

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 6.6.3843 and 6.6.3850 ) AMENDMENT  
pertaining to Credit for Reinsurance )  
and Certified Assuming Insurers ) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On September 1, 2022, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend the above-stated rules.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on May 24, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail [csi@mt.gov](mailto:csi@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

6.6.3843 CERTIFICATION OF ASSUMING INSURERS - FILING REQUIREMENTS (1) and (2) remain the same.

(3) The assuming insurer must provide to the commissioner the following:

(a) and (b) remain the same.

(c) upon the initial certification, audited financial statements for the last two years filed with the certified reinsurer's supervisor; thereafter, annually, reports of an independent auditor on the financial statements of the assuming insurer, the most recent audited financial statements ~~(audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinions (as filed with the assuming insurer's supervisor, with a translation into English);~~

(d) through (f) remain the same.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1217, MCA

6.6.3850 CERTIFIED ASSUMING INSURERS - LEGAL ENTITY SECURITY RATING (1) Each certified reinsurer shall be rated on a legal entity basis, with due

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

(a) through (g) remain the same.

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

(i) through (2) remain the same.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1217, MCA

4. REASON: The Commissioner of Securities and Insurance, Montana State Auditor, Troy Downing (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance. Chapter 65, passed by the 67th Montana Legislature (effective March 23, 2021), amended 33-2-1216 and 33-2-1217, MCA, regarding credit for reinsurance, a practice regularly used in the insurance industry.

The National Association of Insurance Commissioners (NAIC) is an organization of insurance regulators from the 50 states, the District of Columbia, and the U.S. Territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate. The statutory amendments passed in 2021 were based on the NAIC model law regarding credit for reinsurance. The amendments to ARM 6.6.3843 and 6.6.3850 implement the statutory changes and are derived from the NAIC Credit for Reinsurance Model Regulation (#786), Section 8 (2019); they ensure uniformity with other states and are necessary to meet the NAIC accreditation standards.

The foregoing amendments are related to, and should have been included with, the proposed new rule and amendments set forth in the Notice of Public Hearing on Proposed Adoption and Amendment to adopt a new rule pertaining to credit for reinsurance and to amend ARM 6.6.3814 (MAR Notice No. 6-267 published on April 15, 2022).

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail [CSI@mt.gov](mailto:CSI@mt.gov), and must be received no later than 5:00 p.m., June 10, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., June 10, 2022.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be far in excess of 25 persons based on the potential for the actions to impact every insured person in Montana if domestic insurance companies choose to use a certified reinsurer.

8. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 above or may be made by completing a request form at any rules hearing held by CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, CSI has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Kirsten Madsen  
Kirsten Madsen  
Rule Reviewer

/s/ Ole Olson  
Ole Olson  
Chief Legal Counsel  
Commissioner of Securities and Insurance,  
Office of the Montana State Auditor

Certified to the Secretary of State May 3, 2022.