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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**MEMORANDUM**

**TO:** Victoria Caltagirone  
Department of Commerce, Community and Economic Development

**FROM:** April Simpson, Office of the Lieutenant Governor   
465.4081

**DATE:** July 24, 2023

**RE:** Filed Permanent Regulations: Division of Insurance  
  
Department of Commerce, Community, and Economic Development - Division of  
Insurance regulations re: Reciprocal Jurisdictions (3 AAC 21.659)

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Attorney General File:	2022200464
Regulation Filed:	7/24/2023
Effective Date:	8/23/2023
Print:	247, October 2023

cc with enclosures: Colleen Bailey, Department of Law  
Judy Herndon, LexisNexis  
Heather Carpenter, Deputy Director  
David Phifer, Insurance Financial Examiner  
Lieann Amante Regulations Specialist



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Law**

CIVIL DIVISION

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July 18, 2023

The Honorable Nancy Dahlstrom  
Lieutenant Governor  
State of Alaska  
P.O. Box 110015  
Juneau, AK 99811-0015

Re: *3 AAC 21.659: DCCED - Division of Insurance Reciprocal Jurisdictions*  
Our file: 2022200464

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Department of Commerce, Community and Economic Development against the statutory standards of the Administrative Procedure Act.

The regulations concern Title 3 of the Alaska Administrative Code, specifically 3 AAC 21.659, and relate to the allowance of credits to domestic insurance companies for reinsurance by foreign assuming insurers. These regulations set out the circumstances in which insurance companies that are domiciled in certain foreign jurisdictions, called reciprocal jurisdictions, may provide reinsurance within the state. The regulations are intended to address changes made to AS 21.12.020 in 2021 under sec. 3, ch. 11, SLA 2021 (SB 87), based on updates to the credit for reinsurance model law issued by the National Association of Insurance Commissioners (NAIC).

The regulations are approved in part and disapproved in part under AS 44.62.060(b). The following regulation changes are disapproved as lacking statutory authority and were therefore removed from the enclosed approved regulations:

1. Alteration of the definition of "reciprocal jurisdiction" found in

AS 21.12.020(i)(2)(A) changing the phrase “not a United States jurisdiction” to “a non-U.S. jurisdiction.”

2. Alteration of the definition of “covered agreement” found in AS 21.12.020(i)(2)(A) adding the words “credit for reinsurance” at the end of the definition.

The language enacted by SB 87 amending AS 21.12.020 differed in some small but significant ways from the NAIC model law. Relevant here, the definition of “reciprocal jurisdictions” in the model law includes a “non-U.S. jurisdiction” that meets certain criteria. Section 21.12.020, as amended by SB 87, however, instead refers to a jurisdiction that is “not a United States jurisdiction.”

In addition, the definition of a “covered agreement” omitted the definition’s last three words, “credit for reinsurance, so that it ends mid-sentence in AS 21.12.020(i)(2)(A). Without the last three words, the final part of the definition is essentially incomprehensible.

Failure of the statutory language to match that of the NAIC model law endangers the State’s NAIC accreditation. In addition, the Federal Insurance Office has indicated in correspondence to the Department of Law that the definitions of “reciprocal jurisdiction” and “covered agreement” in AS 21.12.020(i)(2)(A) are respectively “difficult to reconcile with the correct definition” and “difficult to decipher at best.”<sup>1</sup>

The regulations propose to correct the divergence between the model law and AS 21.12.020 by adopting the NAIC language into the Alaska Administrative Code, as opposed to the definitions as they appear in AS 21.12.020(i)(2)(A).

Regulations may implement, interpret, or make specific statutes, but they may not be inconsistent with existing law.<sup>2</sup> A regulation that purports to change law enacted by the legislature is invalid.<sup>3</sup> Consequently, DCCED lacks legal authority to remedy substantive statutory deficiencies through regulation. To the extent that DCCED’s regulation would deviate from the statutory definitions, the statute governs, rendering the regulation a nullity.

Because these deficiencies must be remedied at the statutory level, the Department contacted the revisor of statutes to inquire whether the revisor could make these changes

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<sup>1</sup> See, email correspondence dated May 20, 2022, between Philip J. Goodman, Senior Insurance Regulatory Policy Analyst, U.S. Dept. of Treasury, and Daniel Wilkerson, Senior Assistant Attorney General, Alaska Dept. of Law.

<sup>2</sup> AS 44.62.030

<sup>3</sup> See, e.g. *Alaska Airlines, Inc. v. Darrow*, 403 P.3d 1116, 1132 (Alaska 2017).

to AS 21.12.020(i)(2)(A), but we were informed that it would be beyond the revisor's authority. Because the corrections are necessary for NAIC compliance, we recommend that they should be introduced in the legislature at the next regular session in the form of a bill making the appropriate changes to AS 21.12.020(i)(2)(A).

The remainder of the adopted regulations are approved. This letter constitutes written approval under AS 44.62.060(b) and (c) that authorizes your office to file the enclosed regulations. We have made some technical corrections to conform the regulations in accordance with AS 44.62.060. The corrections are incorporated into the enclosed copy of the regulations.

The September 23, 2022 public notice and the January 23, 2023 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Sincerely,

TREG TAYLOR  
ATTORNEY GENERAL

By: **Rebecca C. Polizzotto**  
Rebecca C. Polizzotto  
Chief Assistant Attorney General  
Legislation, Regulations, and  
Legislative Research Section

Digitally signed by  
Rebecca C. Polizzotto  
Date: 2023.07.18  
15:30:43 -08'00'

RCP/pwp

CC w/enclosure: David Phifer  
Department of Commerce, Community and Economic Development

Daniel Wilkerson, Assistant Attorney General  
Department of Law

Laura Stidolph, Legislative Director  
Office of the Governor

Parker W. Patterson, Assistant Attorney General  
Department of Law

ORDER RA 22-02 ADOPTING CHANGES TO REGULATIONS  
OF DIVISION OF INSURANCE

The attached page of regulations, dealing with reciprocal jurisdictions, is adopted and certified to be a correct copy of the regulation changes that the Division of Insurance adopts under the authority of AS 21.06.090; AS 21.12.020 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Division of Insurance paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 1-23-2023


  
Lori Wing-Heier, Director

FILING CERTIFICATION

*April Simpson for*

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on

July 24, 2023, at 3:00 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

  
for Lieutenant Governor Nancy Dahlstrom

Effective: August 23, 2023

Register: 24th October 2023

**FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY**

**I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:**

**April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.**



A handwritten signature in blue ink, reading "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM  
LIEUTENANT GOVERNOR**

3 AAC 21.659(e)(1) is amended to read:

(1) if a jurisdiction accredited by the National Association of Insurance Commissioners (NAIC) has determined that the conditions set out in (c) of this section have been met, the director may defer to that jurisdiction's determination and add an assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection, if

(A) [;] the director accepts [MAY ACCEPT] financial documentation filed with the NAIC [NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS] or another jurisdiction accredited by the NAIC [NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS] in satisfaction of the requirements of (c) of this section; or

(B) upon initial eligibility, the assuming insurer submits the information to the director required under AS 21.12.020(a)(6)(D) and complies with any additional requirements that the director may impose by regulations adopted under AS 44.62 (Administrative Procedure Act), except to the extent that they conflict with an applicable covered agreement; and

3 AAC 21.659 is amended by adding a new subsection to read:

(i) Nothing in AS 21.12.020(h) limits or in any way alters the capacity of parties to any reinsurance agreement to renegotiate the agreement. (Eff. 12/23/2021, Register 240; am

8 / 23 / 2023, Register 247)

**Authority:** AS 21.06.090 AS 21.12.020