PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: August 17, 2021
TIME: 1:03 PM

WSR 21-17-124

Agency: Office of the Insurance Commissioner

☒ **Original Notice**
☐ **Supplemental Notice to WSR _____**
☐ **Continuance of WSR _____**

☒ **Preproposal Statement of Inquiry was filed as WSR** 21-13-133 **; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR _____; or**
☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
☐ **Proposal is exempt under RCW _____.**

Title of rule and other identifying information: (describe subject) **Reinsurance agreements**

Insurance Commissioner Matter R 2021-05

Hearing location(s):

Date:	**Time:**	**Location:** (be specific)	**Comment:**
Thursday September 23, 2021	**9:00am**	**Zoom Meeting: Detailed information for attending the Zoom meeting posted on the OIC website here: https://www.insurance.wa.gov/reinsurance-agreements-r-2021-05**	Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform

Date of intended adoption: September 23, 2021 _ (Note: This is **NOT** the **effective** date)

Submit written comments to:
Name: David Forte
Address: PO Box 40260, Olympia, WA 98504-0260
Email: rulescoordinator@oic.wa.gov
Fax: 360-586-3109
Other:
By (date) September 22, 2021

Assistance for persons with disabilities:
Contact Melanie Watness
Phone: 360-725-7013
Fax: 360-586-2023
TTY: 360-586-0241
Email: MelanieW@oic.wa.gov
Other:
By (date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of the purposed rules is to advance collateral reform relating to reinsurance and assist Washington state maintain a competitive and secure insurance market**.**

Reasons supporting proposal: The National Association of Insurance Commissioners (NAIC) recently adopted two revisions to its Credit for Reinsurance Model Law. The amendments to the model law incorporate provisions of an agreement between the United States and the European Union (EU). The agreement eliminates reinsurance collateral and local presence requirements for EU reinsurers that maintain $250 million of their own funds and 100% solvency capital. Conversely, U.S. reinsurers that maintain similar capital and surplus would not be required to maintain a local presence in order to do business in the EU or in any EU jurisdiction. A similar agreement was signed with the United Kingdom and extends similar treatment to qualified jurisdictions and accredited NAIC jurisdictions. Senate Bill 5048 (2021) passed this past legislative session incorporating key components of the NAIC model. The Commissioner is considering rulemaking to further align with the model law.

Statutory authority for adoption: RCW 48.02.060, 48.12.480, section 2, chapter 139, Laws of 2021, and section 4, chapter 138, Laws of 2021

Statute being implemented: Chapter 138, Laws of 2021 (SB 5048)

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Mike Kreidler, Insurance Commissioner

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	David Forte	PO Box 40260, Olympia, WA 98504-0260	360-725-7042
Implementation:	Melanie Anderson	PO Box 40260, Olympia, WA 98504-0260	360-725-7000
Enforcement:	Melanie Anderson	PO Box 40260, Olympia, WA 98504-0260	360-725-7000

Is a school district fiscal impact statement required under RCW 28A.305.135? ☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name: David Forte
Address: PO Box 40260, Olympia, WA 98504-0260

Phone: 360-725-7042
Fax: 360-586-3109
TTY:
Email: davidf@oic.wa.gov
Other:

☐ No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.
Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐	RCW 34.05.310 (4)(b) (Internal government operations)	☐	RCW 34.05.310 (4)(e) (Dictated by statute)
☐	RCW 34.05.310 (4)(c) (Incorporation by reference)	☐	RCW 34.05.310 (4)(f) (Set or adjust fees)
☐	RCW 34.05.310 (4)(d) (Correct or clarify language)	☐	RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☒ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.020.

Explanation of exemptions, if necessary: The domestic companies that are affected by this rule are large companies and are not small business as defined in RCW 19.85.020(3).

Direct Health and Medical Insurance Carriers in Washington State employ on average 6,777 individuals annually throughout the industry. Considering there are on average 58 Direct Health and Medical Insurance Carrier firms operating annually in Washington, the mean number of employees per firm is 118 (6777/58). Direct Life Insurance Carriers in Washington employ on average 2,787 individuals annually, and there are on average 38 firms. Therefore, there are estimated to be 73 employees per firm. By the same logic, Direct Property and Casualty Insurers employ on average 6,393 individuals annually, and there are on average 87 firms. Therefore, there are estimated to be 74 employees per firm. All these estimates are above the small business threshold of 50 employees as defined by RCW 19.85.020(3). The figures used for this calculation are drawn from the 2020 Washington State Employment Security Department's Quarterly Census of Employment and Wages.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's analysis showing how costs were calculated. _____

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: August 17, 2021	**Signature:** Mike Kreidler
Name: Mike Kreidler	
Title: Insurance Commissioner	

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-536 Credit for reinsurance—Certain reinsurers maintaining trust funds—Liabilities defined. For purposes of WAC 284-13-520 through 284-13-538, liabilities means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are ((~~not~~)) otherwise secured by acceptable means, and, must include:

(1) For business ceded by domestic insurers authorized to write accident and disability, and property and casualty insurance:

(a) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(b) Reserves for losses reported and outstanding;

(c) Reserves for losses incurred but not reported;

(d) Reserves for allocated loss expenses; and

(e) Unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, disability and annuity insurance:

(a) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(b) Aggregate reserves for accident and disability policies;

(c) Deposit funds and other liabilities without life or disability contingencies; and

(d) Liabilities for policy and contract claims.

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-538 Specific securities provided to a ceding insurer. A specific security provided to a ceding insurer by an assuming insurer under WAC ((~~284-13-53901~~)) 284-13-540 must be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer under WAC 284-13-520 through 284-13-538.

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-539 Credit for reinsurance—Certified reinsurers. (1) Under RCW 48.12.430, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed must be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security must be in a form consistent with RCW 48.12.430 and 48.12.460, and WAC 284-13-550, 284-13-560 or 284-13-570. The amount of security required in order for full credit to be allowed must correspond with the following requirements:

(a)

Ratings	Security Required
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

(b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The commissioner must require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(d) In order to facilitate the prompt payment of claims, a certified reinsurer is not required to post security for a catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophe occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophe occurrence will be included in the deferral:

(i) Line 1: Fire.

(ii) Line 2: Allied lines.

(iii) Line 3: Farmowners multiple peril.

(iv) Line 4: Homeowners multiple peril.

(v) Line 5: Commercial multiple peril.

(vi) Line 9: Inland marine.

(vii) Line 12: Earthquake.

(viii) Line 21: Auto physical damage.

(e) Credit for reinsurance under this section applies only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, is only subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(f) Nothing in this section prohibits the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(2)(a) The commissioner shall post notice on the commissioner's web site promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty days after posting the notice required by (a) of this subsection.

(b) The commissioner shall issue notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer under subsection (1) of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(c) In order to be eligible for certification, the assuming insurer must meet the following requirements:

(i) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner under subsection (3) of this section.

(ii) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated under (d)(viii) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having a minimum capital and surplus equivalent (net of liabilities) of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.

(iii) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings must be based on interactive communication between the rating agency and the assuming insurer and must not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(A) Standard & Poor's;

(B) Moody's Investors Service;

(C) Fitch Ratings;

(D) A.M. Best Company; or

(E) Any other nationally recognized statistical rating organization.

(iv) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(d) Each certified reinsurer must be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(i) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner must use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA

Ratings	Best	S&P	Moody's	Fitch
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(ii) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(iii) For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC annual statement blank, either schedule F (for property/casualty reinsurers) or schedule S (for life and disability reinsurers);

(iv) For certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and disability reinsurers) set forth in WAC 284-13-59502 through 284-13-59508;

(v) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(vi) Regulatory actions against the certified reinsurer;

(vii) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (d)(viii) of this subsection;

(viii) For certified reinsurers not domiciled in the United States, audited financial statements ((~~(audited United States GAAP basis if available, audited IFRS basis statements are allowed but most include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)~~)), regulatory filings, and actuarial opinions (as filed with non-United States jurisdiction supervisor<u>, with a translation into English</u>). Upon the initial application for certification, the commissioner will consider audited financial statements for the last ((~~three~~)) <u>two</u> years filed with its non-United States jurisdiction supervisor;

(ix) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(x) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner must receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme arrangement; and

(xi) Any other information deemed relevant by the commissioner.

(e) Based on the analysis conducted under (d)(v) of this subsection of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner must, at a minimum, increase the security the certified reinsurer is required to post by one rating level under (d)(i) of this subsection if the commissioner finds that:

(i) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each cedent; or

(ii) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.

(f) The assuming insurer must submit a properly executed Form CR-1 set forth under WAC 284-13-59501 as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner will not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(g) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. The applicable information filing requirements are as follows:

(i) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefore;

(ii) Annually, Form CR-F or CR-S, as applicable per the instructions posted on the National Association of Insurance Commissioner's web site;

(iii) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (g)(iv) of this subsection;

(iv) Annually, audited financial statements ((~~(audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)~~)), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor<u>, with a translation into English</u>). Upon the initial certification, audited financial statements for the last ((~~three~~)) <u>two</u> years filed with the certified reinsurer's supervisor;

(v) At least annually, an audited list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(vi) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(vii) Any other information that the commissioner may reasonably require.

(h) Change in rating or revocation of certification.

(i) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner must upon notice assign a new rating to the certified reinsurer in accordance with the requirements of subsection (2)(d)(i) of this section.

(ii) The commissioner has the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(iii) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner must require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner must require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(iv) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer is required to post security in accordance with WAC 284-13-540 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust under WAC 284-13-520 through 284-13-538, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectability and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectability.

(3)(a) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner must publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner must evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner must determine the appropriate approach for evaluating the qualifications of the jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner include, but are not limited to, the following:

(i) The framework under which the assuming insurer is regulated.

(ii) The structure and authority of the domiciliary regulator with respect to solvency regulation requirements and financial surveillance.

(iii) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(iv) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(v) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.

(vi) The history of performance by assuming insurers in the domiciliary jurisdiction.

(vii) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.

(viii) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(ix) Any other matters deemed relevant by the commissioner.

(c) A list of qualified jurisdictions shall be published through the NAIC committee process. The commissioner shall consider the list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under (b)(i) through (ix) of this subsection.

(d) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program are recognized as qualified jurisdictions.

(4)(a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed CR-1 and additional information as the commissioner requires. The assuming insurer is considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction applies automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer must notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (2)(h) of this section.

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification under subsection (2)(h) of this section, the certified reinsurer's certification remains in good standing in this state for a period of three months, which is extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(5) In addition to the clauses required under WAC 284-13-580, reinsurance contracts entered into or renewed under this section must include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(6) The commissioner will comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-53901 Credit for reinsurance required by law. Under RCW 48.12.435, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 2, chapter 138, Laws of 2021 and RCW 48.12.410 through 48.12.430, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and lawful national government.

NEW SECTION

WAC 284-13-53902 Credit for reinsurance—Reciprocal jurisdiction. (1) Pursuant to section 2, chapter 138, Laws of 2021, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this regulation.

(2) A "reciprocal jurisdiction" is a jurisdiction, as designated by the commissioner that meets one of the following:

(a) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. Secs. 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(b) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(c) A qualified jurisdiction, as determined by the commissioner pursuant to RCW 48.12.430(3) and WAC 284-13-539(3), which is not otherwise described in (a) or (b) of this subsection and which the commissioner determines meets all of the following additional requirements:

(i) Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S. domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

(ii) Does not require a U.S. domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

(iii) Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

(iv) Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(3) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

(a) The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31st or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in (g) of this subsection according to the methodology of its domiciliary jurisdiction, in the following amounts:

(i) No less than two hundred fifty million dollars; or

(ii) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(A) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least two hundred fifty million dollars; and

(B) A central fund containing a balance of the equivalent of at least two hundred fifty million dollars.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(i) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subsection (1)(a) of this section, the ratio specified in the applicable covered agreement;

(ii) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (1)(b) of this section, a risk-based capital (RBC) ratio of three hundred percent of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

(iii) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (1)(c) of this section, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

(d) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (WAC 284-13-59509), of its agreement to the following:

(i) The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in (b) or (c) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.

(ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process.

(A) The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction.

(B) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

(iii) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

(iv) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

(v) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide one hundred percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of RCW 48.12.430 and 48.12.460 and WAC 284-13-550, 284-13-560, or 284-13-570. For purposes of this regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

(vi) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in (e) of this subsection.

(e) The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

(i) For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

(ii) For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

(iii) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

(iv) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in (f) of this subsection.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(i) More than fifteen percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;

(ii) More than fifteen percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety days or more which are not in dispute and which exceed for each ceding insurer one hundred thousand dollars, or as otherwise specified in a covered agreement; or

(iii) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety days or more, exceeds fifty million dollars, or as otherwise specified in a covered agreement.

(g) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the requirements set forth in (b) and (c) of this subsection.

(h) Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(4) The commissioner shall timely create and publish a list of reciprocal jurisdictions.

(a) A list of reciprocal jurisdictions is published through the NAIC committee process. The commissioner's list shall include any reciprocal jurisdiction as defined under subsection (2)(a) and (b) of this section, and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC committee process.

(b) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC committee process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subsection (2)(a) and (b) of this section. Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to RCW 48.12.400 through 48.12.499 or WAC 284-13-500 through 284-13-59509.

(5) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

(a) If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (3) of this section have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection (3) of this section.

(b) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

(6) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

(a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with WAC 284-13-540.

(b) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of WAC 284-13-540.

(7) Before denying statement credit or imposing a requirement to post security with respect to subsection (6) of this section or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

(a) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsection (3) of this section;

(b) Provide the assuming insurer with thirty days from the initial communication to submit a plan to remedy the defect, and ninety days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(c) After the expiration of ninety days or less, as set out in (b) of this subsection, if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subsection; and

(d) Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

(8) If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

NEW SECTION

WAC 284-13-53903 Credit for reinsurance—Term and universal life insurance reserve financing. (1) Pursuant to section 5, chapter 138, Laws of 2021, the purpose and intent of this section is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security, as defined in subsection (4) of this section, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics:

(a) Some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer are issued by the ceding insurer or its affiliates;

(b) Some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer are not unconditionally available to satisfy the general account obligations of the ceding insurer; or

(c) Some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any if its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

(2) This section will apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in subsection (4)(b) of this section, issued by any life insurance company domiciled in this state. This section and WAC 284-13-500 through 284-13-59509 will both apply to such reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this regulation and WAC 284-13-500 through 284-13-59509, the provisions of this regulation will apply, but only to the extent of the conflict.

(3) This section does not apply to:

(a) Reinsurance of:

(i) Policies that satisfy the criteria for exemption set forth in WAC 284-74-350(7); and which are issued before the later of:

(A) The effective date of this regulation; and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

(ii) Portions of policies that satisfy the criteria for exemption set forth in WAC 284-74-350(6) and which are issued before the later of:

(A) The effective date of this regulation; and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

(iii) Any universal life policy that meets all of the following requirements:

(A) Secondary guarantee period, if any, is five years or less;

(B) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the commissioners standard ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

(C) The initial surrender charge is not less than one hundred percent of the first year annualized specified premium for the secondary guarantee period;

(iv) Credit life insurance;

(v) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

(vi) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(b) Reinsurance ceded to an assuming insurer that meets the applicable requirements of RCW 48.12.425; or

(c) Reinsurance ceded to an assuming insurer that meets the applicable requirements of RCW 48.12.410, 48.12.415, or 48.12.420, and that, in addition:

(i) Prepares statutory financial statements in compliance with the *NAIC Accounting Practices and Procedures Manual*, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to statement of statutory accounting principles No. 1 (SSAP 1); and

(ii) Is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as those terms are defined in RCW 48.05.440 through 48.05.455 when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or

(d) Reinsurance ceded to an assuming insurer that meets the applicable requirements of RCW 48.12.410, 48.12.415, or 48.12.420, and that, in addition:

(i) Is not an affiliate, as that term is defined in RCW 48.31B.005, of:

(A) The insurer ceding the business to the assuming insurer; or

(B) Any insurer that directly or indirectly ceded the business to that ceding insurer;

(ii) Prepares statutory financial statements in compliance with the *NAIC Accounting Practices and Procedures Manual*;

(iii) Is both:

(A) Licensed or accredited in at least ten states (including its state of domicile); and

(B) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

(iv) Is not, or would not be, below five hundred percent of the authorized control level RBC as that term is defined in RCW 48.05.440 when its risk-based capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

(e) Reinsurance ceded to an assuming insurer that meets the requirements of section 5(5), chapter 138, Laws of 2021; or

(f) Reinsurance not otherwise exempt under this section if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

(i) The risks are clearly outside of the intent and purpose of this regulation, as described in subsection (1) of this section;

(ii) The risks are included within the scope of this regulation only as a technicality; and

(iii) The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Actuarial method" means the methodology used to determine the required level of primary security, as described in subsection (5) of this section.

(b) "Covered policies" means the following: Subject to the exemptions described in subsection (3) of this section, covered policies are those policies, other than grandfathered policies, of the following policy types:

(i) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or

(ii) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

(c) "Grandfathered policies" means policies of the types described in (a) and (b) of this subsection that were:

(i) Issued prior to January 1, 2015; and

(ii) Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in Section 4 had that section then been in effect.

(d) "Noncovered policies" means any policy that does not meet the definition of covered policies including grandfathered policies as defined in this section.

(e) "Required level of primary security" means the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

(f) "Primary security" means the following forms of security:

(i) Cash meeting the requirements of RCW 48.12.460(1);

(ii) Securities listed by the Securities Valuation Office meeting the requirements of RCW 48.12.460(2), but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

(iii) For security held in connection with funds withheld and modified coinsurance reinsurance treaties:

(A) Commercial loans in good standing of CM3 quality and higher;

(B) Policy loans; and

(C) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(g) "Other security" means any security acceptable to the commissioner other than security meeting the definition of primary security.

(h) "Valuation manual" means the *Valuation Manual* adopted by the NAIC as described in RCW 48.74.100 (2)(a) and WAC 284-74-610, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

(i) "VM-20" means requirements for principle-based reserves for life products, including all relevant definitions, from the *Valuation Manual*.

(5)(a) The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this regulation must be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the *Valuation Manual* as then in effect, applied as follows:

(i) For covered policies described in subsection (4)(b)(i) of this section, the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the *Valuation Manual*, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies described in subsection (4)(b)(ii) of this section, the ceding insurer may elect to instead use (a)(ii) of this subsection as the actuarial method for the entire reinsurance agreement. Whether this subsection (5)(a)(i) or (ii) of this section are used, the actuarial method must comply with any requirements or restrictions that the *Valuation Manual* imposes when aggregating these policy types for purposes of principle-based reserve calculations.

(ii) For covered policies described in subsection (4)(b)(ii) of this section, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR regardless of whether the criteria for exemption testing can be met.

(iii) Except as provided in (a)(iv) of this subsection, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

(iv) If the reinsurance treaty cedes less than one hundred percent of the risk with respect to the covered policies, then the required level of primary security may be reduced as follows:

(A) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under (a)(iv)(C) of this subsection, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

(B) If the reinsurance treaty in a nonexempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(C) If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed [cx/(2 * number of reinsurance premiums per year)] where cx is calculated using the same mortality table used in calculating the net premium reserve; and

(D) For any other treaty ceding a portion of risk to a different reinsurer including, but not limited to, stop loss, excess of loss and other nonproportional reinsurance treaties, there will be no reduction in the required level of primary security.

It is possible for any combination of (a)(iv) of this subsection to apply. Such adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than one hundred percent of the risk.

The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(v) In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

(vi) If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this regulation, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this regulation;

(vii) If a reinsurance treaty subject to this regulation cedes risk on both covered and noncovered policies, credit for the ceded reserves will be determined as follows:

(A) The actuarial method must be used to determine the required level of primary security for the covered policies and subsection (6) of this section must be used to determine the reinsurance credit for the covered policy reserves; and

(B) Credit for the noncovered policy reserves will be granted only to the extent that security, in addition to the security held to satisfy the requirements of (a)(vii)(A) of this subsection, is held by or on behalf of the ceding insurer in accordance with section 2, chapter 138, Laws of 2021 and RCW 48.12.410 through 48.12.460. Any primary security used to meet the requirements of this subsection may not be used to satisfy the required level of primary security for the covered policies.

(b) For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following will apply:

(i) For assets, including any such assets held in trust, that would be admitted under the *NAIC Accounting Practices and Procedures Manual* if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

(ii) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 must be included in the actuarial method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31st on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs must be incorporated into the actuarial method in the manner specified in VM-20.

(6) Requirements applicable to covered policies to obtain credit for reinsurance - Opportunity for remediation:

(a) Requirements are subject to the exemptions described in subsection (3) of this section and the provisions of (b) of this subsection, credit for reinsurance will be allowed with respect to ceded liabilities pertaining to covered policies pursuant to section 2, chapter 138, Laws of 2021 and RCW 48.12.410 through 48.12.460 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

(i) The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of chapter 48.74 RCW and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract;

(ii) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner;

(iii) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of RCW 48.12.460, on a funds withheld, trust, or modified coinsurance basis;

(iv) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to (a)(iii) of this subsection, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of RCW 48.12.460;

(v) Any trust used to satisfy the requirements of this section must comply with all of the conditions and qualifications of WAC 284-13-550, except that:

(A) Funds consisting of primary security or other security held in trust, will for the purposes identified in subsection (5)(b) of this section, be valued according to the valuation rules set forth in subsection (5)(b) of this section, as applicable;

(B) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of (a)(iii) of this subsection;

(C) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust (when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by (a)(iii) of this subsection below one hundred two percent of the level required by (a)(iii) of this subsection at the time of the withdrawal or substitution; and

(D) The determination of reserve credit under WAC 284-13-550(5) must be determined according to the valuation rules set forth in subsection (5)(b) of this section, as applicable; and

(vi) The reinsurance treaty has been approved by the commissioner.

(b) Requirements at inception date and on an ongoing basis - Remediation:

(i) The requirements of (a) of this subsection must be satisfied as of the date that risks under covered policies are ceded on or after the effective date of this subsection and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under (a)(iii) or (iv) of this subsection with respect to any reinsurance treaty under which covered policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it will use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(ii) Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of subsection (2) of this section must perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of (a)(iii) and (iv) of this subsection were satisfied. The ceding insurer will establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to (a)(iii) of this subsection, unless either:

(A) The requirements of (a)(iii) and (iv) of this subsection were fully satisfied as of the valuation date as to such reinsurance treaty; or

(B) Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security and/or other security, as the case may be, in such amount and in such form as would have caused the requirements of (a)(iii) and (iv) of this subsection to be fully satisfied as of the valuation date.

(iii) Nothing in (b)(ii) of this subsection will be construed to allow a ceding company to maintain any deficiency under (a)(iii) or (iv) of this subsection for any period of time longer than is reasonably necessary to eliminate it.

(7) If any provision of this section is held invalid, the remainder shall not be affected.

(8) No insurer that has covered policies as to which this regulation applies as set forth in section (2) of this section shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in section (1) of this section.

<u>AMENDATORY SECTION</u> (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-540 Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of WAC 284-13-510 through ((~~284-13-53901~~)) <u>284-13-53903</u>. Under RCW 48.12.460, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of <u>section 2, chapter 138, Laws of 2021 and</u> RCW 48.12.405 through 48.12.455, in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract. The security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution as defined in RCW 48.12.465(2). This security may be in the form of any of the following:

(1)(a) Cash;

(b) Securities listed by the Securities Valuation Office of the NAIC, including those exempt from filing as defined by the purposes and procedures manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in RCW 48.12.465(1), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer under this section is allowed only when the requirements of WAC 284-13-580 and the applicable portions of WAC 284-13-550, 284-13-560, or 284-13-570 have been satisfied.

NEW SECTION

WAC 284-13-59509 Form RJ-1.

FORM RJ-1

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I,______________________,____

(name of officer) (title of officer)

of____, the

assuming insurer (name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in Washington state, in order to be considered for approval in this state, hereby certify that____(“Assuming Insurer”): (name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in [Name of State] for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the commissioner. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer’s rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted, by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

2. Designates the Insurance Commissioner of Washington state as its lawful attorney in and for the Washington state upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.

5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in Washington state. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the commissioner, and to provide one hundred percent security to the ceding insurer consistent with the terms of the scheme.

6. Agrees that in each reinsurance agreement it will provide security in an amount equal to one hundred percent of the assuming insurer’s liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.

7. Agrees to provide the documentation in accordance with Washington Administrative Code 284-13-53902(3)(e) for reciprocal jurisdiction reinsurers, if requested by the commissioner.

Dated:____________________________ ____

(name of assuming insurer)

BY:____

(name of officer)

____

(title of office)