

02- DEPARTMENT OF PROFESSIONAL AND FINANCIAL
REGULATION

031 BUREAU OF INSURANCE

Chapter 161 SURPLUS LINES INSURERS

Section 1. Authority and Purpose

This rule is adopted pursuant to 24-A M.R.S. § 212 to set standards and requirements for insurers issuing surplus lines insurance when this State is the home state of the risk, as defined in 24-A M.R.S. § 2003(7). This rule replaces Rule 160.

Section 2. General Requirements

1. If an insurer is domiciled in the United States, it is eligible to issue surplus lines coverage if and only if it has applied for eligibility under Section 3, the Superintendent has granted the application, and the insurer's eligibility has not been suspended or revoked.
2. If an insurer is not domiciled in the United States, it is eligible to issue surplus lines coverage if and only if it is listed on the most recently published quarterly listing of alien insurers issued by the National Association of Insurance Commissioners (NAIC).
3. All surplus lines insurers issuing coverage for which this State is the home state, regardless of where the insurer is domiciled, must comply with all provisions of the Insurance Code that by their terms are applicable to surplus lines insurers, including, but not limited to:
 - (A) The prohibition against cancelling or nonrenewing coverage without timely advance notice, pursuant to 24-A M.R.S. § 2009-A and, when applicable, pursuant to the Maine Property Insurance Cancellation Control Act, 24-A M.R.S. §§ 3048–3061; and
 - (B) The requirement to designate a resident agent for service of process in this State, pursuant to 24-A M.R.S. § 2019.

Section 3. Insurers Domiciled in the United States

1. An insurer domiciled in the United States and applying for surplus lines eligibility must be licensed in its domiciliary state, as either an admitted

insurer or a domestic surplus lines insurer, for the class or classes of business it proposes to write in this State.

2. The insurer must maintain sufficient capital and surplus as determined according to the laws of its domiciliary state and reported on its most recent annual and quarterly financial statements.
 - (A) The amount of capital and surplus is automatically deemed to be sufficient if it equals or exceeds the greater of \$15 million or the minimum capital and surplus that would be required if the insurer were licensed in this State.
 - (B) If the insurer's capital and surplus is less than \$15 million, but equals or exceeds the greater of \$4.5 million or the minimum capital and surplus that would be required if the insurer were licensed in this State, the insurer may request an affirmative finding by the Superintendent that the amount of capital and surplus is adequate for the business the insurer has written and intends to write, considering factors including, but not limited to, quality of management, capital and surplus of any parent company, underwriting profit and investment income trends, market availability, and the insurer's record and reputation within the industry. If the Superintendent approves the insurer's request, the terms of approval may include conditions of eligibility such as restrictions on the type or volume of business that may be written, and a minimum capital and surplus requirement in excess of \$4.5 million.
 - (C) The United States branch of an alien insurer is considered for purposes of this Rule to be an insurer domiciled in its United States state of entry, with capital and surplus equal to the available surplus in its United States trust fund, if the state of entry has approved the branch to issue surplus lines coverage and provides reciprocal recognition to insurers entered in Maine in accordance with 24-A M.R.S. § 413-A.
3. The insurer shall file a written application on a form supplied by the Superintendent, which shall include:
 - (A) The name and home office address of the insurer;
 - (B) The location of its principal office;
 - (C) The insurer's NAIC company code;
 - (D) The insurer's Federal Employer Identification Number;

- (E) Contact information for the insurer;
 - (F) A Certificate of Compliance from the domiciliary state;
 - (G) A copy of the last report of examination, certified by the supervisory official in the domiciliary state;
 - (H) Appointment of a resident agent to accept service of process;
 - (I) A plan of operation describing the types of surplus lines risks the insurer proposes to write in this State;
 - (J) A statement whether the insurer is applying for discretionary eligibility under Subsection 2(B), and if so, an explanation of why the insurer's capital and surplus are adequate for the business the insurer has written and intends to write, describing all relevant factors the Superintendent should consider;
 - (K) Certification, signed by the insurer's President, Secretary, Treasurer, or Attorney-in-Fact, that the insurer has fully complied with its charter and bylaws, that the insurer is in sound financial condition, and that its methods of underwriting and conducting business are known and permitted by the insurance officials of the state of domicile and approved by the insurer's directors; and
 - (L) Such other information as the Superintendent may from time to time deem necessary and appropriate.
- (4) The Superintendent may suspend or revoke an insurer's eligibility if the Superintendent determines that the application included materially false or misleading information or that the insurer no longer meets the requirements of this rule or of 24-A M.R.S. § 2007.

Section 4. Insurers Domiciled Outside the United States

The Superintendent shall make a form available for use by insurers domiciled outside the United States which intend to issue surplus lines coverage in this State. The form shall include identifying and contact information and the appointment of a resident agent to accept service of process. Only insurers giving notice under this section will be listed in the Superintendent's published lists of surplus lines insurers providing coverage in this State.

EFFECTIVE DATE: March 1, 1973 (Filed 7-20-78)

AMENDED: April 29, 1980

EFFECTIVE DATE (ELECTRONIC CONVERSION): January 14, 1997