

March 24, 2004

Dear Mr. D:

This letter is written in response to your request for an interpretation concerning the application of the Terrorism Risk Insurance Act of 2002 (the “Act”)¹ and Treasury’s regulations implementing the Act² to terrorism insurance coverage for losses resulting from an act of terrorism and nuclear, biological, and chemical (commonly referred to as “NBC”)³ reaction, release, and/or contamination.⁴

Under the Act, the Federal Government shares in 90 percent of an insurer’s “insured losses” above the insurer’s annual deductible, subject to an industry-aggregate limit of \$100 billion. “Insured loss” is defined in the Act as *any loss* resulting from an “act of terrorism” (including an act of war, in the case of workers’ compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss occurs at the locations identified in the Act.⁵ The Act’s definition of “insured loss” does not exclude losses from nuclear, biological, or chemical perils. Similarly, the Act’s definition of “act of terrorism” does not preclude the Secretary from certifying terrorist acts involving nuclear reaction or radiological, biological, or chemical release, and/or contamination.⁶

The Program covers “insured losses” from a nuclear reaction, or radiological, biological, or chemical release and/or contamination resulting from a certified act of terrorism, if the coverage for those perils is provided in the primary or excess property and casualty policy issued by an insurer. As explained in the preamble to our final regulations implementing the mandatory availability or “make available” provisions of the Act:

If an insurer provided such coverage in a commercial property and casualty policy, and met its insurer deductible and other conditions for

¹ Public Law 107-297, 116 Stat. 2322, 15 U.S.C. §6701 note..

² 31 C.F.R. Part 50.

³ Other terms include CBRN (chemical, biological, radiological, and/or nuclear), CBRNE (chemical, biological, radiological, and/or nuclear exposure), and WMD (weapons of mass destruction).

⁴ This response is being issued pursuant to 31 C.F.R. §50.9, which sets forth a procedure whereby persons actually or potentially affected by the Act or regulations may request an interpretation.

⁵ 31 C.F.R. §50.5(e).

⁶ *Id.* at §50.5(b).

federal payment, the insurer would receive federal payment under the Program for a claim filed based on that policy.⁷

However, the preamble and regulations also provide that an insurer's initial offer to provide terrorism coverage may exclude losses from nuclear, biological, or chemical perils from the coverage if such exclusion is 1) also applied to losses arising from events other than acts of terrorism, and 2) permitted by State law.⁸

Thank you for your letter. We hope this addresses the misconceptions that some may have regarding this topic. If you have any further questions, please contact the Program office at (202) 622-6770.

Sincerely,

Jeffrey S. Bragg
Executive Director

⁷ 68 Fed. Reg. 59720, 59726 (Oct. 17, 2003).

⁸ *Id.* at §50.23.