

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

OIR – Insurance Regulation

RULE NOS.: RULE TITLES:

69O-144.005 Credit for Reinsurance

69O-144.007 Credit for Reinsurance From Eligible Reinsurers

PURPOSE AND EFFECT: These rules are being amended in order to conform to the National Association of Insurance Commissioners (NAIC) model laws for accreditation purposes and to provide consistency among regulatory jurisdictions as to the manner in which reinsurers are granted the status of “certified reinsurer” (currently termed “eligible reinsurer” in the rule) and the manner in which Florida domestic insurance companies can apply credit for reinsurance from these entities. The amendments pertain to a requirement that ceding insurers notify the Office in the event that reinsurance recoverables or reinsurance ceded exceeds a certain amount; the filing requirements for certified reinsurers; the factors to be considered in the evaluation and rating of certified reinsurers; the method by which a jurisdiction is determined to be qualified; the circumstances under which the Commissioner may suspend, revoke, or otherwise modify a certified reinsurer’s certification; and the effect of a rating downgrade, rating upgrade, or revocation of the certification of a certified reinsurer.

SUMMARY: There is a need for Florida to make certain changes to these rules to provide consistency amongst jurisdictions and ensure that Florida remains a key player and leader in the insurance marketplace. Among the most material changes are:

1. Changing the status name from eligible reinsurer to certified reinsurer.
2. Clarifying and expanding the documentation required to be filed in order to obtain and maintain the status as a “certified reinsurer”
3. Clarifying process and regulatory responsibilities when the financial condition of a certified reinsurer changes(i.e., there is a change in financial strength rating)
4. Clarifying disclosure requirements of the Office when it receives an application from a reinsurer for this status
5. Adding reinsurance concentration disclosure requirements
6. Adding language that would allow the trusteed surplus of Trusteed Reinsurers to drop below \$20 million if the Trusteed reinsurer is no longer underwriting new business and demonstrated that surplus below \$20 million was warranted.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Agency personnel familiar with the subject matter of the rule amendment have performed an economic analysis of the rule amendment that shows that the rule amendment is unlikely to have an adverse impact on the State economy in excess of the criteria established in Section 120.541(2)(a), Florida Statutes.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 624.308, 624.610(14) FS.

LAW IMPLEMENTED: 624.307(1), 624.610 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: Wednesday, February 18, 2015, 9:30 a.m.

PLACE: 116 Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: David Altmaier, Office of Insurance Regulation, E-mail: David.Altmaier@flor.com. If you are hearing

or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: David Altmaier, Office of Insurance Regulation, E-mail: David.Altmaier@flor.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-144.005 Credit for Reinsurance.

(1) No change.

(2) Credit for reinsurance by a domestic insurer shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state pursuant to Section 624.610(3)(b), ~~F.S. Florida Statutes~~ and Rule 69O-144.002, F.A.C., as of any date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer pursuant to Section 624.610(3)(b), ~~F.S. Florida Statutes~~:

(a)1. No change.

2. Form OIR-C1-1464 is available on the Office's web site located at <https://www.flor.com> and shall be filed electronically via the Office's Online Company Admissions system, "iApply," located at <http://www.flor.com/iportal>; from, and shall be submitted to the following: for life and health insurers, Life and Health Financial Oversight, 200 East Gaines Street, Tallahassee, Florida 32399-0327; for property and casualty insurers, Property and Casualty Financial Oversight, 200 East Gaines Street, Tallahassee, Florida 32399-0329;

(b) No change.

(c) Files annually and quarterly with the Office via the Office's Regulatory Electronic Filing System, "REFS," located at <http://www.flor.com/iportal>, a copy of its annual and quarterly statements prepared in accordance with the National Association of Insurance Commissioners manuals adopted in Rule 69O-137.001, F.A.C., ~~filed on the National Association of Insurance Commissioners convention blanks, which are hereby adopted and incorporated by reference,~~ with the insurance department of its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement and maintains a surplus as regards policyholders in accordance with Section 624.610(3)(b)1.d., F.S., and whose approval has been granted by the Office. If quarterly statements are not required by the state of domicile, quarterly statements shall only be required upon written request of the Office. ~~The following National Association of Insurance Commissioners blanks are hereby adopted and incorporated by reference:~~

- ~~1. NAIC Annual Statement Blank Life/Accident/Health 2005,~~
- ~~2. NAIC Quarterly Statement Blank Life/Accident/Health 2005,~~
- ~~3. NAIC Annual Statement Blank Health 2005,~~
- ~~4. NAIC Quarterly Statement Blank Health 2005,~~
- ~~5. NAIC Annual Statement Blank Property and Casualty 2005, and~~
- ~~6. NAIC Quarterly Statement Blank Property and Casualty 2005.~~

(3) No change.

(4) Credit for Reinsurance – Reinsurers Maintaining Trust Funds.

(a)1. Pursuant to Section 624.610(3)(c)1., ~~F.S. Florida Statutes~~, the Office shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified financial institution as defined in Section 624.610(5)(b), ~~F.S. Florida Statutes~~, for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest.

2. No change.

(b) The following requirements apply to the following categories of assuming insurer:

1.a. No change.

b. The assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000, except as provided in paragraph c. of this subsection.

c. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

2. No change.

(c) through (d) No change.

(e) Assets deposited in the trust and the trustee surplus of a single assuming insurer shall consist of assets of a quality and limitation substantially similar to that required in Part II of Chapter 625, ~~F.S. Florida Statutes~~, and shall be valued according to their fair market value.

(f) Assets deposited in the trust and the trustee surplus of a group including incorporated and individual unincorporated underwriters established to meet the requirements of Section 624.610(3)(c)3.b., ~~F.S. Florida Statutes~~, shall be of the type and subject to limitations of the following:

1. Assets deposited in the trusts established pursuant to Section 624.610(3)(c)3.b., ~~F.S. Florida Statutes~~, and this section shall be valued according to their fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in Section 624.610(5)(a), ~~F.S. Florida Statutes~~, clean irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in Section 624.610(5)(a), ~~F.S. Florida Statutes~~, and investments of the type specified in this subsection.

2.-5. No change.

(5) Trust agreements qualified under Section 624.610(4), ~~F.S. Florida Statutes~~.

(a) No change.

(b) Required conditions:

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified ~~U.S. United States~~ financial institution as defined in Section 624.610(5)(b), ~~F.S. Florida Statutes~~.

2. through 10. No change.

11. Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section 624.610(4), ~~F.S. Florida Statutes~~, in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. through b. No change.

c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified ~~U.S. United States~~ financial institution apart from its general assets, in trust for such uses and purposes specified in a. and b. above as may remain executory after the withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section 624.610(4), ~~F.S. Florida Statutes~~, in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. through c. No change.

13. through 14. No change.

(c) No change.

(d) A reinsurance agreement may contain provisions that stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in U.S. United States dollars, certificates of deposit issued by a U.S. United States bank and payable in U.S. United States dollars, and investments permitted by Part II of Chapter 625, F.S. of the Florida Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement.

(6) Letters of credit qualified under Section 624.610(4)(c), F.S. Florida Statutes.

(a)1. The letter of credit shall be clean, irrevocable, unconditional, and issued or confirmed by a qualified U.S. United States financial institution.

2. As used in this subsection (6), a qualified U.S. United States financial institution is one which meets the definition set forth in Section 626.7492(2)(j), F.S. Florida Statutes.

3. through 6. No change.

(b) No change.

(c) The letter of credit shall contain a statement to the effect that the obligation of the qualified U.S. United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(d) No change.

(e)1. No change.

2. All drafts drawn on the letter of credit shall be presentable at an office in the United States of a qualified U.S. United States financial institution.

(f) The letter of credit shall be issued or confirmed by a qualified U.S. United States financial institution authorized to issue letters of credit, pursuant to Section 624.610(5)(a), F.S. Florida Statutes.

(g) No change.

(7) Credit shall be allowed foreign and alien insurers when the reinsurance is ceded to an assuming insurer which is domiciled or licensed in, or, in the case of a U.S. branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under these rules, and the assuming insurer and the reinsurance agreement meets the requirements established by this rule and Section 624.610, F.S. Florida Statutes.

(8) A domestic ceding insurer shall notify the Office within thirty (30) days after reinsurance recoverables from any single assuming insurer, or group of assuming insurers, exceeds fifty percent (50%) of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(9) A domestic ceding insurer shall notify the Office within thirty (30) days after ceding to any single assuming insurer, or group of assuming insurers, more than twenty percent (20%) of the domestic ceding insurer's gross written premium in the prior calendar year, or after it is determined that the reinsurance ceded to any single assuming insurer, or group of assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Specific Authority 624.308, 624.610(14), FS. Law Implemented 624.307(1), 624.610 FS. History--New 1-30-91, Formerly 4-108.005, Amended 12-25-97, 10-13-02, Formerly 4-144-005, Amended 9-14-06, _____.

690-144.007 Credit for Reinsurance from Certified Eligible Reinsurers.

(1) Purpose. ~~Paragraph (3)(e)~~ of Section 624.610(3)(e), F.S., gives the Office Commissioner the option to allow credit for reinsurance without full collateral for transactions involving assuming insurers not meeting the requirements of Sections 624.610(3)(a), (b), (c), or (d)(~~d~~), F.S. These rules implement that subsection paragraph.

This rule does not apply to ~~assuming insurers~~ ~~reinsurers~~ that meet the requirements of Sections 624.610(3)(a),(b), (c), or (d)(~~e~~), F.S. This rule is not an attempt to assert extra-territorial jurisdiction. Insurers that write in states other than Florida will need to comply with the laws of those states. ~~This rule applies only to property and casualty insurance; it does not apply to life and health.~~

(2) Definitions. As used in this rule the following terms have the following meanings:

(a) "Ceding insurer" means a domestic insurer, as defined by ~~paragraph (1)~~ of Section 624.06(1), F.S.

(b) "~~Certified Eligible~~ reinsurer" means an assuming insurer ~~that may which does not~~ meet the requirements of ~~paragraphs (3)(a), (3)(b), or (3)(e)~~ of Section 624.610(3)(a), (b), (c), or (d), F.S., and ~~that which~~ has been determined by the ~~Office commissioner~~ by order to have met the requirements set forth in subsections (7) and (8) of this rule.

(c) "~~Qualified Eligible~~ jurisdiction" means a jurisdiction which has met the requirements set forth in subsection ~~(9)(8)~~ of this rule.

(3) ~~Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. With respect to reinsurance contracts entered into or renewed on or after the effective date of this rule, a ceding insurer may elect to take credit, as an asset or deduction from reserves, for reinsurance ceded to an eligible reinsurer, provided that the certified eligible reinsurer holds surplus in excess of \$250 million and maintains, on a stand alone basis separate from its parent or any affiliated entities, a secure financial strength rating from at least two of the rating agencies indicated in paragraphs (a) through (e)(~~d~~) of this subsection. Due consideration shall be given to the group rating where appropriate. The credit is subject to the limitations set forth in this rule. As provided in Section 624.610(e), F.S., the The rating agencies are:~~

- (a) Standard and Poor's;
- (b) Moody's Investors Service;
- (c) Fitch Ratings;
- (d) A.M. Best Company; ~~and or~~
- (e) Demotech.

(4) The collateral required to allow one hundred percent (100%) credit shall be no less than the percentage specified for the lowest rating as indicated below:

<u>Rating</u>	<u>Collateral Required</u>	<u>Best</u>	<u>S&P</u>	<u>Moody's</u>	<u>Fitch</u>	<u>Demotech</u>
<u>Secure - 1</u>	0%	A++	AAA	Aaa	AAA	<u>A"</u>
<u>Secure - 2</u>	10%	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-	<u>A'</u>
<u>Secure - 3</u>	20%	A, A-	A+, A, A-	A1, A2, A3	A+, A, A-	<u>A</u>
<u>Secure - 4</u>	50%	A-	A-	A3	A-	<u>n/a</u>
<u>Secure - 5</u>	75%	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-	<u>n/a</u>
<u>Vulnerable - 6</u>	100%	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B, CCC, CC, C, D, R, NR	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CCC, CC, CCC-, C-, DD	<u>n/a</u>

For reinsurance ceded by Florida domestic property insurers for short-tailed lines as defined below, any collateral required to be posted may be subject to a one-year deferral from the date of the first instance of a liability reserve entry as a result of a catastrophic loss from a named Hurricane. For these purposes, a short-tailed line of business is defined as any one of the following lines of business as reported on the NAIC annual financial statement:

- Line 1 Fire
- Line 2 Allied Lines
- Line 3 Farmowners multiple peril
- Line 4 Homeowners multiple peril
- Line 5 Commercial multiple peril

Line 9 Inland marine

Line 12 Earthquake

Line 21 Auto physical damage

(5) Nothing in this rule shall be construed to deny the ceding insurer the ability to take credit for reinsurance for the remainder of its liabilities with a certified an eligible reinsurer so long as those amounts are secured with acceptable collateral pursuant to Section 624.610(4), F.S.

(6) In addition to the trust fund required under ~~paragraph (3)(c)~~ of Section 624.610(3)(c), F.S., the ~~Office commissioner~~ shall permit an assuming insurer that maintains a trust fund in a qualified ~~U.S. United States~~ financial institution, as that term is defined in ~~paragraph (5)(b)~~ of Section 624.610(5)(b), F.S., for the payment of the valid claims of its ~~U.S. United States~~ cedent insurers and their assigns and successors in interest to also maintain in a qualified ~~U.S. United States~~ financial institution a trust fund constituting a trust amount at least equal to the collateral required in accordance with subsection (4) of this rule to secure the liabilities attributable to ~~U.S. United States~~ cedent insurers under reinsurance policies (contracts) entered into or renewed by such assuming insurer on or after the effective date of this rule or such other date as may be established in other states for cedent insurers domiciled in such states, but only when maintenance of such a trust fund serves to protect the interests of the public and the interests of insurer solvency.

(7) A ceding insurer may not take credit pursuant to this rule unless:

(a) The ~~assuming insurer reinsurer~~ has been determined, by order of the ~~Office commissioner~~, to be a certified an eligible reinsurer, pursuant to subsection (8) of this rule;

(b) The ceding insurer maintains satisfactory evidence that the certified eligible reinsurer meets the standards of solvency, including standards for capital adequacy, established by its domestic regulator; and

(c) All reinsurance contracts between the ceding insurer and the certified eligible reinsurer ~~must~~ provide:

1. For an insolvency clause in conformance with Section 624.610(8), F.S.;

2. For a service of process clause in conformance with Section 624.610(3)(f)1. and 2., F.S.; and

3. For a submission to jurisdiction clause in conformance with Section 624.610(3)(f)1. and 2., F.S.

(8) Status as certified eligible reinsurer:

(a) Application for a determination as a certified an eligible reinsurer under this rule shall be made by cover letter from the insurer requesting a finding of certification eligibility as a reinsurer pursuant to this rule and shall be filed electronically via the Office's Online Company Admissions system, "iApply," located at <http://www.flor.com/iportal>. The cover letter shall be accompanied with the following:

1. Audited financial statements prepared on a U.S. GAAP basis for the last three (3) years as filed with the insurer's domiciliary jurisdiction. With permission of the Office, an insurer may provide audited International Financial Reporting Standards (IFRS) basis statements so long as they include an audited reconciliation of equity and net income on a U.S. GAAP basis, or, with the permission of the Office, audited IFRS statements with a reconciliation of equity and net income on a U.S. GAAP basis certified by an officer of the company from inception or for the last 3 years, whichever is less, filed with its domiciliary regulator by the reinsurer or, in the case of a rated group, by the group, pursuant to or including a reconciliation to U.S. GAAP, U.S. Statutory Accounting Principles, or International Financial Property Standards (IFRS); the requirement for 3 years reconciliation shall be waived by the office if the commissioner determines that other provided financial information will be as useful in the determination of financial health of the reinsurer;

2. An actuarial opinion as filed with the insurer's domiciliary jurisdiction;

~~3.2.~~ Documentation, in the form of a properly executed Form OIR-C1-2116, which is hereby adopted and incorporated by reference, that the insurer applicant submits to the jurisdiction of the ~~U.S. United States~~ courts, appoints an agent for service of process in Florida, and agrees to post one hundred percent (100%) collateral for its Florida liabilities if it resists enforcement of a valid and final judgment from a court in the United States, or if otherwise required by the Office pursuant to this rule;

4. At the request of the Office, any other regulatory filing made with the insurer's domiciliary jurisdiction;

~~5.3.~~ Form OIR-C1-2117 (for property/casualty) or Form OIR-C1-2118 (for life and health), which are hereby adopted and incorporated by reference. A report that provides information to the office as to its ceded and ceding insurance; the information may be provided in the form of the NAIC Property and Casualty Annual Filing Blank

~~Schedule F, or in any manner that provides the Office with the same information about its ceded and ceding insurance that is disclosed by the NAIC Property and Casualty Annual Filing Blank Schedule F;~~

~~6.4.~~ A list of all disputed or overdue recoverables due to or claimed by ceding insurers, whether or not the claims are in litigation or arbitration;

~~7.5.~~ A certification from the domiciliary ~~jurisdiction regulator~~ of the insurer that the company is in good standing and that the ~~domiciliary jurisdiction regulator~~ will provide financial and operational information to the Office; and-

8. Any other information that the Office may reasonably deem appropriate to the application.

(b) Upon receipt of an application for a determination as a certified reinsurer, the Office shall post notice on the Office's website. Such notice shall include instructions on how members of the public may respond to the application. The Office shall not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

~~(c)(b)~~ The determination of eligibility will be made by order ~~issued~~ executed by the ~~Office Commissioner~~.

~~(d)(e)~~ To become a certified ~~an eligible~~ reinsurer, the ~~insurer reinsurer~~, at a minimum:

1. Shall hold surplus in excess of \$250 400-million. 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 million and a central fund containing a balance of at least \$250 million;

2. Shall be authorized in its domiciliary jurisdiction to assume the kind or kinds of reinsurance ceded by the ceding insurer; and-

3. Shall be domiciled in a ~~qualified an eligible~~ jurisdiction as defined in subsection (9).

(e) 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:

1. 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 subsection (4) of this rule. The Office shall use the lowest financial strength rating received from a rating agency indicated in subsection (3)(a)-(e) of this rule 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 pursuant to subsection (3) will result in loss of eligibility for certification;

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

3. For certified reinsurers domiciled in the U.S., 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);

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

5. Regulatory actions against the certified reinsurer;

6. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding; and

7. A certified reinsurer's participation in any solvent schemes of arrangement, or similar procedure, that involves U.S. ceding insurers. A certified reinsurer shall notify the Office prior to participation in a solvent scheme of arrangement.

~~(f)(d)~~ If the ~~Office Commissioner~~ determines, based upon the material submitted, and any other relevant information, that it is in the best interests of market stability and the solvency of ceding insurers, the ~~Office Commissioner~~ will find, by order, that the insurer is a certified ~~an eligible~~ reinsurer and will set an amount of credit allowed for the reinsurer if lower than the amount set forth in subsection (4).

(g) The Office shall publish and maintain a list of certified reinsurers on the Office's website. Such list shall disclose the rating assigned to the certified reinsurer pursuant to subsection (4) of this rule.

~~(h)(e)~~ Every certified eligible reinsurer shall file the following information annually with the Office electronically via the Office's Regulatory Electronic Filing System, "REFS," located at <http://www.flor.com/iportal>, no later than July 1, ~~on the anniversary of the order granting it eligibility~~:

1. Form OIR-C1-2117 (for property/casualty) or Form OIR-C1-2118 (for life and health);

2. The report of the independent auditor on the financial statements of the insurance enterprise, filed on a U.S. GAAP basis. If approved by the Office, the certified reinsurer may provide audited IFRS basis statements so long as a reconciliation of equity and net income are provided on a U.S. GAAP basis. The reconciliation of equity and net income to U.S. GAAP must either be audited or certified by an officer of the company;

3. Actuarial opinion as filed with the certified reinsurer's domiciliary jurisdiction;

4. A statement from the certified reinsurer's domiciliary jurisdiction that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level;

~~5.1-~~ A statement certifying that there has been no change in the provisions of its domiciliary license or any of its financial strength ratings, or a statement describing such changes and the reasons ~~therefore~~ ~~therefor~~;

~~6.2-~~ At the request of the Office, a copy of any regulatory filings made ~~all financial statements filed with the certified reinsurer's domiciliary jurisdiction~~ ~~their domiciliary regulator~~;

~~7.3-~~ Any change in its directors and officers;

~~8.4-~~ An updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers; and

~~9.5-~~ Any other information that the Office may require to assure market stability and the solvency of ceding insurers.

~~(i)(f)~~ A certified an-eligible reinsurer must ~~immediately~~ advise the Office within ten (10) days of any changes in its ratings assigned by rating agencies, ~~or~~ domiciliary license status, or of any regulatory actions taken against the certified reinsurer. Such notice shall include a statement describing such actions and the reasons therefore. ~~(j)(g)~~ At any time, if the Office Commissioner determines that it is in the best interests of market stability and the solvency of ceding insurers, the Office Commissioner will withdraw, by order, any determination of an insurer as a certified an-eligible reinsurer or require the certified reinsurer to post additional collateral.

~~(k)(h)~~ If the rating of a certified an-eligible reinsurer rises above that used by the Office Commissioner in ~~its~~ ~~his~~ ~~or her~~ determination of the credit allowed for the reinsurer, an affected party may petition the Office Commissioner for a redetermination of the credit allowed. If it is in the best interests of market stability and the solvency of ceding insurers, the Office Commissioner will raise the credit allowed for the certified reinsurer.

(9) Status as a qualified an-eligible jurisdiction:

(a) The determination of a jurisdiction as a qualified an-eligible jurisdiction is to be made by the Office Commissioner. No jurisdiction shall be determined to be a qualified an-eligible jurisdiction unless:

1. The insurance regulatory body of the jurisdiction agrees that it will provide information requested by the Office regarding its certified eligible domestic reinsurers;

2. The Office has determined that the jurisdiction has a satisfactory structure and authority with regard to solvency regulation, acceptable financial and operating standards for reinsurers in the domiciliary jurisdiction, acceptable transparent financial reports filed in accordance with generally accepted accounting principles, and verifiable evidence of adequate and prompt enforcement of valid U.S. judgments or arbitration awards;

3. The Office has determined that the history of performance by reinsurers in the jurisdiction is such that the insuring public will be served by a finding of qualification eligibility;

4. For non-U.S. jurisdictions, the jurisdiction allows U.S. reinsurers access to the market of the domiciliary jurisdiction on terms and conditions that are at least as favorable as those provided in Florida law and regulations for unaccredited non-U.S. assuming insurers; and

5. There is no other documented information that it would not serve the best interests of the insuring public and the solvency of ceding insurers to make a finding of qualification eligibility.

(b) If the NAIC issues findings that certain jurisdictions should be considered qualified eligible jurisdictions, the Office Commissioner shall, if it would serve the best interests of the insuring public and the solvency of ceding insurers, make a determination that jurisdictions on the NAIC list are qualified eligible jurisdictions.

(c) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as a qualified jurisdiction.

(d) The Office shall publish a list a jurisdictions that have been determined to be qualified.

(e)(e) If the Office Commissioner determines that it is in the best interests of market stability and the solvency of ceding insurers, the Office Commissioner shall withdraw, by order, the determination of a jurisdiction as a qualified an-eligible jurisdiction.

(10)(a) If the rating of a certified an-eligible reinsurer is below or falls below that required in subsection (4) for the respective amount of credit, the Office shall upon written notice assign a new rating to the certified reinsurer in accordance with subsection (4) of this rule existing credit to the ceding insurer shall be adjusted accordingly. Notwithstanding the change or withdrawal of a certified eligible reinsurer's rating, the Office Commissioner, upon a determination that the interest of ensuring market stability and the solvency of the ceding insurer requires it, shall, upon request by the ceding insurer, authorize the ceding insurer to continue to take credit for the reinsurance recoverable, or part thereof, relating to the rating change or withdrawal for some specified period of time following such change or withdrawal, unless the reinsurance recoverable is deemed uncollectible.

(b) If the ceding insurer's experience in collecting recoverables from any certified eligible reinsurer indicates that the credit to the ceding insurer should be lower, the ceding insurer shall notify the Office of this.

(c) The Office 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 Office to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(d) If the rating of a certified reinsurer is upgraded by the Office, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Office 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 Office, the Office 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.

(e) Upon revocation of the certification of a certified reinsurer by the Office, the assuming insurer shall be required to post security in accordance with Section 624.610, F.S., in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer.

(11) The ceding insurer shall give immediate notice to the Office and provide for the necessary increased reserves with respect to any reinsurance recoverables applicable, in the event:

(a) That obligations of a certified an-eligible reinsurer for which credit for reinsurance was taken under this rule are more than ninety (90) days past due and not in dispute; or

(b) That there is any indication or evidence that any certified eligible reinsurer, with whom the ceding insurer has a contract, fails to substantially comply with the solvency requirements under the laws of its domiciliary jurisdiction.

(12) The Office Commissioner shall disallow all or a portion of the credit based on a review of the ceding insurer's reinsurance program, the financial condition of the certified eligible reinsurer, the certified eligible reinsurer's claim payment history, or any other relevant information when such action is in the best interests of market stability and the solvency of the ceding insurer. At any time, the Office Commissioner may request additional information from the certified eligible reinsurer. The failure of a certified an-eligible reinsurer to cooperate with the Office is grounds for the Office Commissioner to withdraw the status of the insurer as a certified an-eligible reinsurer or for the disallowance or reduction of the credit granted under this rule.

(13)(a) Upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer, pursuant to Chapter 631, Part I, F.S., or the equivalent law of another jurisdiction, a certified an-eligible reinsurer, within thirty (30) days of the order, shall fund the entire amount that the ceding insurer has taken, as an asset or deduction from reserves, for reinsurance recoverable from the certified eligible reinsurer. The insurer may request a variance and waiver from this provision as provided by Section 120.542, F.S.

(b) If a certified an-eligible reinsurer fails to comply on a timely basis with paragraph (a) of this subsection, the Office Commissioner shall withdraw the reinsurer's certification eligibility under this rule.

(14) The ~~Office Commissioner~~ may, by order, determine that credit shall not be allowed to any ceding insurer for reinsured risk pursuant to this rule if it appears to the ~~Office Commissioner~~ that granting of the credit to the ceding insurer would not be in the public interest or serve the best interests of the ceding insurer's solvency.

(15) Nothing in this rule prohibits a ceding insurer and a reinsurer from entering into agreements establishing collateral requirements in excess of those set forth in this rule.

(16) A ceding insurer shall notify the Office within thirty (30) days after reinsurance recoverables from any single assuming insurer, or group of assuming insurers, exceeds fifty percent (50%) of the ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(17) A ceding insurer shall notify the Office within thirty (30) days after ceding to any single assuming insurer, or group of assuming insurers, more than twenty percent (20%) of the ceding insurer's gross written premium in the prior calendar year, or after it is determined that the reinsurance ceded to any single assuming insurer, or group of assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the ceding insurer.

(18) Forms adopted in this rule are available on the Office's web site located at <http://www.floir.com>.
Specific Authority 624.308, 624.610(14) FS. Law Implemented 624.307(1), 624.610 FS. History--New 10-29-08, Amended

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NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: THE FINANCIAL SERVICES COMMISSION

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