

Chapter 284-13 WAC

ASSETS—LIABILITIES—INVESTMENTS AND REINSURANCE

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284-13-850	Scope.		
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- 10/2/93.] Repealed by WSR 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.
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- 284-13-380 Confidentiality and prohibition on announcements. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). WSR 93-19-012 (Order R 93-16), § 284-13-380, filed 9/1/93, effective 10/2/93.] Repealed by WSR 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.
- 284-13-390 Supplemental provisions. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). WSR 93-19-012 (Order R 93-16), § 284-13-390, filed 9/1/93, effective 10/2/93.] Repealed by WSR 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.
- 284-13-400 Foreign and alien insurers. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). WSR 93-19-012 (Order R 93-16), § 284-13-400, filed 9/1/93, effective 10/2/93.] Repealed by WSR 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.
- 284-13-410 Notices. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). WSR 93-19-012 (Order R 93-16), § 284-13-410, filed 9/1/93, effective 10/2/93.] Repealed by WSR 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.
- 284-13-420 Phase-in provision. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). WSR 93-19-012 (Order R 93-16), § 284-13-420, filed 9/1/93, effective 10/2/93.] Repealed by WSR 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.
- 284-13-505 Actual reinsurance. [Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-505, filed 2/10/97, effective 3/13/97.] Repealed by WSR 15-24-126 (Matter No. R 2015-09), filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63.
- 284-13-515 Qualified United States financial institution. [Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-515, filed 2/10/97, effective 3/13/97.] Repealed by WSR 15-24-126 (Matter No. R 2015-09), filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63.

EARNED SURPLUS

WAC 284-13-160 Definition of "earned surplus." (1) As used in RCW 48.08.030(1), "earned surplus" means that part of surplus that represents net earnings, gains, or profits, after deduction of all losses, that have not been distributed to share holders as dividends or transferred to stated capital or capital surplus or lawfully applied to other purposes. It does not include unrealized appreciation of assets, unrealized capital gains, or reevaluation of assets.

(2) Earned surplus can be determined from the annual statement.

(a) For stock life companies, earned surplus is unassigned funds less any unrealized gains included in that figure; and

(b) For property and casualty stock companies, earned surplus is unassigned funds, less any unrealized gains included in that figure.

[Statutory Authority: RCW 48.02.060 and 48.13.171. WSR 18-21-117, § 284-13-160, filed 10/17/18, effective 11/17/18. Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. WSR 93-19-004 (Order R 93-8), § 284-13-160, filed 9/1/93, effective 10/2/93.]

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ASSETS

WAC 284-13-210 Valuation of bonds. All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(3) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of such bonds or other evidences of debt.

(4) No method of valuation shall be inconsistent with any applicable valuation or method used by insurers in general, or any such method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

[Statutory Authority: RCW 48.02.060, 48.12.180, 48.12.190 and 48.12.200. WSR 93-19-007 (Order R 93-11), § 284-13-210, filed 9/1/93, effective 10/2/93.]

WAC 284-13-220 Valuation of other securities. (1) Securities, other than those referred to in WAC 284-13-210, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by the commissioner as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of valuation as he or she may approve.

(3) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible under chapter 48.13 RCW for investment of the funds of the insurer directly.

(4) No valuations under this section shall be inconsistent with any applicable valuation or method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

[Statutory Authority: RCW 48.02.060, 48.12.180, 48.12.190 and 48.12.200. WSR 93-19-007 (Order R 93-11), § 284-13-220, filed 9/1/93, effective 10/2/93.]

WAC 284-13-280 Real estate appraisals. An insurer may not rely on an appraisal if the insurer knows or should know that the appraisal is not reliable. An appraisal may be "not reliable" because it was incorrect when done, because conditions affecting the property have changed, or for other reasons.

[Statutory Authority: RCW 48.02.060, 48.13.171(1) and chapter 48.13 RCW. WSR 17-19-026 (Matter No. R 2017-02), § 284-13-280, filed 9/11/17, effective 10/12/17. Statutory Authority: RCW 48.02.060. WSR 93-19-010 (Order R 93-14), § 284-13-280, filed 9/1/93, effective 10/2/93.]

(10/17/18)

CREDIT FOR REINSURANCE

WAC 284-13-500 Purpose. The purpose of WAC 284-13-500 through 284-13-590 is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of RCW 48.12.400 through 48.12.499. The actions and information required by WAC 284-13-500 through 284-13-590 are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-500, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-500, filed 9/1/93, effective 10/2/93.]

WAC 284-13-503 Severability clause. If any provision of WAC 284-13-500 through 284-13-590 or its application to any person or circumstances is held invalid, the remainder of WAC 284-13-500 through 284-13-590 to other persons or circumstances is not affected.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-503, filed 12/2/15, effective 1/2/16.]

WAC 284-13-510 Credit for reinsurance—Reinsurer holding certificate of authority in this state. Under RCW 48.12.410, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that held a certificate of authority in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-510, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-510, filed 9/1/93, effective 10/2/93.]

WAC 284-13-516 Credit for reinsurance—Accredited reinsurers. (1) Under RCW 48.12.415, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer must:

(a) File a properly executed Form AR-1 as set forth in WAC 284-13-595 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(b) File with the commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(c) File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case 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

(d) Maintain a surplus as regards policyholders in an amount not less than twenty million dollars, or obtain the affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(2) If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-516, filed 12/2/15, effective 1/2/16.]

WAC 284-13-517 Credit for reinsurance—Reinsurer domiciled in another state. (1) Under RCW 48.12.420, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

(a) Is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under RCW 48.12.400 through 48.12.499, and WAC 284-13-500 through 284-13-590;

(b) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(c) Files a properly executed Form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.

(2) The provisions of this section relating to surplus as regards policyholders does not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the commissioner determines equal or exceed the standards of RCW 48.12.400 through 48.12.499, and WAC 284-13-500 through 284-13-590.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-517, filed 12/2/15, effective 1/2/16.]

WAC 284-13-520 Credit for reinsurance—Certain reinsurers maintaining trust funds. Under RCW 48.12.-425, the commissioner 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 in WAC 284-13-530 through 284-13-538 in a qualified United States financial institution as defined in RCW 48.12.465(2), for the payment of the valid claims of its United States domiciled ceding insurers, their assigns and successors in interest. The assuming insurer must report annually to the commissioner substantially the same informa-

tion as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-520, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-520, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-520, filed 9/1/93, effective 10/2/93.]

WAC 284-13-530 Credit for reinsurance—Certain alien reinsurers maintaining trust funds—Single alien insurer. The trust fund for a single assuming alien insurer must consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer must maintain a trustee surplus of not less than twenty million dollars, except as provided in WAC 284-13-531.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-530, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-530, filed 2/10/97, effective 3/13/97.]

WAC 284-13-531 Credit for reinsurance—Certain alien reinsurers maintaining trust funds—Assuming insurer discontinuing business. 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 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 must 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 of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-531, filed 12/2/15, effective 1/2/16.]

WAC 284-13-532 Credit for reinsurance—Certain alien reinsurers maintaining trust funds—Group of incorporated and individual unincorporated underwriters. (1) The trust fund for a group including incorporated and individual unincorporated underwriters must consist of:

(a) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(b) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of WAC 284-13-500 through 284-13-590, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(c) In addition to these trusts, the group must maintain a trustee surplus of which one hundred million dollars must be held jointly for the benefit of the United States domiciled insurers of any member of the group for all the years of account.

(2) The incorporated members of the group must not be engaged in any business other than underwriting as a member of the group and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group must, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(a) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(b) If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-532, filed 12/2/15, effective 1/2/16.]

WAC 284-13-533 Credit for reinsurance—Certain alien reinsurers maintaining trust funds—Group of incorporated insurers under common administration. (1) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars (calculated in substantially the same manner as prescribed by the annual statement instructions and accounting practices and procedures manual of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, must:

(a) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group under reinsurance contracts issued in the name of the group;

(b) Maintain a joint trustee surplus of which one hundred million dollars must be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(c) File a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and must certify that any member examined will bear the expense of the examination.

(2) Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group must file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-533, filed 12/2/15, effective 1/2/16.]

WAC 284-13-535 Trust fund requirements. (1) Credit for reinsurance is not granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, under the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instruments must provide that:

(a) Contested claims must be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States.

(b) Legal title to the assets of the trust must be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest.

(c) The trust must be subject to examination as determined by the commissioner.

(d) The trust must remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, has outstanding obligations under reinsurance agreements subject to the trust; and

(e) No later than February 28 of each year the trustees of the trust must report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and must certify the date of termination of the trust, if so planned, or certify that the trust does not expire prior to the following December 31.

(2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this section or if the grantor(s) of the trust has been declared insolvent or placed in receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee must comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets must be distributed by and claims must be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust must return the assets, or any part thereof, to the trustee for distribution under the trust agreement.

(d) The grantor must waive any right otherwise available to it under United States law that is inconsistent with this section.

(10/17/18)

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-535, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-535, filed 2/10/97, effective 3/13/97.]

WAC 284-13-536 Credit for reinsurance—Certain reinsurers maintaining trust funds—Liabilities defined.

For purposes of WAC 284-13-520 through 284-13-538, liabilities means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are not otherwise secured by acceptable means, and, must include:

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

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

(b) Reserves for losses reported and outstanding;

(c) Reserves for losses incurred but not reported;

(d) Reserves for allocated loss expenses; and

(e) Unearned premiums.

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

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

(b) Aggregate reserves for accident and disability policies;

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

(d) Liabilities for policy and contract claims.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-536, filed 12/2/15, effective 1/2/16.]

WAC 284-13-537 Trust fund requirements—Assets.

Assets deposited in trusts established under RCW 48.12.405 through 48.12.455, and WAC 284-13-520 through 284-13-538 must be valued according to their current fair market value and must consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in RCW 48.12.465(1), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in RCW 48.12.465(1), and investments of the type specified in this section, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust must not exceed five percent of total investments. No more than twenty percent of the total investments in the trust may be foreign investments authorized under subsections (1)(e), (3), (6)(b), or (7) of this section, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security must be classified as a foreign investment denominated in foreign currency. The assets of a trust established to satisfy the requirements of RCW 48.12.405 through 48.12.455, must be invested only as follows:

[Ch. 284-13 WAC p. 5]

(1) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) The United States or by any agency or instrumentality of the United States;

(b) A state of the United States;

(c) A territory, possession or other governmental unit of the United States;

(d) An agency or instrumentality of a government unit referred to in subsections (1)(b) and (c) of this section if the obligations shall by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(2) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

(a) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structures and other material respects to other obligations of the same institution that are so rated;

(b) Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) Have been designated as Class one or Class two by the Securities Valuation Office of the NAIC.

(3) Obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(4) An investment made under subsections (1), (2), or (3) of this section are subject to the following additional limitations:

(a) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities must not exceed five percent of the assets of the trust;

(b) An investment in any one mortgage-related security must not exceed five percent of the assets of the trust;

(c) The aggregate total investment in mortgage-related securities must not exceed twenty-five percent of the assets of the trust; and

(d) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subsection (2)(a) and (c) of this section, but must not exceed two percent of the assets of the trust.

(5) As used in WAC 284-13-500 through 284-13-590:

(a) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC that either:

(i) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(A) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(B) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgage approved by the Secretary of Housing and Urban Development under 12 U.S.C. Sections 1709 and 1715-b, or where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development under 12 U.S.C. Section 1703; or

(ii) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subsection (5)(a)(i)(A) and (B) of this section.

(b) "Promissory note" when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

(6) Equity interests.

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) Its obligations and preferred shares, if any, are eligible as investments under this section; and

(ii) The equity interests of the institution (except an insurance company) are registered on a National Securities Exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a to 78kk or otherwise registered under the act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust must not invest

in equity interests under this section an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

(b) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development.

(c) An investment in or a loan upon any one institution's outstanding equity interests must not exceed one percent of the assets of the trust. The cost of an investment in equity made under this subsection, when added to the aggregate cost of other investments in equity interests then held under this subsection, must not exceed ten percent of the assets of the trust.

(7) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(8) Investment companies.

(a) Securities of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. Section 80a, are permissible investments if the investment company:

(i) Invests at least ninety percent of its assets in the type of securities that qualify as an investment under subsections (1), (2), or (3) of this section or invests in securities that are determined by the commissioner to be substantively similar to the type of securities set forth in subsections (1), (2), or (3) of this section; or

(ii) Invests at least ninety percent of its assets in the type of equity interests that qualify as an investment under subsection (6)(a) of this section.

(b) Investments made by a trust in investment companies under this subsection must not exceed the following limitations:

(i) An investment in an investment company qualifying under (a)(i) of this subsection must not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies must not exceed twenty-five percent of the assets in the trust; and

(ii) Investments in an investment company qualifying under (a)(ii) of this subsection must not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies must be included when calculating the permissible aggregate value of equity interests under subsection (6)(a) of this section.

(9) Letters of credit.

(a) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation under the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of

credit will otherwise expire without being renewed or replaced.

(b) The trust agreement must provide that the trustee is liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required is either negligence, willful misconduct, or both.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-537, filed 12/2/15, effective 1/2/16.]

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

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-538, filed 12/2/15, effective 1/2/16.]

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

(a)

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

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

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

(d) In order to facilitate the prompt payment of claims, a certified reinsurer is not required to post security for a catastrophe recoverables for a period of one year from the

date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophe occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophe occurrence will be included in the deferral:

- (i) Line 1: Fire.
- (ii) Line 2: Allied lines.
- (iii) Line 3: Farmowners multiple peril.
- (iv) Line 4: Homeowners multiple peril.
- (v) Line 5: Commercial multiple peril.
- (vi) Line 9: Inland marine.
- (vii) Line 12: Earthquake.
- (viii) Line 21: Auto physical damage.

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

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

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

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

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

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

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

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

- (A) Standard & Poor's;
- (B) Moody's Investors Service;
- (C) Fitch Ratings;
- (D) A.M. Best Company; or
- (E) Any other nationally recognized statistical rating organization.

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

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

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

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

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

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

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

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

(vi) Regulatory actions against the certified reinsurer;

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

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

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

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

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

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

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

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

(f) The assuming insurer must submit a properly executed Form CR-1 set forth under WAC 284-13-59501 as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment.

The commissioner will not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

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

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

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

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

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

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

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

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

(h) Change in rating or revocation of certification.

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

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

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

effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner must require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The commissioner will comply with all reporting and notification requirements that may be established by the

NAIC with respect to certified reinsurers and qualified jurisdictions.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-539, filed 12/2/15, effective 1/2/16.]

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

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-53901, filed 12/2/15, effective 1/2/16.]

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

- (1)(a) Cash;
- (b) Securities listed by the Securities Valuation Office of the NAIC, including those exempt from filing as defined by the purposes and procedures manual of the Securities Valuation Office, and qualifying as admitted assets;
- (c) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in RCW 48.12.465(1), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or
- (d) Any other form of security acceptable to the commissioner.
- (2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer under

(10/17/18)

this section is allowed only when the requirements of WAC 284-13-580 and the applicable portions of WAC 284-13-550, 284-13-560, or 284-13-570 have been satisfied.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-540, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-540, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-540, filed 9/1/93, effective 10/2/93.]

WAC 284-13-550 Trust agreements qualified under WAC 284-13-540. (1) As used in this section:

(a) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited insurer.

(c) "Obligations," as used in subsection (2)(k) of this section, means:

- (i) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
- (ii) Reserves for reinsured losses reported and outstanding;
- (iii) Reserves for reinsured losses incurred but not reported; and
- (iv) Reserves for allocated reinsured loss expenses and unearned premiums.

(2) Required conditions.

(a) The trust agreement must be entered into between the beneficiary, the grantor, and a trustee which must be a qualified United States financial institution as defined in RCW 48.12.465(2).

(b) The trust agreement must create a trust account into which assets must be deposited.

(c) All assets in the trust account must be held by the trustee at the trustee's office in the United States.

(d) The trust agreement must provide that:

(i) The beneficiary must have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(ii) No other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(iii) It is not subject to any conditions or qualifications outside of the trust agreement; and

(iv) It must not contain references to any other agreements or documents except as provided for under (k) and (l) of this subsection.

(e) The trust agreement must be established for the sole benefit of the beneficiary.

(f) The trust agreement must require the trustee to:

- (i) Receive assets and hold all assets in a safe place;

[Ch. 284-13 WAC p. 11]

(ii) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate the assets, without consent or signature from the grantor or any other person or entity;

(iii) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(iv) Notify the grantor and the beneficiary within ten days, of any deposits to or withdrawals from the trust account;

(v) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(vi) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw the asset upon condition that the proceeds are paid into the trust account.

(g) The trust agreement must provide that at least thirty days, but not more than forty-five days, prior to termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary.

(h) The trust agreement must be made subject to and governed by the laws of the state in which the trust is domiciled.

(i) The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation under the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(j) The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required is either negligence, or willful misconduct, or both.

(k) Notwithstanding other provisions of WAC 284-13-500 through 284-13-590, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and disability, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer must 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:

(i) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(ii) To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(iii) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten 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 United States financial institution as defined in RCW 48.12.465(2), apart from its general assets, in trust for the uses and purposes specified in (k)(i) and (ii) of this subsection as may remain executory after the withdrawal and for any period after the termination date.

(l) Notwithstanding other provisions of WAC 284-13-500 through 284-13-590, when a trust agreement is established to meet the requirements of WAC 284-13-540 in conjunction with a reinsurance agreement covering life, annuities, and disability risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer must 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:

(i) To pay or reimburse the ceding insurer for:

(A) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(B) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement.

(ii) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(iii) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in (l)(i) and (ii) of this subsection as may remain executory after withdrawal and for any period after the termination date.

(m) Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account must be valued according to their current fair market value and must consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by Title

48 RCW 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 must not exceed five percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and disability risks, then the provisions required by this subsection (2)(m) of this section must be included in the reinsurance agreement.

(3) Permitted conditions.

(a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(b) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(c) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subsection (4)(a)(ii) of this section.

(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary must, with written approval by the beneficiary, be delivered over to the grantor.

(4) Additional conditions applicable to reinsurance agreements.

(a) A reinsurance agreement may contain provisions that:

(i) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(ii) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate

these assets without consent or signature from the assuming insurer or any other entity;

(iii) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(iv) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established under the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and must be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(A) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

(II) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(B) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(b) The reinsurance agreement may also contain provisions that:

(i) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(A) The assuming insurer must, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(B) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred two percent of the required amount.

(ii) Provide for return of any amount withdrawn in excess of the actual amounts required for (a)(iv) of this subsection, and for interest payments at a rate not in excess of the prime rate of interest on the amounts.

(iii) Permit the award by any arbitration panel or court of competent jurisdiction of:

(A) Interest at a rate different from that provided in (b)(ii) of this subsection;

(B) Court or arbitration costs;

(C) Attorney's fees; and

(D) Any other reasonable expenses.

(5) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized

assuming insurer in financial statements required to be filed with the insurance commissioner in compliance with the provisions of WAC 284-13-500 through 284-13-590 when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but the reduction must be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(6) Existing agreements. Notwithstanding the effective date of WAC 284-13-500 through 284-13-590, any trust agreement or underlying reinsurance agreement in existence prior to December 31, 2015, and which was in compliance with statutes and regulations in effect at that time, will continue to be acceptable until December 31, 2016, at which time the agreements will have to be in full compliance with WAC 284-13-500 through 284-13-590 for the trust agreement to be acceptable.

(7) The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (1)(a) of this section shall not be construed to affect any actions or rights that the commissioner may take or possess under the provisions of the laws of this state.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-550, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-550, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-550, filed 9/1/93, effective 10/2/93.]

WAC 284-13-560 Letters of credit qualified under WAC 284-13-540. (1) The letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution as defined in RCW 48.12.465(1). The letter of credit must contain an issue date and date of expiration and must stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself must not contain reference to any other agreements, documents, or entities, except as provided in subsection (8)(a) of this section. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(2) The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that the information is for internal identification purposes only.

(3) The letter of credit must contain a statement to the effect that the obligation of the qualified United States finan-

cial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit must be for at least one year and must contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than thirty days' notice prior to the expiration date or nonrenewal.

(5) The letter of credit must state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.

(6) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit must specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of Publication 600 or any other successor publication occur.

(7) If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection (1) of this section, then the following additional requirements must be met:

(a) The issuing financial institution must formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) The "evergreen clause" must provide for thirty days' notice prior to the expiration date for nonrenewal.

(8) Reinsurance agreement provisions.

(a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:

(i) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

(ii) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer under the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and must be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(A) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;

(II) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assum-

ing insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(B) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for and purposes specified in (a)(ii)(A) of this subsection as may remain after withdrawal and for any period after the termination date.

(iii) All of the provisions of (a) of this subsection must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing contained in (a) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

(i) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held under (a)(ii) of this subsection; or

(ii) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-560, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-560, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-560, filed 9/1/93, effective 10/2/93.]

WAC 284-13-570 Other security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-570, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-570, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-570, filed 9/1/93, effective 10/2/93.]

WAC 284-13-580 Reinsurance contract. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of WAC 284-13-510, 284-13-516, 284-13-517, 284-13-520, 284-13-530, 284-13-531, 284-13-532, 284-13-533, 284-13-535, 284-13-536, 284-13-537, 284-13-538, 284-13-539, or 284-13-540 or otherwise is in compliance with RCW 48.12.405 through 48.12.455, after the adoption of WAC 284-13-500 through 284-13-590 unless the reinsurance agreement:

(1) Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding insurer under RCW 48.31.135;

(2) Includes a provision under RCW 48.12.405 through 48.12.455, whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel; and

(3) Includes a proper reinsurance intermediary clause, if applicable, that stipulates that the credit risk for the intermediary is carried by the assuming insurer.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-580, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.154. WSR 05-02-075 (Matter No. R 2004-06), § 284-13-580, filed 1/4/05, effective 2/4/05. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-580, filed 9/1/93, effective 10/2/93.]

WAC 284-13-590 Contracts affected. All new and renewal reinsurance transactions entered into after December 31, 2015, must conform to the requirements of RCW 48.12.-400 through 48.12.499, and WAC 284-13-500 through 284-13-590 if credit is to be given to the ceding insurer for the reinsurance.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-590, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-590, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-590, filed 9/1/93, effective 10/2/93.]

WAC 284-13-595 Form AR-1.

FORM AR-1 CERTIFICATE OF ASSUMING INSURER

I, _____, _____
(name of officer) (title of officer)

of _____,
(name of assuming insurer)

the assuming insurer under a reinsurance agreement with one or more insurers domiciled in Washington, hereby certify that:

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

1. Submits to the jurisdiction of any court of competent jurisdiction in the State of Washington for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United

States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if the obligation is created in the agreement.

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

3. Submits to the authority of the Insurance Commissioner of the State of Washington to examine its books and records and agrees to bear the expense of the examination.

4. Submits with this form a current list of insurers domiciled in the State of Washington reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____
(name of assuming insurer)

BY: _____
(name of officer)

(title of officer)

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-595, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-595, filed 2/10/97, effective 3/13/97.]

WAC 284-13-59501 Form CR-1.

FORM CR-1 CERTIFICATE OF CERTIFIED REINSURER

I, _____,
(name of officer) (title of officer)

of _____,
(name of assuming insurer)

the assuming insurer under a reinsurance agreement with one or more insurers domiciled in Washington, in order to be considered for approval in this state, hereby certify that:

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

1. Submits to the jurisdiction of any court of competent jurisdiction in the State of Washington for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by

the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if the obligation is created in the agreement.

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

3. Agrees to provide security in an amount equal to one hundred percent of liabilities attributable to United States ceding insurers if it resists enforcement of a final United States judgment or properly enforceable arbitration award.

4. Agrees to provide notification within ten days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing the changes and the reasons therefor.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with WAC 284-13-500 through 284-13-590.

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion under WAC 284-13-500 through 284-13-590.

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: _____
(name of assuming insurer)

BY: _____
(name of officer)

(title of officer)

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-59501, filed 12/2/15, effective 1/2/16.]

Model Regulation Service—January 2012

[illegible]

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786-37

Credit for Reinsurance Model Regulation

Ceded Reinsurance as of December 31, Current Year (000 Omitted)

[illegible]

786-38

Model Regulation Service—January 2012

Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities
Without Life or Disability Contingencies, and Related Benefits Listed by Reinsured Company as of December 31, Current Year

[illegible]

786-39

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Credit for Reinsurance Model Regulation

Reinsurance Assumed Accident and Health Insurance Listed by Reinsured Company as of December 31, Current Year

[illegible]

786-40

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Model Regulation Service—January 2012

Reinsurance Recoverable on Paid and Unpaid Losses Listed by Reinsuring Company as of December 31, Current Year

[illegible]

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-59506, filed 12/2/15, effective 1/2/16.]

Credit for Reinsurance Model Regulation

Form CR-S - PART 3 - SECTION 1
Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities
Without Life or Disability Contingencies, and Related Benefits Listed by Reinsuring Company as of December 31, Current Year

[illegible]

786-42

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Model Regulation Service—January 2012

Form CR-S – PART 3 – SECTION 2
Reinsurance Ceded Accident and Health Insurance Listed by Reinsuring Company as of December 31, Current Year

[illegible]

REINSURANCE INTERMEDIARIES

(2) Whether a person is an "employee" of the reinsurer for purposes of RCW 48.94.005 (7)(a) depends on the facts and is not controlled by a mere labeling of the person as an employee in an agreement.

WAC 284-13-710 Applications for license. An application for a license as a reinsurance intermediary by a firm or

[Ch. 284-13 WAC p. 23]

association may name the members and the designated employees to be authorized to act as reinsurance intermediaries under the license. If those persons are not named on the application or a supplement to it, then the application must be accompanied by a letter or other document identifying those persons and signed by an officer of the firm or association.

[Statutory Authority: RCW 48.02.060 and 1993 c 462 § 33. WSR 93-19-011 (Order R 93-15), § 284-13-710, filed 9/1/93, effective 10/2/93.]

WAC 284-13-715 Changes to information contained in an application for license. A licensed reinsurance intermediary must notify the commissioner within fifteen business days after occurrence of material changes to the information that was included in the application. For example this includes, but is not limited to, a change to:

- (1) The reinsurance intermediary's legal name;
- (2) The reinsurance intermediary's formation documents if it is a business entity;
- (3) The reinsurance intermediary's registered address;
- (4) Individuals authorized to act under the license; and
- (5) The reinsurance intermediary's designation to receive service of process.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. WSR 09-24-102 (Matter No. R 2009-11), § 284-13-715, filed 12/2/09, effective 1/2/10.]

WAC 284-13-720 Financial statement of reinsurance intermediary-manager. A reinsurer shall obtain from each reinsurance intermediary-manager, and a reinsurance intermediary-manager shall give to the reinsurer, annual statements of financial condition prepared by an independent certified public accountant. The form of the statements shall be such that the statements clearly show the results of operations, and the assets, liabilities, and equity of the reinsurance intermediary-manager. Nothing in the act or this regulation (WAC 284-13-700 through 284-13-760) prevents a reinsurer from requiring additional information, more detail, or a specified format so long as that specified format at least meets the requirements of this section.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. WSR 09-24-102 (Matter No. R 2009-11), § 284-13-720, filed 12/2/09, effective 1/2/10. Statutory Authority: RCW 48.02.060 and 1993 c 462 § 33. WSR 93-19-011 (Order R 93-15), § 284-13-720, filed 9/1/93, effective 10/2/93.]

WAC 284-13-730 Submission and approval of contracts between reinsurers and reinsurance intermediary—Managers. Contracts filed for approval under RCW 48.94.030 must include the provisions required by that section. If those provisions are not in the order given in that section, or if any other provisions precede or separate any of those required provisions, then the submitted contract shall be accompanied by a statement showing where in the contract each required provision is.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. WSR 09-24-102 (Matter No. R 2009-11), § 284-13-730, filed 12/2/09, effective 1/2/10. Statutory Authority: RCW 48.02.060 and 1993 c 462 § 33. WSR 93-19-011 (Order R 93-15), § 284-13-730, filed 9/1/93, effective 10/2/93.]

WAC 284-13-740 Reporting of claims. The reporting threshold under RCW 48.94.030 (9)(b)(v) is the lesser of fifty thousand dollars or an amount set by the reinsurer.

[Ch. 284-13 WAC p. 24]

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. WSR 09-24-102 (Matter No. R 2009-11), § 284-13-740, filed 12/2/09, effective 1/2/10. Statutory Authority: RCW 48.02.060 and 1993 c 462 § 33. WSR 93-19-011 (Order R 93-15), § 284-13-740, filed 9/1/93, effective 10/2/93.]

WAC 284-13-750 Reporting of discipline in another jurisdiction. A reinsurance intermediary, or a pending applicant, must notify the commissioner within fifteen business days of a disciplinary action taken against it by another governmental jurisdiction.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. WSR 09-24-102 (Matter No. R 2009-11), § 284-13-750, filed 12/2/09, effective 1/2/10.]

WAC 284-13-760 Reporting of a felony conviction. A person holding a reinsurance intermediary license, or a pending applicant, convicted of any felony involving dishonesty or a breach of trust, or convicted of an offense under the Violent Crime Control and Law Enforcement Act of 1994 (108 Stat. 2115; 18 U.S.C. Sec. 1033) must notify the commissioner of the conviction within fifteen business days after the conviction.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. WSR 09-24-102 (Matter No. R 2009-11), § 284-13-760, filed 12/2/09, effective 1/2/10.]

WAC 284-13-850 Scope. (1) The insurance commissioner recognizes that licensed insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus. It is improper, however, for an authorized insurer, in the capacity of ceding insurer, to enter into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival.

(2) This regulation (WAC 284-13-850 through 284-13-863) applies to all domestic life and disability insurers and to all other licensed life and disability insurers which are not subject to a similar regulation in their domiciliary state. This regulation also applies to the disability insurance policies issued by authorized property and casualty insurers. This regulation does not apply to assumption reinsurance, yearly renewable term reinsurance or nonproportional reinsurance (such as stop loss or catastrophe reinsurance).

[Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. WSR 95-19-018 (Order 95-4), § 284-13-850, filed 9/8/95, effective 10/9/95.]

WAC 284-13-855 Accounting requirements. (1) No insurer subject to this regulation shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commissioner if, by the terms of the reinsurance agreement, in substance or effect, one or more of the following conditions exist:

(a) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the

business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Such expenses include commissions, premium taxes and direct expenses including, but not limited to billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured.

(b) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets.

(c) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.

(d) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded.

(e) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company.

(f) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies, for a representative sampling of the products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk categories:

(i) Morbidity.

(ii) Mortality.

(iii) Lapse. This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

(iv) Credit Quality (C1). This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

(v) Reinvestment (C3). This is the risk that interest rates will fall and funds reinvested (coupon payments or moneys

received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.

(vi) Disintermediation (C3). This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

+Significant	0	-	Insignificant			
RISK CATEGORY						
	i	ii	iii	iv	v	vi
Disability - other than LTC/LTD*	+	0	+	0	0	0
Disability - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
dump-in premiums allowed						
*LTC = Long Term Care Insurance						
LTD = Long Term Disability Insurance						

(g)(i) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subsection (1)(g)(ii) of this section) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

(ii) Notwithstanding (g)(i) of this subsection, the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding company without segregation of such assets:

- Disability Insurance - LTC/LTD
- Traditional Non-Par Permanent
- Traditional Par Permanent
- Adjustable Premium Permanent
- Indeterminate Premium Permanent

- Universal Life Fixed Premium
(no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

- Where:
- I is net investment income
(Exhibit 2, Line 16, Column 7)
 - CG is capital gains less capital losses
(Exhibit 4, Line 10, Column 6)
 - X is the current year cash and invested assets (Page 2, Line 10A, Column 1) plus investment income due and accrued (Page 2, Line 16, Column 1) less borrowed money (Page 3, Line 22, Column 1)
 - Y is the same as X but for the prior year

(iii) Line references are for the commissioner's 1992 annual statement form.

(h) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within ninety days of the settlement date.

(i) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(j) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(k) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(2) Notwithstanding subsection (1) of this section, an insurer subject to this regulation may, with the prior approval of the commissioner, take such reserve credit or establish such asset, including actuarial interpretations or standards adopted by the commissioner.

(3)(a) Every agreement entered into after the effective date of this regulation which involves the reinsurance of business issued prior to the effective date of the agreement, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within thirty days after its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this regulation and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the commissioner. The actuary shall maintain adequate documentation and be prepared to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this regulation.

(b) Any increase in surplus net of federal income tax resulting from arrangements described in (a) of this subsection shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the capital and surplus account, page 4 of the annual statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "reinsurance ceded" line, page 4 of the annual statement as earnings emerge from the business reinsured.

For example: On the last day of calendar year N, company XYZ pays a \$20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is \$13.2 million (\$20 million - \$6.8 million) which is reported on the "aggregate write-ins for gains and losses in surplus" line in the capital and surplus account. \$6.8 million (34% of \$20 million) is reported as income on the "commissions and expense allowances on reinsurance ceded" line of the summary of operations. At the end of year N+1 the business has earned \$4 million. ABC has paid \$.5 million in profit and risk charges in arrears for the year and has received a \$1 million experience refund. Company ABC's annual statement would report \$1.65 million (66% of (\$4 million - \$1 million - \$.5 million) up to a maximum of \$13.2 million) on the "commissions and expense allowances on reinsurance ceded" line of the summary of operations, and -\$1.65 million on the "aggregate write-ins for gains and losses in surplus" line of the capital and surplus account. The experience refund would be reported separately as a miscellaneous income item in the summary of operations.

[Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. WSR 95-19-018 (Order 95-4), § 284-13-855, filed 9/8/95, effective 10/9/95.]

WAC 284-13-860 Written agreements. (1) No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner, unless the agreement, amendment, or a binding letter of intent has been executed by both parties no later than the "as of date" of the financial statement.

(2) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding ninety days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(3) The reinsurance agreement shall contain provisions which provide that:

(a) The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

(b) Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by the parties.

[Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. WSR 95-19-018 (Order 95-4), § 284-13-860, filed 9/8/95, effective 10/9/95.]

WAC 284-13-863 Existing agreements. Insurers subject to this regulation shall reduce to zero by December 31, 1996, any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this regulation which under the provisions of this regulation would not be entitled to recognition of the reserve credits or assets; provided however that: The reinsurance agreements are in compliance with laws or regulations in existence immediately preceding the effective date of this regulation.

[Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. WSR 95-19-018 (Order 95-4), § 284-13-863, filed 9/8/95, effective 10/9/95.]

DERIVATIVE INSTRUMENTS

WAC 284-13-900 Purpose. The purpose of this rule is to set standards for the prudent use of hedging and income generation derivative instruments under RCW 48.13.171.

[Statutory Authority: RCW 48.020.60 [48.02.060], 48.13.171 and 48.13.091. WSR 14-21-106 (Matter No. R 2014-05), § 284-13-900, filed 10/15/14, effective 11/15/14.]

WAC 284-13-910 Definitions. The definitions in this section apply to WAC 284-13-920 through 284-13-960.

"Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether for-profit or not-for-profit.

"Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.

"Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor.

"Counterparty exposure amount" means:

(1) The net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse (over-the-counter derivative instrument). The amount of credit risk equals:

(a) The market value of the over-the-counter derivative instrument if the liquidation of the instrument would result in a final cash payment to the insurance company; or

(b) Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurance company.

(2) If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States, or if not within the United States, within a foreign jurisdiction listed in the *Purposes and Procedures of the Securities Valuation Office* of the NAIC as eligible for netting, the net amount of credit risk must be the greater of zero or the net sum of:

(a) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation

of which would result in a final cash payment to the insurance company; and

(b) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurance company to the business entity.

(3) For open transactions, market value must be determined at the end of the most recent quarter of the insurance company's fiscal year and must be reduced by the market value of acceptable collateral held by the insurance company or placed in escrow by one or both parties.

"Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap or floor it has written, or has set aside under a custodial or escrow agreement cash or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written in an income generation transaction.

"Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

(1)(a) To make or take delivery of, or assume or relinquish a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or

(b) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(2) Derivative instruments include options, warrants, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof. Derivative instruments shall additionally include any agreements, options, or instruments permitted under WAC 284-13-920 through 284-13-960. Derivative instruments shall not include an investment authorized by RCW 48.13.061 (2) through (10).

"Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one or more underlying interests.

"Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests.

"Hedging transaction" means a derivative transaction which is entered into and maintained to reduce:

(1) The risk of change in value, yield, price, cash flow, or quantity of assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring; or

(2) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring.

"Insurer" includes domestic insurance companies authorized under chapter 48.05 RCW, United States branches of alien insurers entered through this state, alien insurers admitted and using this state as their port of entry, domestic fraternal benefit societies formed pursuant to chapter 48.36A

RCW, domestic health care service contractors registered under chapter 48.44 RCW, domestic health maintenance organizations registered under chapter 48.46 RCW, and domestic self-funded multiple employer welfare arrangements registered under chapter 48.125 RCW.

"Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, or terminate or effects a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

"Qualified clearinghouse" means a clearinghouse for, and subject to the rules of a qualified exchange or a qualified foreign exchange, which clearinghouse provides clearing services, including acting as a counterparty to each of the parties to a transaction so that the parties no longer have credit risk to each other.

"Qualified exchange" means:

(1) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78 et seq.), as amended;

(2) A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission (CFTC) or any successors thereto;

(3) Private Offerings, Resales and Trading through Automated Linkages (PORTAL);

(4) A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or

(5) A qualified foreign exchange.

"Qualified foreign exchange" means a foreign exchange, board of trade or contract market located outside the United States, its territories or possessions:

(1) That has received regulatory comparability relief under Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30);

(2) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30) as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or

(3) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, but an exchange, board of trade, or contracts market that qualifies as a "qualified foreign" only under this subsection shall be a "qualified foreign exchange" as to foreign stock index futures contracts that are the subject of the no-action relief under this subsection.

"Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance, or value of one or more underlying interests.

"Underlying interest" means the assets, liabilities, other interests, or a combination thereof underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities, or derivative instruments.

"Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a

given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

[Statutory Authority: RCW 48.020.60 [48.02.060], 48.13.171 and 48.13.-091. WSR 14-21-106 (Matter No. R 2014-05), § 284-13-910, filed 10/15/14, effective 11/15/14.]

WAC 284-13-920 Derivative transactions. (1) An insurer may, directly or indirectly through an investment subsidiary, only engage in hedging and income generation derivative transactions. Use of derivative instruments for replication, speculative or any other purpose is prohibited.

(2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction, the insurer can demonstrate to the satisfaction of the commissioner the intended hedging characteristics and ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analysis.

(3) An insurer may only enter into covered income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps and floors, plus the face value of the fixed income securities underlying a derivative instrument subject to call plus the amount of the purchase obligations under the puts, does not exceed chapter 48.13 RCW limitations.

(4) An insurer must include all counterparty exposure amounts in determining compliance with general diversification requirements and medium and low-grade investment limitations under chapter 48.13 RCW.

(5) Side-letter or similar agreements that directly or indirectly alter the original derivative transaction in any way are prohibited.

[Statutory Authority: RCW 48.020.60 [48.02.060], 48.13.171 and 48.13.-091. WSR 14-21-106 (Matter No. R 2014-05), § 284-13-920, filed 10/15/14, effective 11/15/14.]

WAC 284-13-930 Guidelines and internal control procedures. (1) Before engaging in a derivative transaction, an insurance company must establish written guidelines approved by the commissioner, that must be used for effecting and maintaining derivative transactions. The guidelines must:

(a) Specify insurance company objectives for engaging in derivative transactions and derivative strategies and all applicable risk constraints, including credit risk limits;

(b) Establish counterparty exposure limits and credit quality standards;

(c) Identify permissible derivative transactions and the relationship of those transactions to insurance company operations; for example, a precise identification of the risks being hedged by a derivative transaction; and

(d) Require compliance with internal control procedures.

(2) An insurance company must have a written methodology for determining whether a derivative instrument used for hedging has been effective using cash flow testing or other appropriate analysis.

(3) An insurance company must have written policies and procedures describing the credit risk management process and a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using the counterparty exposure amount.

(4) An insurance company's board of directors must, in accordance with RCW 48.13.051:

(a) Approve the written guidelines, methodology and policies, and procedures required by subsections (1), (2), and (3) of this section and the systems required by subsection (2) and (3) of this section;

(b) Determine whether the insurance company has adequate professional personnel, technical expertise, and systems to implement investment practices involving derivatives;

(c) Review whether derivatives transactions have been made in accordance with the approved guidelines and consistent with stated objectives; and

(d) Take action to correct any deficiencies in internal controls relative to derivative transactions.

[Statutory Authority: RCW 48.020.60 [48.02.060], 48.13.171 and 48.13.-091. WSR 14-21-106 (Matter No. R 2014-05), § 284-13-930, filed 10/15/14, effective 11/15/14.]

WAC 284-13-940 Commissioner approval. Written documentation explaining the insurance company's internal guidelines and controls governing derivative transactions must be submitted for approval to the commissioner. The commissioner shall have authority to disapprove the guidelines and controls proposed by the company if the insurance company cannot demonstrate the proposed internal guidelines and controls would be adequate to manage the risks associated with the derivative transactions the insurance company intends to engage in.

[Statutory Authority: RCW 48.020.60 [48.02.060], 48.13.171 and 48.13.-091. WSR 14-21-106 (Matter No. R 2014-05), § 284-13-940, filed 10/15/14, effective 11/15/14.]

WAC 284-13-950 Documentation requirements. An insurance company must maintain all documentation and records relating to each derivative transaction, such as:

- (1) The purpose or purposes of the transaction;
- (2) The assets or liabilities to which the transaction relates;
- (3) The specific derivative instrument used in the transaction;
- (4) For over-the-counter derivative instrument transactions, the name of the counterparty and the market value; and
- (5) For exchange traded derivative instruments, the name of the exchange and the name of the firm that handled the trade and the market value.

[Statutory Authority: RCW 48.020.60 [48.02.060], 48.13.171 and 48.13.-091. WSR 14-21-106 (Matter No. R 2014-05), § 284-13-950, filed 10/15/14, effective 11/15/14.]

WAC 284-13-960 Trading requirements. Each derivative instrument must be:

- (1) Traded on a qualified exchange;
- (2) Entered into with, or guaranteed by, a business entity;
- (3) Issued or written with the issuer of the underlying interest on which the derivative instrument is based; or

(4) Entered into with a qualified foreign exchange.

[Statutory Authority: RCW 48.020.60 [48.02.060], 48.13.171 and 48.13.-091. WSR 14-21-106 (Matter No. R 2014-05), § 284-13-960, filed 10/15/14, effective 11/15/14.]