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CHAPTER 836

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

INSURANCE REGULATION

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RULES:

836-012-0000, 836-012-0046, 836-012-0048

AMEND: 836-012-0000

NOTICE FILED DATE: 10/26/2021

RULE SUMMARY: Amends for the purpose of adopting Form RJ-1, Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction, as referenced in Section 9 of the NAIC Credit for Reinsurance Model Regulation #786.

CHANGES TO RULE:

836-012-0000

Director's Authority ¶¶

(1) OAR 836-012-0000 to 836-012-0110 are adopted pursuant to ORS 731.508 to 731.5144, and general rulemaking authority under ORS 731.244.¶¶

(2) OAR 836-012-0000 to 836-012-0110 are adopted for the purpose of establishing standards and procedural requirements that the director determines to be necessary and appropriate in the public interest for carrying out ORS 731.508 to 731.5144, relating to credit for reinsurance, for the protection of the insurance-buying public and the ceding insurers in this state.¶¶

(3) Form AR-1, Certificate of Assuming Insurer, Exhibit 1 to this rule, is adopted for purposes of OAR 836-012-0000 to 836-012-0110, when the use of the form is required by such rules.¶¶

(4) Form ACR-1, Certificate of Assuming Certified Reinsurer, Exhibit 2, to this rule, is adopted for purposes of OAR 836-012-0000 to 836-012-0110, when the use of the form is required by such rules.¶¶

(5) Form CR-F, Certificate For Property/Casualty Reinsurers, Exhibit 3, to this rule, is adopted for purposes of OAR 836-012-0000 to 836-012-0110, when the use of the form is required by such rules.¶¶

(6) Form CR-S, Certificate For Life/Health Reinsurers, Exhibit 4, to this rule, is adopted for purposes of OAR 836-012-0000 to 836-012-0110, when the use of the form is required by such rules.¶¶

(7) Form RJ-1, Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction, Exhibit 5 to this rule, is adopted for purposes of OAR 836-012-0000 to 836-012-0110, when the use of the form is required by such rules.¶¶

(78) If any provision of this regulation, or the application of the provision to any person or circumstance, is held invalid, the remainder of the regulation, and the application of the provision to persons or circumstances other

than those to which it is held invalid, shall not be affected.

Statutory/Other Authority: Or Laws 2021, ch 204, sec 2, ORS 731.508 - 731.514, ~~4~~, ORS 731.244

Statutes/Other Implemented: Or Laws ~~2019~~, ch ~~151~~204, sec 2, ORS 731.508 - 731.514

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

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

_____, hereby certify that
(name of state)

_____, (“Assuming Insurer”):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____
(ceding insurer’s state of domicile)

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. 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.

2. Designates the Insurance Commissioner of _____
(ceding insurer’s state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of _____ to examine
(ceding insurer’s state of domicile)

its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in _____
(ceding insurer’s state of domicile)

reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____

(name of assuming insurer)

BY: _____
(name of officer)

(title of officer)

FORM ACR-1

CERTIFICATE OF ASSUMING CERTIFIED REINSURER

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

_____, in order to be considered for approval in this state, hereby certify that

(name of state)
("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in **(ceding insurer's state of domicile)** 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. 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.
2. Designates the Insurance Commissioner of (ceding insurer's state of domicile) as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.
3. Submits to the authority of the Insurance Commissioner of _____ to examine (ceding insurer's state of domicile) its books and records and agrees to bear the expense of any such examination.
4. Submits with this form a current list of insurers domiciled in _____ (ceding insurer's state of domicile) reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.
5. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.
6. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.
7. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with [cite relevant provision of the state equivalent of the Credit for Reinsurance Model Regulation.]
8. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

Exhibit 2

9. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with [cite relevant provision of the state equivalent of the Credit for Reinsurance Model Regulation.]
10. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.
11. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated:

(name of assuming insurer)

BY: _____

(name of officer)

Form CR-F – PART 1
Assumed Reinsurance as of December 31, Current Year (000 Omitted)

1 Company Code or ID Number	2	3 Name of Reinsured	4 Domiciliary Jurisdiction	5 Assumed Premium	Reinsurance On			9 Contingent Commissions Payable	10 Assumed Premiums Receivable	11 Unearned Premium	12 Funds Held By or Deposited With Reinsured Companies	13 Letters of Credit Posted	14 Amount of Assets Pledged or Compensating Balances to Secure Letters of Credit	15 Amount of Assets Pledged or Collateral Held in Trust
					6 Paid Losses and Loss Adjustment Expenses	7 Known Case Losses and LAE	8 Cols. 6 + 7							
9999999	Totals													

Dated: _____

_____ (name of assuming insurer)

BY: _____ (name of officer)

_____ (title of officer)

AMEND: 836-012-0046

NOTICE FILED DATE: 10/26/2021

RULE SUMMARY: Amends in a manner consistent with June 2019 revisions to Section 8 of the NAIC Credit for Reinsurance Model Regulation #786.

CHANGES TO RULE:

836-012-0046

Credit for Reinsurance - Certified Reinsurers

(1) Pursuant to ORS 731.511~~(4)~~~~(a)~~, the director 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~~rule. The credit allowed shall 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 director. The security shall be in a form consistent with ORS 731.510 and 731.511 and OAR 836-012-0070, 836-012-0080, or 836-012-0090. The amount of security required in order for full credit to be allowed shall 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 director shall require the certified reinsurer to post 100 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 shall not be required to post security for 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 catastrophic occurrence as recognized by the director. 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 catastrophic occurrence will be included in the deferral:^{¶¶}

(A) Line 1: Fire^{¶¶}

(B) Line 2: Allied Lines^{¶¶}

(C) Line 3: Farmowners multiple peril^{¶¶}

(D) Line 4: Homeowners multiple peril^{¶¶}

(E) Line 5: Commercial multiple peril^{¶¶}

(F) Line 9: Inland Marine^{¶¶}

(G) Line 12: Earthquake^{¶¶}

(H) Line 21: Auto physical damage^{¶¶}

(e) Credit for reinsurance under this ~~section~~rule shall apply 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, shall only be subject to this ~~section~~rule 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~~rule shall prohibit 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~~rule.^{¶¶}

(2) Certification Procedure.^{¶¶}

(2a) The director shall post notice on the ~~insurance department~~Division of Financial Regulation's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The director may not take final action on the application until at least 30 days after posting the notice required by this ~~paragraph~~subsection.^{¶¶}

(3b) The director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with

subsection A(1) of this section rule. The director shall publish a list of all certified reinsurers and their ratings.¶

(4c) In order to be eligible for certification, the assuming insurer shall meet the following requirements:¶

(aA) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to subsection C(3) of this section rule;¶

(bB) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with subparagraph (4d)(hH) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000; and¶

(cC) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the director 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.¶

(dD) The certified reinsurer must comply with any other requirements reasonably imposed by the director.¶

(5d) Each certified reinsurer shall 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:¶

(aA) 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 director shall 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;¶

see attached Table 1¶

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

(cC) 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 health reinsurers);¶

(dD) For certified reinsurers not domiciled in the United States, a review annually of Form CR-F for property/casualty reinsurers (Exhibit 3, OAR 836-012-0000) or Form CR-S for life/health reinsurers (Exhibit 4, OAR 836-012-0000);¶

(eE) 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 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;¶

(fF) Regulatory actions against the certified reinsurer;¶

(gG) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (H) below;¶

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

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

(jJ) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and¶

(kK) Any other information deemed relevant by the director.¶

~~(6e)~~ Based on the analysis conducted under ~~subparagraph 5(e)(d)~~(E) of a certified reinsurer's reputation for prompt payment of claims, the director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under ~~subparagraph (4d)(aA)~~ if the director finds that:¶

~~(aA)~~ More than 15 percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed \$100,000 for each cedent; or.¶

~~(bB)~~ The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds \$50,000,000.¶

~~(7f)~~ The assuming insurer must submit a properly executed Form ACR-1 (Exhibit 2, OAR 836-012-0000) as evidence of its submission to the jurisdiction of this state, appointment of the director as an agent for service of process in this state, and agreement to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The director shall not certify any assuming insurer that is domiciled in a jurisdiction that the director has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.¶

~~(8g)~~ The certified reinsurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under ORS chapter 192 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:¶

~~(aA)~~ Notification within 10 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 such changes and the reasons therefore;¶

~~(bB)~~ Annually, Form CR-F or CR-S, as applicable;¶

~~(cC)~~ Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in ~~subsection paragraph (dD)~~ below;¶

~~(dD)~~ Annually, ~~the most recent~~ audited financial statements ~~(audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company)~~, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, ~~with a translation into English~~). Upon the initial certification, audited financial statements for the last ~~three~~wo years filed with the certified reinsurer's supervisor;¶

~~(eE)~~ At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;¶

~~(fF)~~ 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¶

~~(gG)~~ Any other information that the director may require.¶

~~(9h)~~ Change in Rating or Revocation of Certification.¶

~~(A)~~ In the case of a downgrade by a rating agency or other disqualifying circumstance, the director shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of ~~subsection 5(a) paragraph (d)(A)~~.¶

~~(10B)~~ The director shall have 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 director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.¶

~~(11C)~~ If the rating of a certified reinsurer is upgraded by the director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the director shall 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 director, the director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.¶

~~(12D)~~ Upon revocation of the certification of a certified reinsurer by the director, the assuming insurer shall be required to post security in accordance with OAR 836-012-0060 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 in accordance with OAR 836-012-0041, the director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility 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 director to be at high risk of uncollectibility.¶

(13) Qualified Jurisdictions.¶

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

(14b) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the United States. The director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the director 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 director, include but are not limited to the following:¶

(aA) The framework under which the assuming insurer is regulated;¶

(bB) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;¶

(cC) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;¶

(dD) 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;¶

(eE) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the director in particular;¶

(fF) The history of performance by assuming insurers in the domiciliary jurisdiction;¶

(gG) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the director has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards;¶

(hH) 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; and ¶

(iI) Any other matters deemed relevant by the director.¶

(15c) The director shall consider the list of qualified jurisdictions published through the NAIC committee process in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification with respect to the criteria provided under ~~subsection~~paragraphs (14b)(aA) to (iI) of this section.¶

(16d) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.¶

(17e) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the director has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation, subject to ORS chapter 183.¶

(184) Recognition of Certification Issued by an NAIC Accredited Jurisdiction.¶

(a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the director 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 Form ACR-1 and such additional information as the director requires. The assuming insurer shall be considered to be a certified reinsurer in this state.¶

(ab) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.¶

(bc) The director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with ~~subsections (9) to (122)(h).~~¶

(ed) The director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director suspends or revokes the certified reinsurer's certification in accordance with ~~subsections (9) to (122)(h)~~, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.¶

(195) In addition to the clauses required under OAR 836-012-0110, reinsurance contracts entered into or renewed under this ~~section~~rule shall 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.¶

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

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.5144, Or Laws 2021, ch 204, sec 2

Statutes/Other Implemented: ORS 731.508 - 731.5144, Or Laws 2021~~9~~, ch ~~154~~204, sec 2

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Table 1

836-012-0046 Credit for Reinsurance – Certified Reinsurers

(a) 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 director shall 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
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

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

RULE SUMMARY: Adopts the provisions of Section 9 (i.e., the Covered Agreement provisions) of the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Regulation #786, relating to the allowance of credit for reinsurance for insurance ceded by domestic insurers to assuming insurers in reciprocal jurisdictions.

CHANGES TO RULE:

836-012-0048

Credit for Reinsurance - Reciprocal Jurisdictions

(1) Pursuant to Oregon Laws 2021, chapter 204, section 2, the director 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 rule.¶

(2) A "Reciprocal Jurisdiction" is a jurisdiction, as designated by the director pursuant to section (4), 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 section, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 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 director pursuant to ORS 731.511(5) and OAR 836-012-0046(3), which is not otherwise described in subsection (a) or (b) above and which the director determines meets all of the following additional requirements:¶

(A) 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; ¶

(B) 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;¶

(C) 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 director 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¶

(D) 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 director in accordance with a memorandum of understanding or similar document between the director 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 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction, and confirmed as set forth in section (3)(g) according to the methodology of its domiciliary jurisdiction, in the following amounts: ¶

(A) No less than \$250,000,000; or¶

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

(i) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250,000,000; and¶

(ii) A central fund containing a balance of the equivalent of at least \$250,000,000.¶

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

(A) If the assuming insurer has its head office or is domiciled in a Reciprocal Jurisdiction as defined in section (2)(a), the ratio specified in the applicable covered agreement;¶

(B) If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in section (2)(b), a risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC; or¶

(C) If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in section (2)(c), after consultation with the Reciprocal Jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the director 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 (Exhibit 5, OAR 836-012-0000), of its agreement to the following:¶

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

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

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

(ii) 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.¶

(C) 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.¶

(D) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) 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.¶

(E) 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 director and to provide one hundred percent (100%) 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 ORS 731.510 and 731.511 and OAR 836-012-0070, 836-012-0080 or 836-012-0090. For purposes of this rule, 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.¶

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

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

(A) 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; ¶

(B) 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;¶

(C) 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 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and¶

(D) 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 subsection (f) of this section.

(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:

(A) More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the director;

(B) More than fifteen percent (15%) of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or

(C) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement.

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

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

(4) The director shall timely create and publish a list of Reciprocal Jurisdictions.

(a) A list of Reciprocal Jurisdictions is published through the NAIC Committee Process. The director's list shall include any Reciprocal Jurisdiction as defined under section (2)(a) and (b), and shall consider any other Reciprocal Jurisdiction included on the NAIC list. The director 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 director 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 director shall not remove from the list a Reciprocal Jurisdiction as defined under section (2)(a) and (b). 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 ORS 731.509 to 731.514 and Oregon Laws 2021, chapter 204, section 2.

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

(a) If an NAIC accredited jurisdiction has determined that the conditions set forth in section (3) have been met, the director 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 section. The director may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of section (3).

(b) When requesting that the director defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the director 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 director determines that an assuming insurer no longer meets one or more of the requirements under this rule, the director may revoke or suspend the eligibility of the assuming insurer for recognition under this rule.

(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 OAR 836-012-0060.

(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 director and consistent with the provisions of OAR 836-012-0060.

(7) Before denying statement credit or imposing a requirement to post security with respect to this rule or adopting any similar requirement that will have substantially the same regulatory impact as security, the director 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 section (3);

(b) Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 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 90 days or less, as set out in subsection (b), if the director determines that no or insufficient action was taken by the assuming insurer, the director may impose any of the requirements as set out

in this section; and¶

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

(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.

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.514, Or Laws 2021, ch 204, sec 2

Statutes/Other Implemented: ORS 731.508 - 731.514, Or Laws 2021, ch 204, sec 2