



# PROPOSED RULEMAKING

[ 31 PA. CODE CH. 161 ]

## Requirements for Qualified and Certified Reinsurers

[42 Pa.B. 5629]

[Saturday, September 1, 2012]

The Insurance Department (Department) proposes to amend Chapter 161 (relating to requirements for qualified and certified reinsurers) to read as set forth in Annex A. The rulemaking is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), regarding the general rulemaking authority of the Department, and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 442.1), regarding credits for reinsurance.

### *Purpose*

Chapter 161 sets forth requirements to be met for a licensed ceding insurer to receive credit for reinsurance in its financial statements. The purpose of this proposed rulemaking is to update Chapter 161 in accordance with amendments made to section 319.1 of the act by the act of July 5, 2012 (P. L. 1111, No. 136) (Act 136), which grants the Insurance Commissioner (Commissioner) the authority to "certify" reinsurers so that ceding insurers may receive credit for reinsurance ceded to duly certified reinsurers. These amendments are proposed in conjunction with proposed amendments to Chapter 163 (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers).

The proposed amendments to Chapter 161 are based upon recent amendments to model law and regulation developed by the National Association of Insurance Commissioners (NAIC) entitled "Credit for Reinsurance Model Law" (No. 785) and "Credit for Reinsurance Model Regulation" (No. 786), respectively. This proposed rulemaking is part of the financial regulation standards the Department must meet to maintain its accreditation by the NAIC. Thus, if a jurisdiction opts to certify reinsurers, as the Commonwealth has done with the enactment of Act 136, the standards by which it does so must be substantially similar to NAIC requirements for the jurisdiction to maintain NAIC accreditation.

A copy of the copyrighted NAIC model regulation was provided to the legislative standing committees, the Independent Regulatory Review Commission (IRRC), the Governor's Office of Policy and Planning, the Governor's Office of General Counsel and the Attorney General to assist in the analysis of this proposed rulemaking. Copies of NAIC model regulations are available to the general public by contacting the NAIC.

### *Explanation of Proposed Amendments*

The heading of Chapter 161 is proposed to be amended to "requirements for qualified and certified reinsurers" to properly reflect the scope of the regulations.

Section 161.1 (relating to purpose) is proposed to be amended to include a reference to certified reinsurers, to reflect the proposed rescission of § 161.8 (relating to credit for reinsurance ceded to alien nonaffiliated insurers which write no primary coverages in the United States) and to correct the reference to section 319.1 of the act.

Section 161.2 (relating to definitions) is proposed to be amended to delete the definition of "unauthorized alien assuming insurer" in accordance with the proposed rescission of § 161.8.

Section 161.3 (relating to credit for reinsurance) is proposed to be amended to: modify the requirements for an assuming foreign insurer to be considered for qualification; authorize a reduction in required trustee surplus for a qualified alien reinsurer after a risk assessment if an assuming reinsurer has permanently discontinued underwriting new business for at least 3 calendar years; make editorial changes to paragraph (3)(vii)(B); add a provision indicating that credit will be allowed when reinsurance is ceded to certified reinsurers; and clarify that credit is allowed under section 319.1(b) of the act if it does not exceed the liabilities carried by the ceding insurer.

Section 161.3a (relating to requirements for certified reinsurers) is proposed to be added to: set forth the standards for assuming insurers to be eligible for certification as a certified reinsurer; provide for additional requirements for an association, including incorporated and individual unincorporated insurers to be a certified reinsurer; give the Commissioner discretion to defer to the reinsurer's certification by an NAIC accredited jurisdiction; allow a certified reinsurer to request to maintain its certification in inactive status if it ceases to assume new business; and set forth the Department's procedure for giving notice of and granting certified status to assuming reinsurers.

Proposed § 161.3b (relating to calculation of credit for reinsurance regarding obligations secured with certified reinsurers) outlines the standards that shall be met for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer. Specifically, this section would: provide for the requirements for maintaining security in a form acceptable to the Commissioner and provide additional requirements for security maintained in a multibeneficiary trust; specify the requirements for calculation of the allowable credit; and provide that the Commissioner will reduce the allowable credit by an amount proportionate to a deficiency if the security is found to be insufficient and has the discretion to impose further reductions or adjustments upon a finding of material risk or if the Commissioner finds that the reinsurer is not promptly paying claims. Additionally, this section contains a provision that clarifies that parties may agree to provisions establishing security requirements in excess of the minimum requirements required by regulation.

Proposed § 161.3c (relating to concentration risk) requires domestic ceding insurers to notify the Commissioner within 30 days if reinsurance recoverables from a single assuming insurer, or group of affiliated assuming insurers, exceed 50% of surplus or upon a determination that it is likely to exceed that limit. This section would also require a ceding insurer to take steps to diversify its reinsurance program, requiring notification to the Commissioner within 30 days of ceding more than 20% of the ceding insurer's gross written premium or upon a determination that it is likely to exceed this limit.

Proposed amendments to § 161.6 (relating to revocation of reinsurer qualification or certification) include provisions regarding the procedure for revoking a certified reinsurer's certification and to require an assuming insurer to post security for a ceding insurer to continue to take credit for reinsurance.

Proposed amendments to § 161.7 (relating to credit for joint underwriting or pooling arrangements) allow domestic ceding insurers to request specific approval from the Commissioner to take reserve credit for reinsurance ceded in a joint underwriting or joint reinsurance pooling arrangement that involves insurers who are not certified reinsurers.

Section § 161.8 is proposed to be rescinded. The requirements in this section, which provide conditions under which partial credit for reinsurance with alien reinsurers may be taken without full collateralization, were superseded by the Act 136 amendments to section 319.1 of the act.

Proposed § 161.8a (relating to reinsurance contracts) requires that a reinsurance agreement contain a proper insolvency clause, a reinsurance intermediary clause (if applicable) and a mandatory funding clause.

#### *External Comments*

The Department circulated pre-exposure drafts of the proposed rulemaking to the Insurance Federation of Pennsylvania, Inc. and the Pennsylvania Association of Mutual Insurance Companies.

#### *Affected Parties*

This proposed rulemaking will apply to insurance companies domesticated in this Commonwealth and the reinsurers with whom they do business.

#### *Fiscal Impact*

*State government.* The proposed rulemaking will strengthen and clarify existing regulatory requirements. There will not be material increase in cost to the Department as a result of this proposed rulemaking.

*General public.* While Chapter 163 does not have immediate fiscal impact on the general public, the general public will benefit to the extent that allowing reduced collateral for reinsurers that are financially solvent and licensed in well-regulated jurisdictions will reduce the cost of reinsurance to ceding insurers in this Commonwealth and reduce trade barriers allowing for more competition in the reinsurance marketplace.

*Political subdivisions.* This proposed rulemaking will not impose additional costs on political subdivisions.

*Private sector.* This proposed rulemaking will not impose significant costs on the transaction of business in this Commonwealth.

#### *Paperwork*

This proposed rulemaking will not impose additional paperwork on the Department.

#### *Effective Date*

This proposed rulemaking will become effective within 30 days after final-form publication in the *Pennsylvania Bulletin*.

#### *Sunset Date*

The Department continues to monitor the effectiveness of regulations on a triennial basis. Therefore, a sunset date has not been assigned.

#### *Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 705-3873, psalvatore@pa.gov within 30 days following the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Under the Regulatory Review Act (71 P. S. §§ 745.1—745.12), the Department is required to write to commentators requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve stakeholders, the Department has made a determination that all commentators will receive a copy of the final-form rulemaking when it is made available to the Independent Regulatory Review Commission (IRRC) and the legislative standing committees.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 22, 2012, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

MICHAEL F. CONSEDINE,  
Insurance Commissioner

*(Editor's Note: See 42 Pa.B. 5628 (September 1, 2012) for a proposed rulemaking by the Department relating to this proposed rulemaking.)*

**Fiscal Note:** 11-249. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 31. INSURANCE

#### PART VIII. MISCELLANEOUS PROVISIONS

#### CHAPTER 161. REQUIREMENTS FOR QUALIFIED AND CERTIFIED REINSURERS

##### § 161.1. Purpose.

(a) This chapter sets forth requirements to be met for a licensed ceding insurer to receive credit for reinsurance in its financial statements. This chapter specifies the conditions which shall be met by an unlicensed reinsurer to be considered by the Commissioner for inclusion on a list of qualified **or certified** reinsurers published and periodically reviewed by the Commissioner, as well as, the requirements for receiving reinsurance credit for joint underwriting or joint reinsurance pooling arrangements **[and for reinsurance with alien nonaffiliated reinsurers which write no primary coverages in the United States]**.

(b) This chapter does not apply to reinsurance agreements between or among affiliates which meet the conditions for exemption in section 319.2 of the act (40 P. S. § 442.2) or to the ability of licensed ceding insurers to receive credit for reinsurance by compliance with the conditions specified in 319.1(b) of the act (40 P. S. § 442.1**(b)**).

##### § 161.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

***[Unauthorized alien assuming insurer—An insurer which meets the criteria in § 161.8(a) (relating to credit for reinsurance ceded to alien nonaffiliated insurers which write no primary coverages in the United States).]***

##### § 161.3. Credit for reinsurance.

A licensed domestic ceding insurer will be allowed credit for reinsurance as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of this section or as otherwise provided in §~~§~~ 161.7 **[and 161.8]** (relating to credit for joint underwriting or pooling arrangements**;** **and credit for reinsurance ceded to alien nonaffiliated insurers which write no primary coverages in the United States]**).

\* \* \* \* \*

(2) Credit will be allowed when the reinsurance is ceded to an assuming foreign insurer which has met the conditions specified in this paragraph and has been deemed to be a

qualified reinsurer by the Commissioner. To be considered for qualification, an assuming foreign insurer shall meet the following conditions. The insurer shall:

\* \* \* \* \*

(v) **[Maintain a surplus as regards policyholders in an amount which is not less than \$20 million.] Demonstrate to the satisfaction of the Commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20 million and its qualification has not been denied by the Commissioner within 90 days after submission of its application.**

**[(vi) Cede no more than 50% of its premiums to assuming insurers that are neither licensed nor qualified reinsurers in this Commonwealth.]**

(3) Credit will be allowed when the reinsurance is ceded to an assuming alien insurer which has met the conditions specified in this paragraph and has been deemed to be a qualified reinsurer by the Commissioner. To be considered for qualification, an assuming alien insurer shall meet the following conditions. The insurer shall:

\* \* \* \* \*

(vii) Maintain a trust fund in a qualified United States financial institution, for the payment of valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest.

(A) In the case of a single assuming insurer, the trust shall consist of a trustee account in an amount not less than the assuming insurer's liabilities attributable to business directly written or assumed in the United States. In addition, the assuming insurer shall maintain a trustee surplus of at least \$20 million **except as provided in this clause. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 calendar 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 United States 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 will consider 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 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.**

(B) In the case of a group of insurers which includes **incorporated and** unincorporated individual insurers, the trust shall consist of a trustee account not less than the **[group's aggregate] respective insurers' several** liabilities attributable to business directly written or assumed in the United States. In addition, the group shall maintain a trustee surplus of

which \$100 million shall be held jointly for the benefit of United States ceding insurers of any **[member] insurer** of the group. The group shall make available to the Commissioner an annual certification of the solvency of each insurer by the group's domiciliary regulator and its independent public accountants.

\* \* \* \* \*

**(5) Credit will be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in this Commonwealth in accordance with § 161.3a (relating to requirements for certified reinsurers) and secures its obligations in accordance with § 161.3b (relating to calculation of credit for reinsurance regarding obligations secured with certified reinsurers).**

**(6) Credit will be allowed when the reinsurance is ceded to an assuming insurer that is not a qualified reinsurer in an amount not exceeding the liabilities carried by the ceding insurer in accordance with section 319.1(b) of the act (40 P. S. § 442.1(b)).**

*(Editor's Note: Sections 161.3a—161.3c are new and printed in regular type to enhance readability.)*

### **§ 161.3a. Requirements for certified reinsurers.**

(a) *Certification as a certified reinsurer.* To be eligible for certification as a certified reinsurer, the assuming insurer shall meet the following requirements:

(1) The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction.

(i) In accordance with reporting and notification requirements that may be established by the NAIC, the Commissioner will create a list of qualified jurisdictions, which will be published annually in the *Pennsylvania Bulletin*.

(ii) United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program will be recognized as qualified jurisdictions.

(iii) To determine whether the domiciliary jurisdiction of an alien assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner will evaluate:

(A) The appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, initially and on an ongoing basis.

(B) 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.

(C) Whether the jurisdiction is a qualified jurisdiction as determined by the NAIC through the committee process. If the Commissioner approves a jurisdiction as qualified that does not appear on the NAIC's list of qualified jurisdictions, the Commissioner will provide thoroughly documented justification of reasons.

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

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

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

(G) 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.

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

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

(J) 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.

(iv) A domiciliary jurisdiction of an alien assuming insurer is not eligible to be recognized as a qualified jurisdiction unless:

(A) The jurisdiction has agreed to share information and cooperate with the Commissioner with respect to certified reinsurers domiciled within that jurisdiction.

(B) The jurisdiction adequately and promptly enforces final United States judgments and arbitration awards.

(v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Commissioner may withdraw recognition of that jurisdiction.

(2) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined acceptable by the Commissioner in accordance with the following standards:

(i) The assuming insurer must maintain capital and surplus, or its equivalent, of at least \$250 million calculated in accordance with subparagraph (ii). 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.

(ii) Certified reinsurers not domiciled in the United States shall file with the Commissioner audited financial statements (audited United States Generally Accepted Accounting Principles (GAAP) basis if available, audited International Financial Reporting Standards (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 state insurance 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 non-United States jurisdiction supervisor). Upon the initial



application for certification, the Commissioner will consider audited financial statements for the last 3 years filed with its non-United States jurisdiction supervisor.

(3) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner in accordance with subparagraph (i) and be rated by the Commissioner in accordance with subparagraph (ii).

(i) *Financial strength ratings.* The financial strength ratings must be based on interactive communication between the rating agency and the assuming insurer and may not be based solely on publicly available information. These ratings will be one factor used by the Commissioner in determining the rating assigned under subparagraph (ii). Acceptable rating agencies include Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company or another Nationally recognized statistical rating organization.

(ii) *Assignment and publication of rating.* The Commissioner will assign a rating to each certified reinsurer and publish a list of certified reinsurers and their ratings annually in the *Pennsylvania Bulletin* in accordance with the following:

(A) Each certified reinsurer will be rated on a legal entity basis, with due consideration being given to the group rating when appropriate, except that an association including incorporated and individual unincorporated insurers that have been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating.

(B) Factors that may be considered as part of the evaluation process include 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 following table. The Commissioner will 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.

<b>Ratings</b>	<b>Best</b>	<b>S&amp;P</b>	<b>Moody's</b>	<b>Fitch</b>
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+, 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 health 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 health reinsurers) as developed by the NAIC.

(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 90 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 subclause (VIII).

(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 must include an audited footnote reconciling equity and net income to a United States GAAP basis or, with the permission of the state insurance 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 non-United States jurisdiction supervisor). Upon the initial application for certification, the Commissioner will consider audited financial statements for the last 3 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 a solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The Commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.

(iii) *Change in rating or revocation of certification.*

(A) In the case of a downgrade by a rating agency or other disqualifying circumstance, the Commissioner will upon written notice assign a new rating to the certified reinsurer in accordance with subparagraph (ii)(B).

(B) The Commissioner has the authority to suspend, revoke or otherwise modify a certified reinsurer's certification in accordance with the procedures in § 161.6 (relating to revocation of reinsurer qualification or 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.

(C) 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 will require the certified reinsurer to post security under the previously applicable security requirements as to the 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 will require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(4) The assuming insurer shall agree to submit to the jurisdiction of the Commonwealth, appoint the Commissioner as its agent for service of process in this Commonwealth and agree to provide security for 100% 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 assuming insurer shall submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of the Commonwealth, appointment of the Commissioner as an agent for service of process in this Commonwealth and agreement to provide security for 100% 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 an 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.

(5) The assuming insurer shall agree to meet applicable information filing requirements both with respect to an initial application for certification and on an ongoing basis. Information submitted by certified reinsurers that is not otherwise public information subject to disclosure is confidential and privileged and is not subject to subpoena, discovery, the Right-to-Know Law (65 P. S. §§ 67.101—67.3104) or admissible in evidence in any private civil action. The applicable information filing requirements are as follows:

(i) Notification within 10 days of regulatory actions taken against the certified reinsurer, a change in the provisions of its domiciliary license or a change in rating by an approved rating agency, including a statement describing the changes and the reasons.

(ii) Annual submission of Form CR-F or CR-S, as applicable per NAIC instructions.

(iii) Annual submission of the report of the independent auditor on the financial statements of the insurance enterprise on the basis described in subparagraph (iv).

(iv) Annual submission of 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 state insurance 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). Upon the initial certification, audited financial statements for the last 3 years filed with the certified reinsurer's supervisor.

(v) At least annually, filing of an updated list of 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.

(b) *Certification of an association as a certified reinsurer.* In addition to meeting the requirements of subsection (a), an association, including incorporated and individual unincorporated insurers, may be a certified reinsurer if it satisfies the following additional requirements:

(1) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which includes a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the Commissioner to provide adequate protection.

(2) The incorporated members of the association may not be engaged in business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(3) Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Commissioner an annual certification by the association's domiciliary regulator of the solvency of each insurer member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each insurer member of the association.

(c) *Deferment of certification.* 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. The assuming insurer will be considered to be a certified reinsurer in this Commonwealth in accordance with the following:

(1) The assuming insurer shall submit a properly executed Form CR-1 to the Commissioner.

(2) A change in the certified reinsurer's status or rating in the other jurisdiction applies automatically in this Commonwealth as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Commissioner of a change in its status or rating within 10 days after receiving notice of the change.

(3) The Commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (a)(3)(ii).

(4) The Commissioner may withdraw recognition of the other jurisdiction's certification at any time with written notice to the certified reinsurer. Unless the Commissioner revokes the certified reinsurer's certification in accordance with § 161.6, the certified reinsurer's certification will remain in good standing in this Commonwealth for 3 months, which will be extended if additional time is necessary to consider the assuming insurer's application for certification in this Commonwealth.

(d) *Inactive status certification.* A certified reinsurer that ceases to assume new business in this Commonwealth may request to maintain its certification in inactive status to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with the applicable requirements of this section and the Commissioner will assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(e) *Certification procedure.*

(1) The Department will post notice of an application for certification in the *Pennsylvania Bulletin* promptly upon receipt and will include instructions on how members of the public may respond to the application. The Commissioner will not take final action on the application until at least 30 days after posting the notice in the *Pennsylvania Bulletin*.

(2) If the Department is satisfied that an assuming insurer has met the conditions for certification and determines to designate the assuming insurer as a certified reinsurer, the Department will issue written notice of the designation to the assuming insurer. The rating assigned the certified reinsurer in accordance with subsection (a)(3)(ii) will be included in the notice.

### **§ 161.3b. Calculation of credit for reinsurance regarding obligations secured with certified reinsurers.**

(a) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commissioner and consistent with section 319.1(b) of the act (40 P. S. § 442.1(b)) or in a multibeneficiary trust in accordance with § 161.3(3)(vii)(B) (relating to credit for reinsurance) except that:

(1) If a certified reinsurer maintains a trust to fully secure its obligations subject to § 161.3(3)(vii) and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions and for its obligations subject to § 161.3(3)(vii)(B). It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the chief regulatory official with principal regulatory oversight of each trust account, to fund, upon termination of a trust account, out of the remaining surplus of the trust any deficiency of another trust account.

(2) The minimum trusteed surplus requirements provided in § 161.3(3)(vii) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this paragraph, except that the trust must maintain a minimum trusteed surplus of \$10 million.

(b) The allowable credit allowed a ceding insurer must be based upon the security held by or on behalf of the ceding insurer and shall be calculated in accordance with the following requirements:

(1) For full credit to be allowed, the amount of security must correspond with the rating assigned by the Commissioner to the certified reinsurer under § 161.3a(a)(3) (relating to requirements for certified reinsurers) as follows:

<b>Rating</b>	<b>Security required</b>
Secure—1	0%
Secure—2	10%
Secure—3	20%
Secure—4	50%
Secure—5	75%
Vulnerable—6	100%

(2) Affiliated reinsurance transactions will receive the same opportunity for reduced security requirements as other reinsurance transactions.

(3) The Commissioner will require the certified reinsurer to post 100% 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.

(4) To facilitate the prompt payment of claims, a certified reinsurer will not be required to post security for catastrophe recoverables for 1 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 Commissioner. The 1-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner in compliance with its contractual obligations in the reinsurance agreement under which the claims are ceded. 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:

- 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

(c) With respect to obligations incurred by a certified reinsurer, if the security is insufficient, the Commissioner will reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(d) For purposes of calculating the allowable credit under this section, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.

(1) As used in this subsection, "terminated" refers to revocation, suspension, voluntary surrender and inactive status.

(2) If the Commissioner continues to assign a higher rating as permitted by this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(e) Based on the analysis conducted under § 161.3a(a)(3)(ii)(B)(V) 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 will, at a minimum, increase the security the certified reinsurer is required to post by one rating level under § 161.3a(b)(1) if the Commissioner finds either of the following:

(1) More than 15% 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.

(2) The aggregate amount of reinsurance recoverables on paid losses not in dispute that are overdue by 90 days or more exceeds \$50 million.

(f) This section does not prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements under this section or under § 161.8a (relating to reinsurance contracts).

### § 161.3c. Concentration risk.

(a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner within 30 days after reinsurance recoverables from a single assuming insurer, or group of affiliated assuming insurers, exceed 50% of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from a single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner within 30 days after ceding to a single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to a single assuming insurer, or group of affiliated assuming insurers is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

### § 161.6. Revocation of reinsurer qualification **or certification**.

(a) If the Department determines that a **[qualified]** reinsurer has failed to continue to meet one or more of the conditions for qualification **or certification**, the Commissioner may upon written notice and hearing revoke its qualification **or certification** and remove it from the published list of qualified **or certified** reinsurers.

(b) If an assuming insurer's qualification has been revoked by the Commissioner after notice, a ceding insurer shall be allowed to continue to take credit for reinsurance ceded to the assuming insurer until the end of the contract year or 1 year from the date of the revocation, whichever time is less, but in no event less than 6 months. **If an assuming insurer's certification has been revoked by the Commissioner, the assuming insurer shall post security in accordance with section 319.1(b) of the act (40 P. S. § 442.1(b)) 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 § 161.4 (relating to trust fund requirements) 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 3 months for reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Commissioner to be at high risk of uncollectability.**

(c) If a modification, amendment or revision to an existing reinsurance agreement, which increases the risk reinsured, takes place after an assuming insurer's qualification **or certification** has been revoked, credit will not be allowed a ceding insurer for additional risks ceded after the date and directly resulting from the modification, amendment or revision.

\* \* \* \* \*

### **§ 161.7. Credit for joint underwriting or pooling arrangements.**

(a) Domestic ceding insurers which are participating in a joint underwriting or joint reinsurance pooling arrangement, in which the insurers participating in the arrangement are not qualified **or certified** reinsurers, may request specific approval by the Commissioner to take reserve credit for reinsurance ceded under those arrangements.

\* \* \* \* \*

### **§ 161.8. [Credit for reinsurance ceded to alien nonaffiliated insurers which write no primary coverages in the United States] (Reserved).**

**[(a) This section applies to reinsurance ceded by a domestic ceding insurer to an alien nonaffiliated assuming insurer which:**

**(1) Writes no primary coverages in the United States and thereby is not eligible for consideration for inclusion on the Non-Admitted Insurers Listing published by the Non-Admitted Insurers Information Office of the NAIC, or a successor list.**

**(2) Has not provided security in full for the ceded recoverables under section 318.1 (b) of the act (40 P. S. § 442.1).**

**(3) Is authorized in its domiciliary jurisdiction to assume the kinds of insurance ceded thereto.**

**(b) When a domestic ceding insurer cedes reinsurance to an alien nonaffiliated**



assuming insurer which meets the criteria in subsection (a), referred to in this section as an "unauthorized alien assuming insurer," credit will be allowed for the amount of unsecured ceded reinsurance recoverables by a deduction from liability, not to exceed in the aggregate 10% of the ceding insurer's policyholders surplus, only when the following conditions are met:

(1) The ceding insurer establishes an unauthorized reinsurance reserve which is a percentage of the unsecured ceded reinsurance recoverable from the unauthorized alien assuming insurers for which credit for reinsurance is taken as permitted in this section. The percentage shall be equal to the greatest of one of the following:

(i) The largest percentage of uncollectible ceded unauthorized reinsurance experienced by the ceding insurer during any one of the last 5 full calendar years, as measured by dividing the amount of reinsurance recoverables due and payable to the ceding insurer for that calendar year from the unauthorized alien assuming insurers, over 90 days past due and not in dispute, by the amount of reinsurance recoverables due and payable to the ceding insurer and actually collected by the ceding insurer for that same calendar year from unauthorized alien assuming insurers.

(ii) The largest percentage of unearned premiums ceded by the ceding insurer to any one unauthorized alien assuming insurer as measured at the end of the last previous calendar year by dividing the amount of the calendar year-end unearned premium reserve ceded to each unauthorized alien assuming insurer by the total amount of the unearned premium reserve ceded to unauthorized alien assuming insurers.

(iii) Fifteen percent.

(2) The unauthorized alien assuming insurer provides to and maintains authorized security with the ceding insurer for ceded reinsurance recoverables under section 319.1(b) of the act (40 P. S. § 442.1(b)) in an amount at least equal to 110% of the unearned premium and known case outstanding reserves for loss and allocated loss adjustment expense ceded to the unauthorized alien assuming insurer by the ceding insurer.

(3) The unauthorized alien assuming insurer maintains adjusted shareholder funds of at least \$20 million.

(4) The unauthorized alien assuming insurer maintains an acceptable level of premium writing in relation to its adjusted shareholder funds that does not exceed a net written premium to adjusted shareholder funds ratio of 3:1.

(5) The unauthorized alien assuming insurer is included in the Insurance Solvency International (ISI) classic database and does not fail more than four of the nine ISI tests.

(6) The ceding insurer limits the maximum amount of liability for loss with respect to any one risk ceded to any one unauthorized alien assuming insurer to 10% of the unauthorized alien assuming insurer's adjusted shareholder funds and limits the aggregate premium cession to the assuming insurer to 20% of the unauthorized alien

assuming insurer's adjusted shareholder funds.

**(7) The reinsurance agreements between the unauthorized alien assuming insurer and the ceding insurer contain:**

**(i) An agreement by the unauthorized alien assuming insurer that, in the event of the failure of the unauthorized alien assuming insurer to perform its obligations under the terms of the reinsurance agreement, the unauthorized alien assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in a state in the United States, comply with requirements necessary to give that court jurisdiction and abide by the final decision of that court or of an appellate court in the event of an appeal. The provision does not override an agreement between the ceding insurer and the unauthorized alien assuming reinsurer to arbitrate.**

**(ii) An agreement by the unauthorized alien assuming insurer to designate a person as its true and lawful agent upon whom may be served any lawful process in an action, suit or proceeding instituted by or on behalf of the ceding insurer.**

**(iii) An insolvency clause as provided for in section 319.1(d) of the act.**

**(8) The unauthorized alien assuming insurer substantially meets other reasonable standards of solvency as may be established from time to time by the Commissioner.**

**(9) The credit claimed for reinsurance recoverable under this section is supported by proper and appropriate records maintained by the ceding insurer as to:**

**(i) The solvency of the unauthorized alien assuming insurer, including ISI reports and test results.**

**(ii) Documentation necessary to demonstrate for purposes of financial examinations conducted by the Department that the conditions of this section have been met for reserve credit taken under this section.**

**(10) The ceding insurer files with the Department annually within 30 days of the filing by the ceding insurer of its annual statutory financial statement a ceded reinsurance report, as prescribed by the Commissioner, with respect to the credit for reinsurance taken under this section. The report shall include a certification by the chief financial officer of the ceding insurer that the credit for reinsurance meets the requirements of this section.**

**(11) The ceding insurer promptly provides for the necessary increase in its ceded reserves with respect to applicable reinsurance recoverables—that is, it eliminates the previous credit taken by the ceding insurer under this section for that unauthorized alien assuming insurer—and shall give immediate notice to the Department if:**

**(i) Obligations of an unauthorized alien assuming insurer for which credit for reinsurance was taken under this section are more than 90 days past due and not in dispute.**

**(ii) There is material indication or evidence that an unauthorized alien assuming insurer for which credit for reinsurance was taken under this section is failing to meet the standards in this section.**

**(c) For purposes of subsection (b)(11)(i), a claim in dispute is one in which one of the following applies:**

**(1) The ceding insurer or unauthorized alien assuming insurer has instituted arbitration or litigation proceedings in good faith over the issue of the recoverability of the loss or allocated loss adjustment expense.**

**(2) The ceding insurer has received a formal written communication from the unauthorized alien assuming insurer, within a time period specified in the reinsurance agreement, denying the validity of coverage for the loss or allocated loss adjustment expense.**

**(d) As used in this section, adjusted shareholder funds shall be as reported by ISI or other recognized National rating agency as the Commissioner may, from time to time, approve for purposes of compliance with this section.**

**(e) Subsection (b)(2)—(5) and (7) do not apply when reinsurance cessions are made by domestic ceding insurers to unauthorized alien assuming insurers of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.]**

*(Editor's Note: The following section is new and printed in regular type to enhance readability.)*

### **§ 161.8a. Reinsurance contracts.**

A ceding insurer will not be granted a credit or allowed an asset or reduction from liability for reinsurance effected with assuming insurers meeting the requirements of this chapter unless the reinsurance agreement includes the following provisions:

(1) A proper insolvency clause as provided for in section 319.1(d) of the act (40 P. S. § 442.1(d)), which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company.

(2) A reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

(3) A mandatory funding clause requiring the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of a financial statement penalty on the ceding insurer for reinsurance ceded to the certified reinsurer.

### **§ 161.9. Application.**

\* \* \* \* \*

**[(c) Credit for reinsurance will be allowed a foreign licensed ceding insurer as**

**permitted by the laws or regulations of that insurer's state of domicile if the laws or regulations are substantially similar to the NAIC model law relating to credit for reinsurance. In the absence of substantially similar laws or regulations, credit for reinsurance will be allowed under the requirements of this chapter.]**

[Pa.B. Doc. No. 12-1685. Filed for public inspection August 31, 2012, 9:00 a.m.]

---

No part of the information on this site may be reproduced for profit or sold for profit.

This material has been drawn directly from the official *Pennsylvania Bulletin* full text database. Due to the limitations of HTML or differences in display capabilities of different browsers, this version may differ slightly from the official printed version.

---



[webmaster@PaBulletin.com](mailto:webmaster@PaBulletin.com)