners insurance) to terrorism risk, the cov-
4 erage currently available, and potential policy re-
5 sponses.

6 “(2) REPORT.—Not later than September 1,
7 2006, the Comptroller General shall submit a report
8 to the Congress on the results of the study con-
9 ducted under subparagraph (1), together with spe-
10 cific policy recommendations.

11 “(i) STUDY OF RISKS STEMMING FROM NUCLEAR,
12 BIOLOGICAL, CHEMICAL AND RADIOLOGICAL EVENTS.—

13 “(1) IN GENERAL.—The Comptroller General of
14 the United States, after consultation with the NAIC,
15 representatives of the insurance industry, including
16 a cross-section of insurers, independent insurance
17 agents and brokers, and policyholders, and other ex-
18 perts in the insurance field, shall conduct a study
19 concerning the risk of potential terrorist acts stem-
20 ming from the use of nuclear, biological, chemical,
21 and radiological weapons.

22 “(2) REPORT.—Not later than September 1,
23 2006, the Comptroller General shall submit a report
24 to the Congress on the results of the study con-

1 ducted under paragraph (1), together with specific
2 policy recommendations.

3 “(j) STUDY OF NEED FOR FEDERAL NATURAL DIS-
4 ASTER CATASTROPHE PROGRAM.—

5 “(1) IN GENERAL.—The Comptroller General of
6 the United States, after consultation with the NAIC,
7 representatives of the insurance industry, including
8 a cross-section of insurers, independent insurance
9 agents and brokers, and policyholders, and other ex-
10 perts in the insurance field, shall conduct a study
11 concerning the need for a Federal program that pro-
12 vides for a system of shared public and private com-
13 pensation for insured losses resulting from natural
14 disaster.

15 “(2) REPORT.—Not later than September 1,
16 2006, the Comptroller General shall submit a report
17 to the Congress on the results of the study con-
18 ducted under paragraph (1), together with specific
19 policy recommendations.

20 **“SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF**
21 **CLAIMS.**

22 “(a) GENERAL AUTHORITY.—The Secretary shall
23 have the powers and authorities necessary to carry out the
24 program, including authority—

1 “(1) to investigate and audit all claims under
2 the Program; and

3 “(2) to prescribe regulations and procedures to
4 effectively administer and implement the Program,
5 and to ensure that all insurers and self-insured enti-
6 ties that participate in the Program are treated com-
7 parably under the Program.

8 “(b) INTERIM RULES AND PROCEDURES.—The Sec-
9 retary may issue interim final rules or procedures speci-
10 fying the manner in which—

11 “(1) insurers may file and certify claims under
12 the Program;

13 “(2) the Federal share of compensation for in-
14 sured losses will be paid under the Program, includ-
15 ing payments based on estimates of or actual in-
16 sured losses;

17 “(3) the Secretary may, at any time, seek re-
18 payment from or reimburse any insurer, based on
19 estimates of insured losses under the Program, to ef-
20 fectuate the insured loss sharing provisions in sec-
21 tion 103; and

22 “(4) the Secretary will determine any final net-
23 ting of payments under the Program, including pay-
24 ments owed to the Federal Government from any in-
25 surer and any Federal share of compensation for in-

1 sured losses owed to any insurer, to effectuate the
2 insured loss sharing provisions in section 103.

3 “(c) CONSULTATION.—The Secretary shall consult
4 with the NAIC, as the Secretary determines appropriate,
5 concerning the Program.

6 “(d) CONTRACTS FOR SERVICES.—The Secretary
7 may employ persons or contract for services as may be
8 necessary to implement the Program.

9 “(e) CIVIL PENALTIES.—

10 “(1) IN GENERAL.—The Secretary may assess
11 a civil monetary penalty in an amount not exceeding
12 the amount under paragraph (2) against any insurer
13 that the Secretary determines, on the record after
14 opportunity for a hearing——

15 “(A) has failed to charge, collect, or remit
16 terrorism loss risk-spreading premiums under
17 section 103(e) in accordance with the require-
18 ments of, or regulations issued under, this title;

19 “(B) has intentionally provided to the Sec-
20 retary erroneous information regarding pre-
21 mium or loss amounts;

22 “(C) submits to the Secretary fraudulent
23 claims under the Program for insured losses;

24 “(D) has failed to provide the disclosures
25 required under subsection (f); or

1 “(E) has otherwise failed to comply with
2 the provisions of, or the regulations issued
3 under, this title.

4 “(2) AMOUNT.—The amount under this para-
5 graph is the greater of \$1,000,000 and, in the case
6 of any failure to pay, charge, collect, or remit
7 amounts in accordance with this title or the regula-
8 tions issued under this title, such amount in dispute.

9 “(3) RECOVERY OF AMOUNT IN DISPUTE.—A
10 penalty under this subsection for any failure to pay,
11 charge, collect, or remit amounts in accordance with
12 this title or the regulations under this title shall be
13 in addition to any such amounts recovered by the
14 Secretary.

15 “(f) SUBMISSION OF PREMIUM INFORMATION.—

16 “(1) IN GENERAL.—The Secretary shall annu-
17 ally compile information on the terrorism risk insur-
18 ance premium rates of insurers for the preceding
19 year.

20 “(2) ACCESS TO INFORMATION.—To the extent
21 that such information is not otherwise available to
22 the Secretary, the Secretary may require each in-
23 surer to submit to the NAIC terrorism risk insur-
24 ance premium rates, as necessary to carry out para-

1 graph (1), and the NAIC shall make such informa-
2 tion available to the Secretary.

3 “(3) AVAILABILITY TO CONGRESS.—The Sec-
4 retary shall make information compiled under this
5 subsection available to the Congress, upon request.

6 “(g) FUNDING.—

7 “(1) FEDERAL PAYMENTS.—There are hereby
8 appropriated, out of funds in the Treasury not oth-
9 erwise appropriated, such sums as may be necessary
10 to pay the Federal share of compensation for in-
11 sured losses under the Program to the extent such
12 Federal share exceeds funds collected by the Sec-
13 retary pursuant to section 103(e)(2).

14 “(2) ADMINISTRATIVE EXPENSES.—There are
15 hereby appropriated, out of funds in the Treasury
16 not otherwise appropriated, such sums as may be
17 necessary to pay reasonable costs of administering
18 the Program.

19 **“SEC. 105. ESTABLISHMENT OF COMMISSION ON TER-**
20 **RORISM RISK INSURANCE.**

21 “(a) IN GENERAL.—There is hereby established the
22 Commission on Terrorism Risk Insurance (in this section
23 referred to as the ‘Commission’).

24 “(b) MEMBERSHIP.—

1 “(1) The Commission shall consist of nine
2 members, as follows:

3 “(A) The Secretary of the Treasury or his
4 designee.

5 “(B) One State insurance commissioner
6 designated by the members of the NAIC.

7 “(C) Seven members appointed by the
8 President, who shall be—

9 “(i) a representative of group life in-
10 surers;

11 “(ii) a representative of property and
12 casualty insurers with direct written pre-
13 mium of \$1,000,000,000 or less;

14 “(iii) a representative of property and
15 casualty insurers with direct written pre-
16 mium of more than \$1,000,000,000;

17 “(iv) a representative of multiline in-
18 surers;

19 “(v) a representative of independent
20 insurance agents;

21 “(vi) a representative of insurance
22 brokers; and

23 “(vii) a policyholder representative.

24 “(2) SECRETARY.—The Program Director of
25 the Terrorism Risk Insurance Act shall serve as Sec-

1 retary of the Commission. The Secretary of the
2 Commission shall determine the manner in which
3 the Commission shall operate, including funding and
4 staffing.

5 “(c) DUTIES.—

6 “(1) IN GENERAL.—The Commission shall iden-
7 tify and make recommendations regarding—

8 “(A) possible actions to encourage, facili-
9 tate, and sustain provision by the private insur-
10 ance industry in the United States of coverage
11 for losses due to an act or acts of terrorism;

12 “(B) possible actions or mechanisms to
13 sustain or supplement the ability of the insur-
14 ance industry in the United States to cover
15 losses resulting from acts of terrorism in the
16 event that—

17 “(i) such losses jeopardize the capital
18 and surplus of the insurance industry in
19 the United States as a whole; or

20 “(ii) other consequences from such
21 acts occur, as determined by the Commis-
22 sion, that may significantly affect the abil-
23 ity of the insurance industry in the United
24 States to independently cover such losses;
25 and

1 “(C) significantly reducing the expected
2 Federal role over time in any continuing Fed-
3 eral terrorism risk insurance program.

4 “(2) EVALUATIONS.—In identifying and mak-
5 ing the recommendations required under paragraph
6 (1), the Commission shall specifically evaluate the
7 utility and viability of TRIA Capital Reserve Funds
8 made available under section 103(e)(2), any risk
9 sharing mechanism created or made available under
10 section 103(e)(3), a Federally created or mandated
11 reinsurance facility, empowering such a facility to
12 issue pre-event financing bonds, post-event financing
13 bonds, assessments, single or multiple pooling ar-
14 rangements, and other risk sharing arrangements to
15 accomplish, in whole or in part, the specified objec-
16 tives, taking into consideration the studies and re-
17 ports to the Congress pursuant to subsections (h)
18 and (i) of section 103.

19 “(3) REPORT.—Not later than December 31,
20 2006, the Commission shall submit a report to Con-
21 gress evaluating and making recommendations re-
22 garding whether there is a need for a Federal ter-
23 rorism risk insurance program and, if so, shall make
24 a specific, detailed recommendation for the replace-
25 ment of the Program, including specific, detailed

1 recommendations for the creation of a terrorism re-
2 insurance facility or facilities or single or multiple
3 pooling arrangements, or both.

4 “(d) EFFECT ON EXISTING PROGRAM.—For pur-
5 poses of section 108(a), the Secretary shall make a deter-
6 mination not later than January 31, 2007, of whether the
7 Commission has satisfied its obligations under subsection
8 (c)(3).

9 **“SEC. 106. PRESERVATION PROVISIONS.**

10 “(a) STATE LAW.—Nothing in this title shall affect
11 the jurisdiction or regulatory authority of the insurance
12 commissioner (or any agency or office performing like
13 functions) of any State over any insurer or other person—

14 “(1) except as specifically provided in this title;
15 and

16 “(2) except that—

17 “(A) the definition of the term ‘act of ter-
18 rorism’ in section 102 shall be the exclusive def-
19 inition of that term for purposes of compensa-
20 tion for insured losses under this title, and shall
21 preempt any provision of State law that is in-
22 consistent with that definition, to the extent
23 that such provision of law would otherwise
24 apply to any type of insurance covered by this
25 title; and

1 “(B) during the period beginning on the
2 date of enactment of this Act and for so long
3 as the Program is in effect, as provided in sec-
4 tion 108, including authority in subsection
5 108(b), books and records of any insurer that
6 are relevant to the Program shall be provided,
7 or caused to be provided, to the Secretary, upon
8 request by the Secretary, notwithstanding any
9 provision of the laws of any State prohibiting or
10 limiting such access; and

11 “(3) except that with respect to coverage re-
12 quired to be made available under section 103(c)—

13 “(A) rates and forms filed with any State
14 shall not be subject to prior approval or a wait-
15 ing period under any law of a State that would
16 otherwise be applicable, except that where a
17 State has prior approval authority, such author-
18 ity shall apply to allow subsequent review to in-
19 validate a rate as in adequate or unfairly dis-
20 criminatory, and, with respect to forms, such
21 authority shall apply to allow subsequent review
22 of such forms for compliance with the statutes
23 and regulations of the State, except that such
24 subsequent review must allow sub-limits for cov-
25 erage for acts of terrorism for property insur-

1 ance and casualty insurance and must be based
2 on transparent standards;

3 “(B) no laws or regulations of a State with
4 respect to rate and form approval or dis-
5 approval other than disclosure requirements re-
6 garding exempt commercial purchases and in-
7 formational filing requirements, shall apply to
8 insurance offered by an insurer to an exempt
9 commercial purchaser, so long as the insurer
10 files and retains the exempt commercial pur-
11 chaser certification and any policies issued pur-
12 suant to such certification for at least three
13 years and makes such certification and policies
14 available to such State for review as required by
15 the statutes and regulations of such State;

16 “(C) no laws or regulations of a State,
17 other than the home State, shall apply to a
18 multi-State commercial insurance policy relat-
19 ing to the policy form or the terms of the policy
20 (including any requirement of the State relating
21 to policy form filing, the coverages the policy
22 must afford, the terms of such coverages, policy
23 termination, policy cancellation, policy renewal,
24 premium finance, premium payment, and policy

1 application), except laws and regulations relat-
2 ing to workers' compensation coverage;

3 “(D) no laws or regulations of a State im-
4 posing a diligent search requirement for the
5 placement of a surplus lines policy shall apply
6 in connection with the purchase of such insur-
7 ance by an exempt commercial policyholder; and

8 “(E) no laws or regulations of a State, ex-
9 cept the home State, imposing a diligent search
10 requirement for the placement of a surplus lines
11 policy shall apply with respect to the placement
12 of a multi-State surplus lines commercial insur-
13 ance policy, provided the contract of insurance
14 insures risks in the home State.

15 “(b) STREAMLINED RATE AND FORM FILING.—
16 Within two years of the date of enactment of this Act,
17 the Congress intends that all States, with respect to sub-
18 mission of a commercial property insurance policy or com-
19 mercial casualty insurance policy that includes coverage
20 for acts of terrorism—

21 “(1) implement and fully utilize the System for
22 Electronic Rate and Form Filing (in this section re-
23 ferred to as ‘SERFF’), developed by the NAIC,
24 without deviation to provide a single point for elec-

1 tronic filing of property insurance and casualty in-
2 surance forms for review;

3 “(2) update SERFF to provide a single coordi-
4 nated checklist for inputting the required informa-
5 tion used by various States for filing reviews and
6 designating to which States the information will be
7 submitted;

8 “(3) allow the option of filing of self-certified
9 commercial property insurance and commercial cas-
10 ualty insurance forms through a substantially na-
11 tionwide coordinated electronic filing system that—

12 “(A) includes a review checklist with uni-
13 form nomenclature clearly establishing what is
14 required under the laws of such State for a
15 compliant filing of such forms;

16 “(B) uses a single input system and trans-
17 mittal document that allows the filer to submit
18 such form for review without required format
19 deviations to any combination of the States par-
20 ticipating in the system;

21 “(C) does not require prior approval for
22 such self-certified form filing;

23 “(D) keeps such filings confidential until
24 they are implemented, deemed implemented, or
25 disapproved; and

1 “(E) only allows disapproval of such filings
2 in writing based on specific standards that are
3 published in statute, rule, or regulation.

4 “(c) STREAMLINED SURPLUS LINES PLACEMENT.—
5 Within two years of the date of enactment of this Act,
6 the Congress intends that all States streamline their sur-
7 plus lines diligent search rules with respect to the place-
8 ment of surplus lines policies in any covered line of insur-
9 ance that includes coverage for acts of terrorism by pro-
10 viding for—

11 “(1) automatic export for exempt commercial
12 purchasers, under which a surplus lines broker seek-
13 ing to obtain, provide, or place insurance in a State
14 for an insured that qualifies as an exempt commer-
15 cial purchaser may procure surplus lines insurance
16 from or place surplus lines insurance with any non-
17 admitted insurer without making a diligent search to
18 determine whether the full amount or type of insur-
19 ance sought by the exempt commercial purchaser
20 can be obtained from admitted insurers in such
21 State.

22 “(2) home State regulation of diligent search
23 requirements, that provides that, except as provided
24 in paragraph (1), only the home State may impose
25 a diligent search requirement for the placement of a

1 multi-State surplus lines commercial insurance pol-
2 icy, provided the contract of insurance insures risks
3 in the Home State.

4 “(d) EXISTING REINSURANCE AGREEMENTS.—Noth-
5 ing in this title shall be construed to alter, amend, or ex-
6 pand the terms of coverage under any reinsurance agree-
7 ment in effect on the date of enactment of this Act. The
8 terms and conditions of such an agreement shall be deter-
9 mined by the language of that agreement.”; and

10 (2) in section 108—

11 (A) by striking subsection (a) and insert-
12 ing the following new subsection:

13 “(a) TERMINATION OF PROGRAM.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), the Program shall terminate on December
16 31, 2008.

17 “(2) FAILURE OF COMMISSION TO SUBMIT RE-
18 PORT.—If the Secretary determines pursuant to sec-
19 tion 105(d) that the Commission on Terrorism Risk
20 Insurance established under section 105 has not sat-
21 isfied its obligations under section 105(c)(3), the
22 Program shall terminate on December 31, 2007.”;
23 and

24 (B) in subsection (c)(1), by striking “para-
25 graph (4), (5), (6), (7), or (8) of”.

1 (b) APPLICABILITY.—The amendments made by sub-
2 section (a) shall apply beginning on January 1, 2006. The
3 provisions of the Terrorism Risk Insurance Act of 2002,
4 as in effect on the day before the date of the enactment
5 of this Act, shall apply through the end of December 31,
6 2005.

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