# **02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**031 BUREAU OF INSURANCE**

**Chapter 250: REQUIREMENTS FOR ELIGIBILITY TO SELF-INSURE WORKERS' COMPENSATION BENEFITS**

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**Section I*.* General Provisions**.

**A. Authority*.*** This Rule is promulgated by the Superintendent pursuant to Title 24-A M.R.S.A. § 212 and 39-A M.R.S.A. § 403.

**B. Purpose*.*** This rule sets forth standards and procedures for employers to establish and maintain eligibility to self-insure their Maine workers' compensation risks.

**C. Scope*.*** This Rule applies to employers who operate in the State of Maine and elect to provide workers' compensation coverage through workers' compensation programs of self-insurance approved by the Superintendent.

**D. Definitions*.*** When used in this Rule, the following words or terms shall have the following meanings.

 1. **Act.** The Workers' Compensation Act, Titles 39 and 39-A M.R.S.A. as amended.

 2. **Actuarial Certification**. A statement signed by a qualified actuary and based on an actuarial review as of the valuation date in which the actuary expresses an opinion that: reserves are calculated in accordance with generally accepted loss reserving standards; that reserves are stated fairly and in conformity with sound actuarial principles; that recorded reserves make reasonable provision for obligations of the self-insurer; that reasonable provision has been made by taking any required safety margins into account, net of reinsurance credits; and that the funding schedule or rating plan of the group is sufficient to meet the obligations incurred by the self-insurer pursuant to the Act as they become due and payable from time to time.

 3. **Actuarially determined fully funded trust.** A trust which meets all of the following conditions:

a. The funding amount is established at a level sufficient to discharge those obligations incurred by the employer pursuant to the Act as they become due and payable from time to time;

b. The sum of the value of trust assets at least equals the present value of ultimate expected incurred claims and claims settlement costs, plus required safety margins and, if determined necessary by the Superintendent, administrative costs for the operation of the plan of self-insurance; and

c. A qualified actuary has provided an actuarial certification;

 4. **Actuarial Review.** An actuarial evaluation conducted by a Qualified Actuary which includes the following:

a. Estimated ultimate loss and loss expense levels for all self-insured years for which there are outstanding liabilities, or in the case of a review prepared solely for the purpose of a surplus release at other than annual, levels for all completed self-insured years for which there are outstanding liabilities, including liability as required for terminated members pursuant to Section III(E)(3);

b. Estimated ultimate loss and loss expense levels for the prospective year;

c Estimated financial impact of relief afforded by reinsurance contracts;

d. The effects of present value discounting, and where present value discounting is applied, the appropriateness of any discount rate. If the actuarial review does not include an evaluation of the appropriateness of the interest discount rate, the actuary must clearly disclose the source of, or basis for, the selected interest rate, and the actuary must state that the actuary is expressing no opinion as to appropriateness of the rate;

e. The safety margins applied to expected loss levels at required confidence levels;

f. The effect of the use by a group self-insurer of any irrevocable standby letter of credit;

g. An estimate of all other expenses anticipated to be paid from the actuarially determined fully funded trust; and

h. An actuarial certification.

 5. **Audited Financial Statements.** Financial statements which have been examined by an independent Certified Public Accountant, according to generally accepted auditing standards (GAAS) as prescribed by the American Institute of Certified Public Accountants. The statements presented must include a Statement of Financial Position, a Statement of Operations and a Statement of Cash Flows, including all footnotes and disclosures which are an integral part of the financial statements. The financial statements must be prepared according to generally accepted accounting principles (GAAP) unless another basis has been approved in advance by the Superintendent.

 6. **Board.** The Workers' Compensation Board as created by section 151 of the Act including a designee of the Board.

 7. **Confidence Level**. As applied to a reserve, a fund, or a prospective funding level, a confidence level means the probability that the actual level of loss and loss adjustment expense costs will be less than or equal to the reserve, fund, or prospective funding level. The required loss and loss adjustment expense values corresponding to a confidence level must be determined by a Qualified Actuary.

 8. **Consolidating Schedule.** A schedule that supplies the underlying detail to support a consolidated financial statement. Such schedule shall separately show each entity included in the consolidated financial statements, including the parent on an unconsolidated basis, and shall reconcile to the consolidated audited financial statements. Entities other than U.S. or Canadian corporations may be aggregated for presentation purposes. The schedule should clearly show the self-insured companies, their relationship to the overall corporate structure, and corresponding detail through each parental level to the ultimate consolidating level.

 9. **Deposit Value**. The market value, at the time of initial deposit and at any subsequent valuation date, of acceptable securities which are deposited with the Treasurer of Maine in support of a self-insurance program.

 10.  **Foreign Parent**. A corporation formed under the laws of any country other than the United States.

 11. **Fund.** Those monies maintained in an actuarially determined fully funded trust or a deposit held by the Treasurer of State.

 12. **Funding Schedule.** The schedule of required deposits to meet the funding requirements of an actuarially determined fully funded trust.

 13. **Governing Body.** A group of directors, officers, or trustees that direct the administration of a group self-insurance program.

 14. **Indemnity Agreement**. A written agreement in a form prescribed by the Superintendent between the group self-insurer's governing body and each member of the group self-insurer which: specifies that the group is established for the purpose of securing payment of workers' compensation benefits to employees of the group members; binds the parties to the terms and requirements of the bylaws of the group; and jointly and severally binds the group and each member to comply with the provisions of the Act.

 15. **Intrastate Experience Modification Rating** . The adjustment to manual premium as determined in accordance with the experience rating plan approved for the designated workers’ compensation advisory organization using only the exposure and losses only from the State of Maine.

 16. **Industry.** A subset of economic entities with common or related business purposes, usually determined by Standard Industrial Classification (SIC) codes.

 17. **Loss Development.** The change in the value of loss data relating to a given coverage period from one valuation date to another.

 18. **Manual Premium.** Premium determined by multiplying annualized payroll segregated into the proper workers' compensation job classifications by the rates approved by the Superintendent. For a self-insurer for which a rate has not been approved, manual premium is the advisory loss cost rate filed by the principal workers' compensation advisory organization multiplied by 1.20.

 19. **Net Earnings**. Net income (loss) after all operating and nonoperating items, including income taxes and preferred dividends, as presented in the audited financial statements for the respective years.

 20. **Normal Premium.** Standard premium less any applicable premium discount determined in accordance with this rule.

 21. **Parent Corporation.** A corporation that has direct ownership of a majority voting interest of the subsidiary employer.

 22. **Plan Year.** A period of coverage no more than twelve (12) months in duration.

 23. **Plan Year Surplus or Deficit.** The difference between the trust fund balance and the funding level required by statute or this Rule.

 24. **Public Employer**. The State, the University of Maine System, counties, cities and towns.

 25. **Qualified Actuary**. A member of the American Academy of Actuaries who is either a Fellow of the Casualty Actuarial Society or an Associate of the Casualty Actuarial Society with five (5) or more years of experience, and who has no other business relationship with the client which would cause a potential or actual conflict of interest.

 26. **Rating Plan.** The rates by payroll classification and rating adjustments used to fund the trust maintained by a group to secure its obligations under the Act.

 27. **Reinsurance.** An insurance contract covering workers' compensation exposures in excess of risk retained by a self-insurer.

 28. **Reviewed Financial Statement**. Financial statements which have been examined by an independent Certified Public Accountant in accordance with statements on standards for accounting and review services issued by the American Institute of Certified Public Accountants. Statements presented must include a Statement of Financial Position, a Statement of Operations, and a Statement of Cash Flows including footnotes and disclosures which are an integral part of the financial Statements.

 29. **Safety Margin.** The difference between the loss and loss expenses at the required confidence level and the expected loss and loss expense level.

 30. **Self-Insurer**. An employer or a group of employers which operate an ongoing self-insurance program as well as a former self-insurer that still has undischarged liabilities. A group self-insurer is a group of employers approved to operate a plan of self-insurance pursuant to the terms of joint and several liability evidenced by an indemnity agreement executed by the parties. In the case of a group, the term "self-insurer" can indicate the entire group, as well as the individual members.

 31. **Service Company**. A business which has contracted with a self-insurer for the purpose of providing any underwriting, claims adjusting, loss control, safety engineering, administrative services, or payroll auditing services to an approved self-insurance program. The term "Service Agent" is synonymous with the term "Service Company" as used in this rule.

 32. **Standard Premium.** Manual premium modified by the intrastate experience modification rating factor determined in accordance with the experience rating plan filed by the designated workers' compensation advisory organization.

 33. **Successor Employer.** An employer that succeeds a self-insured employer, that assumes 100% of the self-insured workers’ compensation liabilities of the self-insured employer, and which maintains substantially the same business operations of the self-insured employer.

 34. **Superintendent**. The State of Maine Superintendent of Insurance.

 35. **Tangible Net Worth**. Equity less assets that have no physical existence and depend on expected future benefits for their ascribed value.

 36. **Trust Document.** A written agreement between a group self-insurer's duly authorized governing body or an individual self-insurer and a trustee bank in a form prescribed by the Superintendent which specifies the respective rights and duties of the parties to the contract.

 37. **Trustee Bank**. A state or national bank located in Maine and subject to regulation by the Federal Deposit Insurance Corporation (FDIC) or the Maine Superintendent of Banking, or other trust company meeting applicable State or Federal qualifications and approved in advance by the Superintendent, that serves in a fiduciary capacity pursuant to a trust document prescribed by the Superintendent to oversee funds placed in trust for the benefit of claimants under the Act.

 38.  **Working Capital.** The excess of current assets over current liabilities in accordance with generally accepted accounting principles.

**II. Individual Self-Insurance Plans.**

**A. Eligibility for Self-Insurance.** An applicant employer is eligible to self-insure if the employer and any required guarantor furnishes proof to the satisfaction of the Superintendent of solvency and financial ability to pay compensation and benefits required under the Act, the employer meets all other requirements for eligibility as a self-insurer as required by the Act and this Rule, and the employer provides the security, as determined by the Superintendent, required under Section II(D). An applicant employer is eligible to self-insure if the subsidiary employer and parent corporation jointly file an application; if the parent corporation and subsidiary employer submit an irrevocable contract of assignment of the subsidiary employer’s obligations incurred pursuant to the Act; if the parent corporation is solvent and demonstrates an ability to pay the compensation and benefits of the subsidiary employer; if the subsidiary employer meets all other requirements for eligibility as a self-insurer as required by the Act and this Rule; and if the employer provides the security, as determined by the Superintendent, required under Section II(D). The identity of an employer authorized to self-insure is determined by the ownership of the entity on the date on which its certificate of authorization is issued. An entity that is not currently self-insured which becomes controlled by an approved self-insurer is not automatically authorized to self-insure.

1. **Financial Considerations.** To qualify for self-insurance authority, the employer and any required guarantor or parent corporation must demonstrate to the satisfaction of the Superintendent, where applicable, that the applicant meets the following financialqualifications, considered in light of the level of retained workers’ compensation losses:

a. An historical record of profits;

b. An historical record of liquidity;

c. An historical record of adequate working capital;

d. An historical record of an adequate degree of leverage;

e. An historical record of adequate coverage of outstanding debt and related interest expense; and

f. An historical record of positive net worth.

For the purposes of this subsection, adequate means sufficient for the ongoing operation of the business as evidenced either by a history of ongoing operations or equivalence to similar businesses that have operated viably over a comparable period of time.

2. **Other Applicable Financial Considerations.** In determining whether or not an applicant and any required guarantor qualifies for self-insurance authority and in determining the amount of security required, the Superintendent must consider, where applicable, the following:

a. The relative strength of the employer and overall financial strengths or weaknesses compared to employers in the same industry. This analysis includes a comparison of the applicant company with data for the relevant industry in which the company operates. The industry data may be based on a broad industry category, such as manufacturing, or a more narrow category, such as fabricated metal manufacturing, depending on the facts and circumstances of a particular company and within the available resources for such industry data; and

b. The absolute levels, and the recent changes in these levels, of sales, net income, tangible net worth, working capital, cash flows from operations and other conditions.

3. **Discretionary Financial Considerations.** In reviewing an employer's application for self-insurance and in determining whether the general financial requirements have been met, the Superintendent may consider ratios and financial factors, including, but not limited to, the following:

a. Current assets to current liabilities;

b. Quick assets to current liabilities;

c. Sales to working capital;

d. Total liabilities to tangible net worth;

e. Net income to total assets;

f. Net income to net sales;

g. Earnings before interest and taxes to interest expense;

h. Tangible net worth to self-insured retention;

i. Cash flow from operations;

j. Tangible net worth; and

k. Sales and net income.

4. **Discretionary Non-financial Considerations.** In reviewing the employer's application for self-insurance authority and in determining security, the Superintendent may consider the following non-financial factors:

a. Source and reliability of financial information;

b. Organizational structure;

c. Workers' compensation loss history for the most recent five (5) years;

d. Intrastate experience modification rating factor;

e. Number of employees;

f. Payroll by workers' compensation class for the most recent three (3) years;

g. Payroll by workers' compensation class for the prospective year;

h. Reinsurance program; and

i. Other relevant factors depending on the facts and circumstances of the applicant.

5. **Public and nonprofit Applicants.** In determining self-insurance eligibility for public and nonprofit employers, only those ratios and standards relevant to those employers will be applied.

6. **Parental or Affiliate Guaranty Applicants.** If the self-insurer applies for self-insurance authority based upon a parental or affiliate guaranty, the applicant must use the form of guaranty prescribed by the Superintendent. The form must provide that if the ownership of the self-insurer is transferred to a third party during the effective term of the guaranty, conditions acceptable to the Superintendent will be incorporated in any purchase or sales agreement to the end that the guarantor or any third party purchaser will satisfactorily assume any financial responsibility remaining pursuant to the terms of the guaranty.

**B. Initial Application.** Employers must make application to the Superintendent for authorization to self-insure on a form prescribed by the Superintendent and pay the appropriate application fee. The application must contain complete responses to all questions and must be signed by an authorized officer. The Superintendent must approve or deny the application within forty-five (45) days after the application is deemed complete. An application will not be considered complete until all requested data has been filed. The Superintendent must determine whether or not an initial filing is complete within thirty (30) days of its receipt and notify the applicant of the information needed to make the application complete. Applicants must provide the needed information within thirty (30) days from the notification or the application will be considered withdrawn, unless the applicant notifies the Superintendent in writing of the need for additional time to provide the information. Upon approval, the Superintendent shall issue a written certificate of authorization for a period not to exceed one year. Upon denial, the Superintendent shall issue a written notice identifying the reasons for the denial.

1. **Additional Filing Requirements.** In addition to the completed application form, the initial application filing must include the following, except that a guarantor furnishing documentation to act as a guarantor for more than one (1) affiliate or subsidiary need not make duplicate filings:

a. Audited financial statements for the most recently completed fiscal year and for each of the two (2) immediately preceding fiscal years. If the applicant is requesting qualification for self-insurance authority on the basis of a parental or affiliate guarantee or on the basis of an irrevocable contract of assignment, the guarantor or parent corporation must provide audited financial statements for the most recently completed fiscal year and for each of the two (2) immediately preceding fiscal years. In the case of a self-insurer that qualifies on the basis of a financial guarantee or irrevocable contract of assignment, the Superintendent may accept an audited financial statement of the guarantor or parent corporation in satisfaction of this requirement if combining statements are provided in a consolidating schedule.

b. If a publicly traded company, a form 10-K and related proxy statements for both the applicant and any required guarantor;

c. A description of proposed specific and aggregate reinsurance;

d. Copies of binders or cover notes evidencing effective reinsurance contracts or a request for a waiver of the requirement with a justification. Each final reinsurance contract must be filed within ninety (90) days of the effective date of the contract;

e. Proof of adequate facilities and competent personnel to service its program in compliance with Section II(H) and a description of the safety plan maintained by the employer;

f. The name and license number of the licensed Maine adjuster who will be adjusting claims;

g. Proof of a fidelity bond adequate to protect the required funds, in a form and amount acceptable to the Superintendent, covering any person who will have access to the funds who is not otherwise licensed pursuant to Title 24-A M.R.S.A.;

h. Proof of required security after a determinationby the Superintendent pursuant to section II(D) on the Superintendent’s prescribed forms, and proof that any financial institution issuing an irrevocable standby letter of credit meets the requirements of section II(D)(7)(b);

i. A current valuation of each security which is posted as part of a security deposit;

j. Proof that the person signing the application has authority to do so; and

k. The intrastate experience modification rating factor and supporting worksheets determined according to the principal workers' compensation advisory organization in this state and approved by the Superintendent. An intrastate experience modification rating factor must be determined annually on an intrastate basis on the same basis as if the employer were insured.

2. **Discretionary Filings.** The Superintendent may request the following when needed:

a. If a publicly-traded company, a form 10-Q;

b. Audited financial statements for a five (5) -year period; and

c. Any other information necessary for making a determination of self-insurance eligibility.

3. **Financial Statement Presentations; Contact with Contractors.** All financial statement presentations prepared must be in such detail as to facilitate application of the ratio analyses. In undertaking its review of the application, the Superintendent, with consent from the applicant, may contact individuals who have prepared, compiled, or submitted materials which are part of the application.

4. **Employer Qualifying with Irrevocable Contract with Assignment from a Foreign Parent.**  An employer and foreign parent applying for self-insurance authority based upon an irrevocable contract of assignment from a foreign parent, must meet the following additional requirements:

a. Audited financial statements must be prepared by a certified public accountant licensed in a state in the United States according to United States generally accepted accounting principles (GAAP) or, if prepared according to another basis of accounting, accompanied by a reconciliation to United States GAAP;

b. Financial statements must be prepared in the English language;

c. An opinion from an attorney, whose qualifications are deemed satisfactory to the Superintendent that states that the foreign parent’s country of domicile has substantially similar laws with respect to submission to the jurisdiction of the Board and the Courts of this State for the purposes of payment of workers’ claims of the subsidiary employer;

d. A deposit of funds up to $100,000 cash in a United States financial institution in the name of the Treasurer of the State of Maine in a trust account in a form satisfactory to the Superintendent with an approved trustee bank for payment of the costs of enforcing payment of claims or other obligations of the self-insurer;

e. A stipulation, notwithstanding other rights, that all matters related to the self-insurance plan and to obligations under the Act will be resolved in Maine courts and according to Maine law;

f. Designation of a general agent for service of process in Maine; and

g. Payment, if necessary, to the Maine Attorney General’s Office of any fees necessary to retain a consultant, acceptable to the Superintendent and the Attorney General’s Office, to render legal opinions to initially or subsequently confirm that the entity qualifies for self-insured authority. The Superintendent must give the applicant prior notice if fees in excess of $50,000 are required.

C. **Annual Renewal Application.** Self-insurers must make a complete application for renewal of authorization to self-insure to the Superintendent on a form prescribed by the Superintendent, and pay the appropriate renewal fee, not less than twenty-one (21) days prior to the self-insurer’s renewal date, except that evidence of reinsurance coverage may be submitted up to three (3) working days prior to renewal. An application will not be considered complete until all requested data has been filed. The application may be filed sixty (60) days in advance of the renewal date to allow for a determination of completeness. In that case, the Superintendent will notify the applicant within thirty (30) days of any deficiencies in the application. The application must contain complete responses to all questions and must be signed by an authorized officer of the employer. If the application shows that the self-insurer continues to meet the qualifications to self-insure, the Superintendent will issue a written certificate of authorization.

1. **Additional Filing Requirements.** In addition to the renewal application form, the renewal application must include the following:

a. Current audited financial statements, if not previously filed, accompanied by the appropriate fee;

b. A current intrastate experience modification rating factor. Supporting worksheets must be made available to the Superintendent if requested. The self-insurer may request, and the Superintendent will accept, the intrastate experience modification rating factor directly from a qualified third party;

c. Estimated payrolls by classification for the most recently completed year and a projection for the upcoming year, by workers' compensation classification code;

d. The reinsurance contract, binder or cover note from the insurer, or a request for a waiver with justification;

e. If the applicant secures, or proposes to secure, its program by using an actuarially determined fully funded trust to satisfy any or all of the required security amount, a complete and final actuarial review, which values losses at the required confidence levels for all completed plan years and values the current year losses based on not less than nine (9) months of claims experience , a proposed funding schedule, and a request for release of surplus, reduction in funding, or transfer of surplus among complete plan years, if applicable;

f. For all programs not utilizing an actuarially determined fully funded trust, an actuarial review limited to ultimate undischarged claims and claims settlement liabilities, if notified by the Superintendent prior to the renewal date that an actuarial review is required;

g. A current valuation of each security which is posted as part of a security deposit;

h. Identification of the location of the complete and accurate payroll and claims records;

i. Summary loss reports for the complete period of self-insurance, including (i) losses, by accident year, separately displayed for medical, indemnity and claim expense, for each self-insured plan year; and (ii) losses separately displayed as to paid amounts and reserve amounts;

j. Proof that any financial institution issuing an irrevocable standby letter of credit meets the requirements of section II(D)(7);and

k. Any other materials requested in advance by the Superintendent or required as a condition of the certificate of authority.

**D. Security*.*** A qualified self-insurer must provide security either by depositing with the State Treasurer through the Workers' Compensation Board, on or before the date of operation of its plan of self-insurance, funds as permitted under Title 39-A M.R.S.A. § 403(9), a surety bond, or a letter of credit, or by establishing an actuarially determined fully funded trust with an approved trustee bank. A self-insurer may select the security type as long as approval of the Superintendent is obtained. After a self-insurance plan has been approved, a self-insurer may modify the method of providing security only after written approval by the Superintendent.

1. **Determination of Security Amount.** Except for self-insureds securing a program with an actuarially determined fully funded trust, the required security amount will be determined by the Superintendent based upon the greater of:

a. The loss and loss adjustment expense provision of the standard premium for the prospective coverage period, determined by applying the advisory loss costs for each workers' compensation classification to the payroll for that classification, summing for all classifications, and multiplying that sum by the intrastate experience modification rating factor for the current year calculated using the experience rating plan approved for the principal workers' compensation advisory organization; or

b. The outstanding self-insured loss reserves less any recoveries for reinsurance and subrogation plus 31.25 % of the loss and loss adjustment expense provision of the annual standard premium for the prospective period; or

c. $50,000.

2. **Working capital offset*.*** Except in the case of an individual insurer who is qualifying based on a parental or affiliate guaranty, the working capital may be used to reduce the security amount. The Superintendent may use the working capital of a qualified parent corporation to reduce the security amount of an employer if the employer and parent corporation have a certificate of authority based upon Title 39-A M.R.S.A. § 403(3)(G). The amount of the offset applied to the security amount shall not exceed the amount of working capital in the current audited statement of financial condition as of the end of its most recent fiscal year of the employer or of a qualified parent under § 403(3)(G). The offset cannot reduce the required security amount to an amount less than $100,000. The self-insurer must meet the following criteria, based on audited financial statements, to allow the Superintendent to reduce the security amount otherwise required by this section:

a. Net worth equal to or in excess of $10 million;

b. Positive net earnings in three (3) of the five (5) latest fiscal years including one (1) of the two (2) most recent fiscal years; and

c. Mean annual net earnings for the five (5) latest fiscal years greater than or equal to the normal annual standard premium for the prospective fiscal coverage period.

3. **Public Employer.** Any bond, security deposit, or letter of credit required of a public employer having a state-assessed valuation equal to or in excess of $300,000,000 and either a bond rating equal to or in excess of the 2nd highest standard as set by a national bond rating organization or a net worth equal to or in excess of $25,000,000 may not exceed $50,000.

4. **Deteriorated Financial Condition.** If the Superintendent determines that the self-insurer has experienced a deterioration in financial condition that adversely affects the self-insurer's ability to pay obligations under the Act, the security amount may be in excess of the amount prescribed by this formula.

5. **Security Deposit*.*** Funds held by the Treasurer of State as a security deposit shall be accompanied by appropriate legal instruments to effectively assign right, title and interest in such assets to the Treasurer solely for the purpose of meeting obligations incurred under the Act on forms approved by the Superintendent.

a. Each security held by the Treasurer as part of a security deposit shall be valued at market value. If market value for a security accepted for deposit is not readily available, the Superintendent shall assign a value. In the event market value is less than the required deposit value as of the date of valuation, the Superintendent may require that additional securities or other assets be posted by the self-insurer. If at any time the market value exceeds deposit value, the self-insurer may recover the excess value by the substitution of acceptable securities or other acceptable assets of a value not less in the aggregate than the amount of the required deposit.

b. Securities held by the Treasurer of State may be exchanged or replaced by the depositor with other qualifying securities of a current market value which is equal to or greater than the deposit value as long as the self-insurer is solvent and not in bankruptcy.

c. If a security held by the Treasurer no longer meets the requirements of Title 39-A M.R.S.A. § 403(9), the self-insurer shall notify the Superintendent within ten (10) days from the date the self-insurer had knowledge that the security no longer meets the requirements, and shall provide substitute deposit funds.

d. No release shall be effectuated under any circumstances until replacement securities or bonds approved by the Superintendent have been substituted.

6. **Surety Bond.** The surety bond must be issued on the form prescribed by the Superintendent by a licensed surety company which is authorized by the Superintendent to transact surety business in the State of Maine. Any surety bond may be replaced by a self-insurer with another surety bond which meets the requirements of law and this rule after a forty-five (45) day notice to the Superintendent and the Workers' Compensation Board and after approval by the Superintendent. The forty-five (45) day notice requirement may be waived only with written consent of the Superintendent.

7. **Letter of Credit.** The letter of credit must be on a form approved by the Superintendent and must be issued by a qualified financial institution. The form must include all provisions required by the Act, a provision that requires the financial institution to notify the Superintendent of any supervisory agreement with its primary bank regulator or of any regulatory action taken against it which results in an adverse impact on its financial condition, a provision that contemplates that the letter of credit may be called by the Superintendent if not renewed by the financial institution or self-insurer, and a provision confirming the interest of the State of Maine in proceeds upon call.

a. An individual self-insurer may not use a letter of credit to fund an actuarially determined fully funded trust, in whole or in part.

b. A financial institution issuing a letter of credit must, at all times, meet the following qualifications:

i. Is organized, or in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers;

ii. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and

iii. Maintains a long-term unsecured debt rating of at least A with either Moody's Investors Service, Inc. or Standards and Poor's Corporation or with commercial paper within the 3 highest short-term rating categories established by Moody’s Investors Service, Inc. or Standard and Poor’s Corporation.

 8. **Actuarially Determined Fully Funded Trust***.*  A trust must be established by utilizing forms prescribed by the Superintendent Assets used to fund the trust shall comply with relevant requirements of Section II(F).

a. The required security amount shall be calculated based upon actuarial review, as approved by the Superintendent. The self-insurer must provide the actuary with complete and accurate information necessary for completion of the actuarial review. For a new plan, twenty-five percent (25%) of the funding amount must be deposited upon the first day of approval. The remaining balance, adjusted for discounting, must be deposited over eleven (11) equal monthly payments due on the first of each month following the initial deposit or at a minimum distributed pro rata throughout the year**,** unless another payment plan is approved by the Superintendent. If the Superintendent determines that the self-insurer has experienced a deterioration in financial condition that adversely affects the self-insurer's ability to pay obligations under the Act, the security amount may be in excess of the minimum required.

b. Funding. Initial funding for each plan year must be maintained at the 90th or higher confidence level. Funding after the completion of the initial plan year may be established no lower than the 75th confidence level provided that:

i. A year considered for reduction is completed;

ii. The supporting actuarial review includes an evaluation of the completed year experience with the valuation based upon at least 18 months experience; and

iii. Prior approval from the Superintendent is obtained.

c. For the purposes of determining the funding level, all completed years at the same confidence level may be aggregated. Funds may not be released from the trust or transferred among plan years except as approved by the Superintendent.

d. Funding after five years. Depending upon the financial condition of the self-insurer, and if approved by the Superintendent, a self-insurer that has maintained an actuarially determined fully funded trust for a period of 5 or more consecutive years may fund all years, including the prospective plan year, in the aggregate at the 75% or higher confidence level.

e. Application of funds to discharge obligations. Funds required to discharge obligations under the Act as they become due may be applied from trust assets if appropriately authorized by a principal officer of the self-insurer or in the case of a self-insurer which has become the subject of a bankruptcy, receivership, or an arrangement for the benefit of creditors, by the Workers' Compensation Board.

f. Funding of a deficit. Knowledge by the self-insurer, or notice by the Superintendent, of a shortfall below the aggregate confidence level for all years as required and approved by the Superintendent must be funded within sixty (60) days from the date of the Superintendent’s notice.

 **E. Request to Reduce Funding and Declaration and Release of Surplus from an Actuarially Determined Fully Funded Trust.** Surplus releases and transfers among plan years are only permitted for completed plan years. An individual self-insurer may not reduce funding, release surplus, or transfer funds among years except in compliance with this subsection.

1.**Required Filings*.*** Every request for surplus release, transfer of funds, or reduction in the funding schedule must be filed by the individual self-insurer and must contain the following:

a. A complete and final actuarial review containing a valuation of losses valued at the required confidence levels for all completed plan years. In the case of a request filed with a renewal application, the valuation of the current year must be included and must be based on not less than 9 months of claims experience;

b. Notice of the method of distribution, including the distribution date; and

c. A schedule by plan year, on a form prescribed by the Superintendent, calculating the amount of surplus proposed for release or transfer among completed plan years.

 2. **Request with a Renewal Application.** While a renewal application is pending, funding must continue based on the higher of the previous year's funding schedule or the funding proposal in the actuarial review. Unless the Superintendent has not notified the self-insurer that a request to reduce funding has been denied, a self-insurer that has filed a timely application and has been notified by the Superintendent that the renewal application is complete may reduce funding on the renewal date to conform to the funding proposal in the actuarial review, except to the extent that the funding involves a transfer of surplus among plan years or a surplus distribution.

3. **Request not in Connection with a Renewal Application.** A self-insurer must request authorization from the Superintendent for reduction in funding, release of surplus, or transfer of funds among completed plan years at least thirty (30) days in advance of the desired disbursement date. The Superintendent will approve or disapprove the request within thirty (30) days of receipt of the request, unless the self-insurer is notified by the Superintendent of the need for additional information to make the decision, in which case the Superintendent will approve or disapprove the request within thirty (30) days from the date all necessary information is received.

4. **Funding Schedule Subject to Adjustment.** Any funding schedule modified pursuant to this subsection without written approval by the Superintendent is subject to adjustment after review and notice by the Superintendent.

**F. Qualifying Trust Assets and Deposit Funds**.

1. **Acceptable Assets.** The assets acceptable to the Superintendent to fund an actuarially determined fully funded trust or security deposit shall conform to the requirements of Title 39-A M.R.S.A. § 403(9).

2. **Exceptions.** Exceptions to the requirements of § 403(9) of the Act will be considered by the Superintendent upon submission of a written proposal at least sixty (60) days prior to the desired implementation date. Approval must be granted by the Superintendent before implementation.

3. **Diversification Required.** Investments must be diversified in a prudent manner to ensure that funds are maintained at a sufficient level to discharge workers’ compensation obligations incurred by the employer pursuant to this Title as those obligations become due and payable.

**G. Reinsurance Contracts and Standards***.*

 1. **Reinsurance Contracts**.

a. In order to qualify as a reinsurer pursuant to Title 39-A M.R.S.A. § 403(11) for the purposes of assuming reinsurance from a workers' compensation self-insurer, an insurer or reinsurer must be approved by the Superintendent pursuant to Rule Chapter 730.

b. In addition to the requirements of Rule Chapter 730 and any other requirement applicable to reinsurance contracts imposed by law or rule, no contract or policy of reinsurance shall be recognized by the Superintendent in considering the ability of a self-insurer to fulfill its financial obligations under the Workers' Compensation Act unless such contract or policy:

i. Is not cancelable except upon at least sixty (60) days written notice by registered or certified mail to the insured and to the Superintendent;

ii. Is automatically renewable at the expiration of the policy period unless written notice of intent to nonrenew is given to the insured and the Superintendent at least sixty (60) days prior to such expiration by registered or certified mail;

iii. Provides, if it contains any type of commutation clause, (1) that any commutation effected thereunder shall not relieve the reinsurer of further liability with respect to claims and expenses unknown at the time of such commutation or in regard to claims apparently closed but which may be subsequently revived by or through a competent authority or a court, and (2) that in the event the reinsurer proposes to redeem any future undischarged obligations payable as compensation for injuries occurring during the term of the policy by the payment of a lump sum or other settlement to be fixed pursuant to the commutation clause of the policy, such commutation is to comply with the applicable requirements of the Workers' Compensation Board, pursuant to Section 352 of the Act;

iv. Contains a provision that, in the event of default in the timely payment of claims by the self-insurer, the reinsurer will continue to provide information to the Superintendent, a bank trustee, the Treasurer of Maine, any trustee in bankruptcy or to any statutory successor which has responsibility as a guarantor of the self-insurer's obligations and will provide, directly or through a service agent, timely claims settlement services; and

v. Names the Maine Self-Insurance Guaranty Association as a coinsured if required by law.

c. Only persons affiliated with a self-insurer may be covered by any contract or policy of reinsurance. An individual self-insurer may include, in addition to a principal named insured, a named subsidiary, controlled affiliate corporation or other related entity that is an approved self-insurer provided that the Superintendent determines that the policy limits are adequate to cover the exposure of all entities named as insureds under the policy.

 2. **Reinsurance Standards**.

a. Specific and aggregate reinsurance. The amount of reinsurance required will be determined by the Superintendent based upon the self-insurer's tangible net worth, financial condition and exposure to loss with consideration given to current market conditions. Self-insurers with a high risk of multiple injury from a single occurrence may be required to maintain higher levels of specific reinsurance.

b. A waiver of the reinsurance requirement may be granted by the Superintendent after written request from the self-insurer. The Superintendent will notify the Maine Self-Insurance Guarantee Association of any waiver of specific or aggregate reinsurance.

c. No specific or aggregate reinsurance may be required of any individual public employer who is self-insured and has a state-assessed valuation equal to or in excess of $300,000,000 and either a net worth equal to or in excess of $25,000,000 or a bond rating equal to or in excess of the 2nd highest standard as set by a national bond rating organization, provided that, if the self-insurer relying on a bond rating is county, city or town, it shall value or cause to be valued its unpaid workers' compensation claims pursuant to sound accepted actuarial principles. This value must be incorporated in the annual audit of the county, city or town together with disclosure of funds appropriated to discharge incurred claims expenses.

**H. Servicing Requirements*.***

1. **Competent Service Providers Required.** Each self-insurer must provide proof of its ability to operate a program of self-insurance, either through in-house capabilities or by retaining service companies. The self-insurer must utilize competent persons to service its program in the areas of loss control, safety engineering services, underwriting, and administration.

a. Each contract with a service company must be filed with the Superintendent if requested. With prior consent of the self-insurer, the Superintendent may contact servicing companies directly for information regarding the self-insured plan. Each self-insurer electing to change service agents must file information regarding the new plan with the Superintendent which describes how the transition will take place thirty (30) days in advance of the proposed change.

b. Each self-insurer must set forth a safety engineering plan, which describes the range of services and the schedule upon which services will be delivered either through in-house services or by contracting with a third party. Every contract entered into by a self-insurer with a service agent for safety engineering service, must contain a provision requiring the provider of the safety engineering services to file a report annually with the self-insurer that describes the effectiveness of the program. This report need not be automatically filed with the Superintendent, but must be made available to the Superintendent upon request.

c. Each self-insurer shall utilize one or more claims adjusters licensed in Maine empowered to investigate claims, sign agreements for the payment of compensation, and issue drafts or checks in payment of obligations under the Act. Every contract entered into by a self-insurer with an adjuster must contain a provision requiring the adjuster to file with the self-insurer a report of the status of outstanding claims files activity not less frequently than quarterly or more frequently as otherwise requested by the self-insurer or the Superintendent.

 i. The Superintendent may hold a hearing to determine whether a self-insurer or its service agent has engaged in improper claims handling activities. Repeated and unreasonable controverting of claims or other improper claims handling shall constitute grounds for revocation or non-renewal of authorization to self-insure.

d. Each self-insurer which contracts with an individual or entity for the purpose of receiving or collecting charges, contributions or premiums must contract only with a person licensed as a third party administrator pursuant to Title 24-A M.R.S.A. Chapter 18, unless that person is exempted from license requirements pursuant to Title 24-A M.R.S.A. § 1901(1).

**I. Records Retention.**  Each self-insurer must maintain copies of all records sufficient in type and quantity to verify the accuracy and completeness of all reports and documents submitted to the Superintendent or otherwise required by law or rule. A self-insurer's records or records held by its service agents must be open to inspection by representatives of the Superintendent during regular business hours and must be produced within 14 days from a written request of the Superintendent. All records shall be retained for periods of time sufficient to ensure their availability for audit purposes. All payroll records, including audits, shall be kept for a minimum of six (6) years. Claim records must be kept a minimum of six (6) years after the date the claim is closed.

**J. Confidentiality of Filings*.*** All applications and reports filed with the Superintendent in connection with a self-insured plan are confidential to the extent prescribed in Title 39-A M.R.S.A. § 403 (15). This paragraph is not intended to limit the Superintendent's ability to obtain information which is relevant to the performance of self-insurance regulatory responsibilities. All required reports submitted by a service company for any self-insurer it services shall be treated as if they are submitted by the self-insurer directly.

**K. Interim Reports.**

1. **Interim financial statements**. Interim financial statements may be required by the Superintendent at the end of any monthly or quarterly fiscal period whenever the Superintendent believes there has been a deterioration in financial condition of the self-insurer which adversely affects the self-insurer’s ability to pay obligations under the act.

2. **Payroll Audit**. An audit of the payroll of the employer may be required by the Superintendent within 120 days following the close of the plan year. If required, the audit must be performed by an organization which is qualified to perform these services and which is acceptable to the Superintendent. This audit must verify that the payrolls are reported in the proper amounts and are in the proper rate classifications.

3. **Actuarial Review**. An actuarial review of the reserves and liabilities of a self-insurer may be required by the Superintendent when necessary.

4**. Renewal Filings**. Any reports, audits, or other filings required to be filed with a renewal application may be filed earlier when available.

**L. Requests for Extension of Time for Filings.** If a self-insurer requires additional time to file a required report, a request for an extension of time for filing must be made in writing by the self-insurer or its service company no later than five (5) working days prior to the filing deadline. Extensions, if granted, shall be in writing with notice mailed to the self-insurer and any service company authorized to file reports respecting the self-insurer. Such extension will establish a new onetime due date.

**M. Reportable Events.** A self-insurer must report the occurrence of events as required by this subsection.

1.**Forty-five Days Advance Notice Required.** In order for the Superintendent to make a determination as to whether the occurrence of an event results in a termination of an individual employer’s self-insured plan or results in a need for modification of the terms and conditions of the plan, an approved self-insurer must report any of the following events to the Superintendent at least 45 days in advance of the event’s occurrence, if known, or no later than 10 days after the event’s occurrence, if not known in advance:

a. the sale of 20 % or more of the common stock or net assets of the self-insurer;

b a division of the business;

c. a spin-off of the business;

d. a leveraged buyout of the business;

e. a reorganization of the business;

f. a change in legal entity;

g. an acquisition by or merger of the business with another entity;

h. a significant change in a partnership agreement;

i. a change in the membership or managers of a limited liability company;

j. dissolution of a partnership or a limited liability company;

k. cessation of business in the State;

l. any other event affecting the ownership of the business or the structure of the business as identified in rules adopted by the Superintendent; or

m. the self-insurer has become the subject of a bankruptcy, receivership, or an arrangement for the benefit of creditors.

2. **Thirty Days Advance Notice Required.** Whenever any of the following events will occur, the self-insurer must notify the Superintendent thirty (30) days in advance of the occurrence of the event:

 a. Any change in servicing agents; and

b. Any proposed change in the approved reinsurance program, including, but not limited to, retention or attachment point, limits of coverage, carrier, policy forms, or endorsements. Notice must also be given to the Maine Self-Insurance Guarantee Association, if the self-insurer is required to be a member.

3. **Notice Required Within Ten Days of the Event.** Whenever any of the following events occur the self-insurer must notify the Superintendent within ten (10) days of the occurrence of the event:

a. Expanded operations where payrolls and exposures were increased twenty (20) or more percent when compared to the most recent information used for calculating security;

b. The self-insurer's bond obligations are downgraded below investment grade as assigned by a national bond rating agency;

c. Revocation or suspension of self-insurance license or authority in another jurisdiction;

d. Changes in the names and addresses of the self-insurer, guarantor, or parent corporation; and

e. Changes in officers or directors of the self-insurer, guarantor, or parent corporation.

4 . **Penalty for Failure to Notify.** If at any time the Superintendent determines that a self-insurer has failed to notify the Superintendent of the occurrence of any of the events identified in this subsection, the self-insurer may be subject to penalties pursuant to Title 24-A, section 12-A if it is determined by the Superintendent that the occurrence of the event had a substantial negative impact on the financial condition of the employer. As soon as the Superintendent notifies the self-insurer that the Superintendent has determined that the self-insurer failed to notify the Superintendent of the occurrence of any of these events, the self-insurer must comply with this subsection and any other applicable laws or rules.

**N. Termination of Self-Insurance Option-Application for Continuing Authority.** A self-insurance plan may be terminated in the following ways: voluntary termination, termination as a result of the occurrence of a reportable event, non-renewal by the Superintendent, or revocation by the Superintendent. A self-insurer may apply for continuing self-insurance authority if a reportable event occurs that would otherwise result in termination of the plan.

1. **Voluntary Termination**. If a self-insured employer elects to terminate its self-insurance program or a portion of its program, it must submit written notice and a written termination plan to the Superintendent of Insurance at least 30 days in advance of the proposed termination date. In the event that a self-insurer elects to terminate its approval in this State without filing a plan acceptable to the Superintendent, the Superintendent shall issue an order prescribing the terms and conditions of the termination.

2. **Termination Due to Occurrence of an Event; Application for Continuing Authority.** Upon the occurrence of an event in subsection M, the Superintendent must make a determination as to whether the self-insurance plan terminates. A self-insurer may make application for continuing authority to self-insure subject to the requirements of this subsection. In order to qualify to file for continuing self-insurance authority, a successor employer must assume 100% of the liabilities of the predecessor self-insured employer and must show that the business in the State remains substantially the same. The Superintendent may make a determination that an employer’s authority to self-insure has terminated in accordance with this subsection or may grant approval of an application for continuing self-insurance authority. For the purposes of this subsection, an employer includes a successor employer assuming all workers’ compensation liabilities of an approved self-insured employer as a result of the occurrence of one of the events in paragraph A.

a. Notwithstanding any other provision of this Section, an employer and any successor employer that elects to apply to continue to self-insure must notify the Superintendent 45 days in advance of the event’s occurrence and must file a notice of intent to continue to self-insure and an application for continuing authority to self-insurer with the Superintendent 30 days in advance of the event’s occurrence. At the discretion of the Superintendent, and if good cause is shown, an employer may submit an application to continue to self-insurer less than 30 days in advance of the event’s occurrence.

b. Within 7 days of receipt by the Superintendent of the application to continue to self-insurer, the employer and any successor employer must provide all information requested by the Superintendent to allow the Superintendent to make a determination under this subsection, including the application fee as required in Title 24-A, section 601. While the application is pending and during the 30-day period following a denial of an application for continuing self-insurance authority, the employer and any successor employer must maintain the security and reinsurance as required by the employer's certificate of authority, must continue to comply with all other provisions of the employer's certificate of authority and must provide any additional security determined by the Superintendent to be necessary under the circumstance. While the application is pending, the self-insurance authority of the employer continues consistent with the terms and conditions of the employer's certificate of authority. Failure to provide information when requested by the Superintendent and failure to comply with the terms and conditions of the employer’s certificate of authority or with any additional conditions prescribed by the Superintendent will result in automatic termination of the employer's authority to self-insure and the issuance of an order by the Superintendent that prescribes the terms and conditions of a termination plan.

c. The Superintendent shall notify the employer in writing within 30 days of receipt of all requested information whether the employer's application for continuing self-insurance authority is approved or denied. The superintendent's notice must specify the reasons for the denial or must specify the terms and conditions for continuing self-insurance authority as prescribed by this section and any rules adopted by the Superintendent. In the superintendent’s determination*,* the Superintendent must consider, among other things, whether the successor employer has assumed 100% of the workers' compensation liabilities of the employer, whether the successor employer qualifies for self-insurance authority pursuant to subsection II, and whether the successor employer maintains substantially the same business operations as the predecessor self-insured employer. The Superintendent may also consider, among other things, whether the successor employer employs substantially the same number of employees as the predecessor employer.

d. If the Superintendent denies the application, the effective date of the termination is 30 days from the date of the superintendent's notice, unless stayed by order of the Superintendent. The self-insurer may request a hearing on this decision within 30 days from the date of the notice, but there is no automatic stay of the superintendent's decision. Prior to the effective date of the termination, the employer must file a termination plan consistent with this subsection. A successor employer that does not qualify for continuing self-insurance authority under this subsection may file a new application for authority to self-insure workers' compensation obligations pursuant to the Act and rules adopted by the Superintendent.

3. **Non-renewal of self-insurance authority**. The Superintendent may refuse to renew self-insurance approval for any reason listed in Title 39-A M.R.S.A. § 403(6) or 403(13). Any self-insurer non-renewed by the Superintendent may request a hearing pursuant to Title 24-A M.R.S.A. § 229. Any Non-Renewal Order issued by the Superintendent will prescribe terms and conditions of a termination plan.

4. **Revocation of self-insurance authority**. The Superintendent may revoke self-insurance approval for any reason listed in Title 39-A M.R.S.A. § 403(6) or 403(13) only after a hearing held in accordance with the requirements of Title 5 M.R.S.A. Chapter 375 Subchapter IV and Title 24-A .M.R.S.A. Chapter 3. Any Revocation Order issued by the Superintendent will prescribe terms and conditions of a termination plan.

5. **Enforcement of Superintendent’s Order.**  Any order issued pursuant to this subsection, including an order directing a self-insurer to produce relevant information, may be enforced as provided by Title 24-A, section 214.

6. **Termination Plan.** A termination plan must include the following provisions:

a. A description of the proposed type of security to be posted for the purpose of discharging claims liabilities and other obligations under the Workers' Compensation Act including an agreement that the security must be maintained until all claims are paid and that the amount is subject to adjustment by the Superintendent, not less frequently than annually, based upon actuarial review.

b. If a Trust Fund is to be utilized for security, a plan which makes provision for i.) payment of fees and related expenses for claims adjustment, including defense attorney fees, other attorney fees as may be required by law, and such other incidental costs and expenses as may be necessary to administer and operate the Trust Fund; and ii.) payment to the Bank Trustee of such reasonable expenses as approved by the Superintendent and as agreed upon in writing by the self-insurer and the Bank Trustee, including, but not limited to, counsel, actuarial and accounting fees incurred by the Bank Trustee in the administration of the Trust Fund until such time as all obligations of the self-insurer under the Workers' Compensation Act are paid in full.

c. A plan identifying how claims administration will be handled and an agreement that the self-insurer is under a continuing obligation to notify the Superintendent of any changes in contracts with service agents. The plan may include a proposal to contract with a third party administrator licensed in the State of Maine for the purpose of handling the administration of all claims and must include the name of the Maine licensed claims adjuster who will be adjusting the claims. The plan must describe the procedure in place that will assure the payment of claims obligations including identification of specific time periods for which claims handling administration is being delegated.

d. An agreement that the self-insurer will provide the following when required by the Superintendent:

i. An actuarial review of estimated outstanding loss and loss adjustment expense reserves, evaluated at the ninety percent (90%) confidence level, unless another confidence level is required by the Superintendent, for the self-insured liability period for which the plan is being proposed performed by a qualified actuary and an annual review thereafter;

ii. Complete loss runs for the self-insured period being terminated. The loss runs must show paid and reserved amounts for medical, indemnity and expenses for each policy period including the number of open claims, reopened claims, and closed claims;

iii. The identity and amount of those claims reimbursed by the reinsurer or total expected to be reimbursed;

iv. A list of all open claims for which benefits are being paid; a description of each injury; the current status, including whether contested or uncontested, degree of permanent impairment, and degree of incapacity, of the claim; the current weekly benefit being paid; and the age of the claimant; and

v. The current reserve on each open claim and a description of how the reserve amount was determined.

e. An agreement that the self-insurer will continue to be subject to informational filings respecting financial condition and actuarial evaluations of claims and claim expense reserves and loss transfers when requested by the Superintendent to ensure that claims are adequately secured.

7. **Termination Without Approved Plan.** If the employer attempts to terminate its plan without an approved plan, the Superintendent will issue an order prescribing the terms and conditions of the termination.

**Section III. Group Self-Insurance Plans**.

**A. Eligibility for Self Insurance**. Two or more employers may apply to self-insure by forming a group and proving to the satisfaction of the Superintendent its financial ability to pay compensation for the employers in the group and its revenues, their source and assurance of continuance and by providing the security, as determined by the Superintendent, required under Section III(D). For the purposes of this section, each“employer” is a member.

1. **Initial Member Qualifications.** To qualify initially for self-insurance authority, the group must demonstrate to the satisfaction of the Superintendent, where applicable, that each initial member meets the following conditions, considered in light of the level of retained workers’ compensation losses:

 a. An historical record of profits;

b. An historical record of liquidity;

c. An historical record of adequate working capital;

d. An historical record of an adequate degree of leverage;

e. An historical record of adequate coverage of outstanding debt and related interest expense;

f. An historical record of positive net worth;

g. The level of retained workers' compensation losses

For the purposes of this subsection, adequate means sufficient for the ongoing operation of the group members as evidenced either by a history of ongoing operations or equivalence to similar businesses that have operated viably over a comparable period of time.

2. **Considerations for Group Qualification.** In determining whether or not an applicant group qualifies for self-insurance authority and in determining the amount of security required, the Superintendent must consider, where applicable, the following:

a. The relative strength of the employer and overall financial strengths or weaknesses compared to employers in the same industry. This analysis includes a comparison of the applicant company with data for the relevant industry in which the company operates. The industry data may be based on a broad industry category, such as manufacturing, or a more narrow category, such as fabricated metal manufacturing, depending on the facts and circumstances of a particular company and within the available resources for such industry data; and

b. The absolute levels, and the recent changes in these levels, of sales, net income, tangible net worth, working capital, and cash flows from operations and other conditions of the initial member employers.

3. **Considerations for Member Application.** In reviewing a member's application for participation in a group self-insurance program, the Superintendent may consider ratios and financial factors, including, but not limited to, the following:

a. Current assets to current liabilities;

b. Quick assets to current liabilities;

c. Sales to working capital;

d. Net income to total assets;

e. Earnings before taxes to total assets;

f. Net income to net sales;

g. Earnings before interest and taxes to interest expense;

h. Tangible net worth to self-insured retention;

i*.*  Cash flow from operations;

j. Tangible net worth; and

k. Sales and net income.

4. **Discretionary Considerations.** In reviewing the member's and group's application for participation in a group self-insurance program and in determining security, the Superintendent may also consider the following:

a. Source and reliability of financial information;

b. Organizational structure;

c. Workers' compensation loss history for most recent five (5) years;

d. Intrastate experience modification rating factor;

e. Number of employees;

f. Payroll by workers' compensation class for most recent three (3) years;

g. Payroll by workers' compensation class for the prospective year;

h. Reinsurance program; and

i. Other relevant factors depending on the facts and circumstances of the applicant employers.

5. **Public and nonprofit Members.**  In determining self-insurance eligibility for public and nonprofit employers, only those ratios and standards relevant to those employers will be applied.

**B. Initial Application**. The group of employers must file a complete group application on a form prescribed by the Superintendent and pay the appropriate application fee. Each member of the group must file a complete member application. Each application must contain complete responses to all questions and be signed by an officer, director, or trustee authorized to sign. The Superintendent must approve or deny the application within ninety (90) days after the application is deemed complete. An application will not be considered complete until all requested data has been filed. The Superintendent must determine whether an initial filing is complete within thirty (30) days of its receipt and advise the applicant of the information needed to make the application complete. The applicant must provide the necessary information within thirty (30) days from the notification or the application will be considered withdrawn, unless the applicant notifies the Superintendent in writing of the need for additional time to provide the information. Upon approval, the Superintendent shall issue a written certificate of authorization for a period not to exceed one (1) year. Upon denial of a group or any member, the Superintendent shall issue a written notice identifying the reasons for the denial.

1. **Additional Filings Required.** In addition to the completed application form, the initial application, as submitted by the governing body of the group, must include the following for the group as a whole:

a. A copy of the bylaws and other governance documents of the proposed program;

b. Evidence of the financial ability of the group to meet its obligations under the Act including a pro forma statement of operations for the group's initial year of operations;

c. A distribution of all projected administrative costs by class of expense for the upcoming fund year stated in dollar amount and as a proportion of projected premium income;

d. A composite listing of the estimated standard premium to be developed for each member individually and in total for the group. Such premium for the initial year must at least equal four times all expenses other than retained loss and loss adjustment expenses;

e. A description of proposed specific and aggregate reinsurance;

f. Copies of binders or cover notes evidencing effective specific and aggregate reinsurance, or a request for a waiver of the requirement with a justification. Each final reinsurance contract must be filed within ninety (90) days of the effective date of the contract;

g. Designation of the initial governing body, including any officers, directors, trustees, general managers, or administrators, and a narrative description any responsibilities of the governing body which are delegated to an administrator, manager or other service agent. The duties of the governing body must be delineated and must include responsibility for approving applications of new members to the group and expelling members not in conformity with the group bylaws or other governing policies, or Title 39-A M.R.S.A. A majority of the officers, directors, and the governing body must be members of the group self-insurer;

h. Acceptable standards for the approval of new members and the group as a whole which must include financial and underwriting criteria for new and continuing members;

i. Proof of a fidelity bond adequate to protect the interests of any required funds, in a form and amount acceptable to the Superintendent, covering any person who will have access to the funds, who is not otherwise licensed pursuant to Title 24-A M.R.S.A.;

j. Proof of adequate facilities and competent personnel to service its program in compliance with Section III(H) and a description of the safety plan maintained by the group for the prevention of injuries;

k. The name and license number of the adjuster or adjusters, licensed in Maine, who will be adjusting claims;

l. Proof of required security after determined by the Superintendent pursuant to Section III(D), on the Superintendent’s prescribed forms, and proof that any financial institution issuing an irrevocable standby letter of credit meets the requirements of Section III(D)(7);

m. An actuarial review and proposed funding model for the prospective fund year;

n. A current valuation of each security which is posted as part of a security deposit; and

o. Proof that the person signing the application has authority to do so.

2. **Additional Member Filings Required.** The initial application, as submitted by each initial member, must include the following:

a. Audited or reviewed financial statements for the most recently completed fiscal year and for each of the two (2) immediately preceding fiscal year;

b. Payroll data for each of the three (3) preceding years by risk classification based on the classification plan of the principal advisory organization licensed in the State of Maine;

c. The intrastate experience modification rating factor and supporting worksheets as determined by the principal workers' compensation advisory organization in this state and approved by the Superintendent. The intrastate experience modification rating factor must be determined annually on an intrastate basis on the same basis as if the employer was insured;

d. An executed indemnity agreement; and

e. Proof that the person signing the application has authority to do so.

3. **Discretionary Filings.** The Superintendent may request the following when needed:

a. If a publicly-traded company, a form 10-Q;

b. Audited or reviewed financial statements for a five (5) year period;

c. A resume of professional qualifications for each member of the Governing Body; and

d. Any other agreements, contracts, or pertinent documents relating to the organization of the employers in the group.

4. **Employer Qualifying with guarantee.** A member seeking approval on the basis of a guarantee from a parent or affiliate must submit documents for both the applicant member and the guarantor. In the case where more than one subsidiary is applying based on a guarantee from the same parent, the parent need not make duplicate filings of information.

5. **Financial Statement Review.** All financial statement presentations must be prepared in such detail as to facilitate the ratio analyses. In undertaking its review of the application, the Superintendent, with approval from the applicant, may contact individuals who have prepared, compiled, or submitted materials which are part of the application.

**C. Annual Renewal Application**. Group self-insurers must make a complete application for renewal of authorization to self-insure to the Superintendent on a form prescribed by the Superintendent, and pay the appropriate renewal fee, not less than twenty-one (21) days prior to the self-insurer’s renewal date, except that evidence of reinsurance coverage may be submitted up to three (3) working days prior to renewal. An application will not be considered complete until all requested data has been filed. The application may be filed sixty (60) days in advance of the renewal date to allow for a determination of completeness. In that case, the Superintendent will notify the applicant within thirty (30) days of any deficiencies in the application. The application must contain complete responses to all questions and must be signed by an authorized officer of the employer. If the application shows that the group self-insurer continues to meet the qualifications to self-insure, the Superintendent will issue a written certificate of authorization.

1. **Additional Filing Requirements.** In addition to the renewal application form, a renewal application for a group self-insurer must include the following:

a. Summary loss reports for the complete period of self-insurance, including (i) losses, by accident year, separately displayed for medical, indemnity and claim expense, for each self-insured plan year; and (ii) losses separately displayed as to paid amounts and reserve amounts;

b. If the applicant secures, or proposes to secure, its program by using an actuarially determined fully funded trust to satisfy any or all of the required security amount, a complete and final actuarial review, which values losses at the required confidence levels for all completed plan years and values the current year losses based on not less than eight (8) months of claims experience, except for groups in continuous operation for three (3) or more years at renewal, not less than six (6) months of claims experience, a proposed funding schedule, and the identity of any reduction in funding or transfer of surplus among complete plan years, if applicable;

c. Current intrastate experience modification rating factor. The group self-insurer may request, and the Superintendent will accept, a calculation of the experience rating directly from a qualified third party;

d. The reinsurance contract, binder or cover note from the insurer, or a request for a waiver with justification;

e. A current valuation of each security which is posted as part of a security deposit with the State Treasurer;

f. A report of the results of application of the group financial and underwriting criteria as approved by the Superintendent;

g. A rating plan for the group;

h. Proof that any financial institution issuing an irrevocable standby letter of credit meets the requirements of Section III(D)(7).

i. Any other materials requested in advance by the Superintendent or required as a condition of the certificate of authority.

**D. Security.**  A group self-insurer must provide security either by depositing with the State Treasurer through the Workers' Compensation Board, on or before the date of operation of its plan of self-insurance, funds as permitted under Title 39-A M.R.S.A. § 403(9) or a surety bond, or by establishing an actuarially determined fully funded trust with an approved trustee bank. A group self-insurer may select the type of security if approved by the Superintendent. After a self-insurance plan has been approved, a group self-insurer may modify the method of providing security only after written approval by the Superintendent.

1. **Basis for Security Amount.** For a group self-insurer, the amount of security will be determined based upon an actuarial review. The self-insurer must provide the actuary with complete and accurate information necessary for completion of the actuarial review. If the Superintendent determines that the group self-insurer has experienced a deterioration in financial condition that adversely affects the self-insurer's ability to pay obligations under the Act, the security amount may be in excess of the amount in the actuarial review.

2. **Funding**. Initial funding for each group plan year must be maintained at the 90th or higher confidence level. Funding after the completion of the initial plan year may be established no lower than the seventy-five percent (75%) confidence level provided that a year considered for reduction is completed, and the supporting actuarial review includes an evaluation of the completed year experience with claims evaluated not less than six (6) months from the end of the plan year, or in the case of a group self-insurer in existence for at least thirty-six (36) months, not less than four (4) months from the end of the plan year. For the purposes of determining the confidence level, all completed years at the same confidence level may be aggregated.

a. **Funding after five (5) years**. Depending upon the financial condition of the group self-insurer, and if approved by the Superintendent, a self-insurer that has maintained an actuarially determined fully funded trust for a period of five (5) or more consecutive years may fund all years, including the prospective fund year, in the aggregate at the seventy-five percent (75%) or higher confidence level.

b. **Funding Schedule for Trust**. For group self-insurers utilizing an actuarially determined fully funded trust, twenty-five percent (25%) of the required funding amount must be deposited upon the first day of approval for a new plan. The remaining balance, adjusted for discounting, must be deposited either over eleven (11) equal monthly payments due on the first of each month following the initial deposit or at a minimum distributed pro rata throughout the year, unless another payment plan is approved by the Superintendent. After the initial authorization the funding schedule may be deposited pro-rata throughout the year, unless another schedule has been approved by the Superintendent.

c. **Application of funds to discharge obligations**. Funds required to discharge obligations under the Act as they become due may be applied from trust assets if appropriately authorized by an authorized officer of the governing body of the group self-insurer or in the case of a group self-insurer which has filed for bankruptcy, by the Workers' Compensation Board.

d. **Funding of a deficit**. Knowledge by the self-insurer, or notice by the Superintendent, of a shortfall below the confidence level for all years as required and approved by the Superintendent must be funded within sixty (60) days.

3. **Deposit**. Funds held by the Treasurer of State as a security deposit shall be accompanied by appropriate legal instruments to effectively assign right, title and interest in such assets to the Treasurer solely for the purpose of meeting obligations incurred under the Act on forms approved by the Superintendent.

a. Each security held by the Treasurer as part of a security deposit shall be valued at market value. If market value for a security accepted for deposit is not readily available, the Superintendent shall assign a value. In the event market value is less than the required deposit value as of the date of valuation, the Superintendent may require that additional securities or other assets be posted by the self-insurer. If at any time the market value exceeds deposit value, the self-insurer may recover the excess value by the substitution of acceptable securities or other acceptable assets of a value not less in the aggregate than the amount of the required deposit.

b. Securities held by the Treasurer of State may be exchanged or replaced by the depositor with other qualifying securities of a current market value which is equal to or greater than the deposit value as long as the self-insurer is solvent and not in bankruptcy.

c. If a security held by the Treasurer no longer meets the requirements of Title 39-A M.R.S.A. § 403(9), the self-insurer shall notify the Superintendent within ten (10) days from the date the self-insurer had knowledge that the security no longer meets the requirements, and shall provide substitute deposit funds.

d. No release shall be effectuated under any circumstances until replacement securities or bonds approved by the Superintendent have been substituted.

4. **Surety Bond**. The surety bond must be issued on the form prescribed by the Superintendent by a licensed surety company which is authorized by the Superintendent to transact surety business in the State of Maine. Any surety bond may be replaced by a self-insurer with another surety bond which meets the requirements of law and this rule after a forty-five (45) day notice to the Superintendent and the Workers' Compensation Board and after approval by the Superintendent. The forty-five (45) day notice requirement may be waived only with written consent of the Superintendent.

5 . **Actuarially Determined Fully Funded Trust**. A trust must be established by utilizing forms prescribed by the Superintendent. Assets used to fund the trust shall comply with relevant requirements of Section III(F). An irrevocable standby letter of credit may be utilized by a group self-insurer that maintains a trust account actuarially funded to the confidence level required by the Superintendent as follows: only in an amount not greater than the difference between the funding to the required confidence level and funding to the confidence level reduced by 10 percentage points; only as long as the trust assets are not used as collateral for the letter of credit; and only as long as the value of trust assets, excluding the value of the letter of credit, are at least equal to the present value of ultimate expected incurred claims, claims settlement costs and, if determined necessary by the Superintendent, administrative costs. Obligations secured by a letter of credit must be on an undiscounted basis. The letter of credit must be on a form approved by the Superintendent and must be issued by a qualified financial institution. The form must include all provisions required by the Act, a provision that requires the financial institution to notify the Superintendent of any supervisory agreement with its primary bank regulator or of any regulatory action taken against it which results in an adverse impact on its financial condition, a provision that contemplates that the letter of credit may be called by the Superintendent if not renewed by the financial institution or self-insurer, and a provision confirming the interest of the State of Maine in proceeds upon call. A qualified financial institution is one that at all times, meets the following qualifications:

a*.* Is organized, or in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers;

b. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and

c. Maintains a long-term unsecured debt rating of at least A with either Moody's Investors Service, Inc. or Standards and Poor's Corporation or with commercial paper within the 3 highest short-term rating categories established by Moody’s Investors Service, Inc. or Standard and Poor’s Corporation.

**E. Request to Reduce Funding and Declaration and Release of Surplus from an Actuarially Determined Fully Funded Trust**.

1. **Determination of surplus funds.** For the purpose of determining whether an actuarially determined fully funded trust has a surplus of funds in excess of that required by the Act and this Rule, the Superintendent shall consider, based upon the group’s audit for all completed years, only the following assets held outside the trust account: cash up to $10,000; accounts receivable, limited to amounts collected and deposited in the trust account by the date of the surplus distribution; accrued interest on trust account assets that will be collected and deposited in the trust account within 6 months from the date of the surplus determination; tangible assets that will be converted to cash and deposited in the trust account prior to the distribution date of any surplus; and a letter of credit to be used to partially fund the trust to the extent allowed under the Act and this Rule, as supported in the actuarial review. The Superintendent will consider cash held outside the trust account in excess of $10,000 if the self-insurer provides, to the superintendent's satisfaction documentation regarding why the money is being held outside the trust account. If reserves are valued as of a date subsequent to the date of the group’s most recent audit, reserves shall be reconciled to the audit date.

2. **Request to Reduce Funding Included with a Renewal Application.** While a renewal application is pending, funding must continue based on the higher of the previous year's funding schedule or the funding proposal in the actuarial report. However, if the group self-insurer has filed a timely application and has been notified by the Superintendent that the renewal application is complete, funding may be reduced to conform to the funding proposal in the actuarial report on the renewal date if the Superintendent has not notified the self-insurer that a request to reduce funding has been denied. Any funding schedule modified pursuant to this paragraph without written approval by the Superintendent is subject to adjustment after review and notice by the Superintendent.

3. **Declaration or distribution of surplus.** The governing body of a group self-insurer may at any time declare a surplus of funds above the required confidence level, but may only release funds or transfer funds among completed plan years after the completion of any plan year. The Superintendent may request information regarding any such declaration. Any distribution of surplus, including transfers of funds among completed plan years, must be based upon an actuarial review of all outstanding obligations for all completed plan years, an audited financial statement of the group for completed plan years, and a surplus distribution worksheet for all completed plan years on a form approved by the Superintendent. If the distribution is made more than six (6) months after the fiscal year audited and if either the valuation or trust assets date elected by the group is later than the closing date of the last fiscal year audited, the group self-insurer must file quarterly financial statements, or other reliable financial information relevant to changes since the audit. The group self-insurer must provide the required information within 10 days after the distribution or transfer. Any surplus declared, transferred or distributed pursuant to this paragraph is subject to adjustment after review by the Superintendent within 60 days of the receipt of the required information. Any deficit below the required confidence level, as determined by the Superintendent, that results from a distribution under this paragraph must be funded within 45 days from the date of the notice by the Superintendent.

4. **Termination of Membership.** If a member leaves a group for any reason whatsoever, that member shall fund the member’s proportionate share of the group's liabilities and obligations of the program to the 95th confidence level. The proportionate share shall be measured based on that member's standard premium as compared to the entire group's standard premium. For each year, or portion thereof, that the departing member participated in the group, the percentage of that member's standard premium bears to the entire standard premium of the group shall be calculated. The sum of these values for all years is the required additional security for the departing member. If for any reason the departing member fails to fund the member's proportionate share of the trust's exposure to the 95th confidence level, then the remaining members of the group shall make the additional contribution no later than the anniversary date of the program as required to fund the departing member's exposure in accordance with this provision.

5. **Default of Group Self-Insurer.**  In case of any default of a group self-insurer, the Workers' Compensation Board, with advice and approval of the Superintendent, may sell securities or collect such amounts adequate to pay benefits and compensation awarded. “Default”, under this section, means the failure to make timely payments of any awards or other disbursements required pursuant to the Act or the self-insurer's bankruptcy, receivership, or any arrangement for the benefit of its creditors.

**F. Qualifying Trust Assets and Deposit Funds**.

1. **Acceptable Assets.** The assets acceptable to the Superintendent to fund an actuarially determined fully funded trust or security deposit shall conform to the requirements of Title 39-A M.R.S.A. § 403(9).

2. **Exceptions.** Exceptions to the requirements of § 403(9) of the Act will be considered upon submission of a written proposal at least sixty (60) days prior to the desired implementation date. Approval must be granted by the Superintendent before implementation.

3. **Diversification Required.** Investments must be diversified in a prudent manner to ensure that funds are maintained at a sufficient level to discharge workers’ compensation obligations incurred by the employer pursuant to this Title as those obligations become due and payable.

**G. Reinsurance Contracts and Standards***.*

 1. **Reinsurance Contracts.**

a. In order to qualify as a reinsurer pursuant to Title 39-A M.R.S.A. § 403(11) for the purposes of assuming reinsurance from a workers' compensation self-insurer, an insurer or reinsurer must be approved by the Superintendent pursuant to Rule Chapter 730.

b. In addition to the requirements of Rule Chapter 730 and any other requirement applicable to reinsurance contracts imposed by law or rule, no contract or policy of reinsurance shall be recognized by the Superintendent in considering the ability of a group self-insurer to fulfill its financial obligations under the Workers' Compensation Act unless such contract or policy:

i. Is not cancelable except upon at least sixty (60) days written notice by registered or certified mail to the insured and to the Superintendent;

ii. Is automatically renewable at the expiration of the policy period unless written notice of intent to nonrenew is given to the insured and the Superintendent at least sixty (60) days prior to such expiration by registered or certified mail;

iii. Provides, if it contains any type of commutation clause, (1) that any commutation effected thereunder shall not relieve the reinsurer of further liability with respect to claims and expenses unknown at the time of such commutation or in regard to claims apparently closed but which may be subsequently revived by or through a competent authority or a court, and (2) that in the event the reinsurer proposes to redeem any future undischarged obligations payable as compensation for injuries occurring during the term of the policy by the payment of a lump sum or other settlement to be fixed pursuant to the commutation clause of the policy, such commutation is to comply with the applicable requirements of the Workers' Compensation Board, pursuant to Section 352 of the Act;

iv. Contains a provision that, in the event of default in the timely payment of claims by the self-insurer, the reinsurer will continue to provide information to the Superintendent, a bank trustee, the Treasurer of Maine, any trustee in bankruptcy or to any statutory successor which has responsibility as a guarantor of the self-insurer's obligations and will provide, directly or through a service agent, timely claims settlement services; and

v. Names the Maine Self-Insurance Guaranty Association as a coinsured if required by law.

c. Only members of a group self-insurer may be covered by any contract or policy of reinsurance.

2. **Reinsurance Standards.**

a. Specific and aggregate reinsurance. The amount of reinsurance required will be determined by the Superintendent based upon the group self-insurer's tangible net worth, financial condition and exposure to loss with consideration given to current market conditions. Group self-insurers with a high risk of multiple injury from a single occurrence may be required to maintain higher levels of specific reinsurance.

b. A waiver of the reinsurance requirement may be granted by the Superintendent after written request from the group self-insurer with justification. The Superintendent will notify the Maine Self-Insurance Guarantee Association of any waiver of specific or aggregate reinsurance.

**H. Servicing Requirements**.

1. **Competent Service Providers Required.** Each group self-insurer must provide proof of its ability to operate a plan of self-insurance, either through in-house capabilities or by retaining service companies. The group self-insurer must utilize competent persons to service its program in the areas of loss control, safety engineering services, underwriting, and administration.

2. **Contracts and Communications with Service Providers.**  Each contract with a service company must be filed with the Superintendent if requested. With prior consent of the self-insurer, the Superintendent may contact servicing companies directly for information regarding the self-insured plan. Each group self-insurer electing to change service agents must file information regarding the new plan with the Superintendent which describes how the transition will take place thirty (30) days in advance of the proposed change.

3. **Safety Engineering**. Each group self-insurer must set forth a safety engineering plan which describes the range of services and the schedule upon which services will be delivered. Every contract entered into by a group self-insurer with a service agent for safety engineering service, must contain a provision requiring the safety engineering services to file a report annually with the self-insurer that describes the effectiveness of the program. This report need not be automatically filed with the Superintendent, but must be made available to the Superintendent upon request.

4. **Claims Handling**. Each group self-insurer shall utilize one or more licensed claims adjusters empowered to investigate claims, sign agreements for the payment of compensation, and issue drafts or checks in payment of obligations under the Act. Every contract entered into by a group self-insurer with an adjuster must contain a provision requiring the adjuster to file with the group self-insurer a report of the status of outstanding claims files activity not less frequently than quarterly or more frequently as otherwise requested by the self-insurer or the Superintendent.

a. The Superintendent may hold a hearing to determine whether a group self-insurer or its service agent has engaged in improper claims handling activities. Repeated and unreasonable controverting of claims or other improper claims handling shall constitute grounds for revocation or non-renewal of authorization to self-insure.

5. **Third Party Administrators**. Each group self-insurer utilizing an individual or entity for the purpose of receiving or collecting charges, contributions or premiums must contract only with a person licensed as a third party administrator pursuant to Title 24-A M.R.S.A. Chapter 18, unless that person is exempted from license requirements pursuant to Title 24-A M.R.S.A. § 1901(1).

**I. Records Retention**.

1. **Maintenance of Records.**  Each group self-insurer must maintain copies of all records sufficient in type and quantity to verify the accuracy and completeness of all reports and documents submitted to the Superintendent or otherwise required by law or rule. The following documents must be maintained and made available for examination by the Superintendent within 14 days from a written request:

a. Supporting worksheets for the current intrastate experience modification rating factor for each member;

b. Service agreements;

c. Payrolls for the most recently completed year and projections for the upcoming year by workers' compensation classification code for each member and for the group and evidence of a payroll audit, completed within 120 days of the close of the plan year;

d. Copies of all approved minutes of Governing Body's minutes;

e. Records of compliance with the group's investment policy, which should include the following: the overall goal of the investment policy; the objectives for at least the areas of liquidity, return, risk, maturity and investment mix; specific guidelines that address the issues in the objectives; and other appropriate matters, such as investment decision responsibilities and communication of loss payment patterns and other relevant instructions to the Trustee Bank. The following example of an investment policy meets the requirements of this paragraph:

*Investment policy*

*Goal:*

*To invest the funds collected as premium and other contributions to the trust so that the assets deposited in the trust together with the earnings thereon shall be sufficient to meet all the obligations of the approved self-insurer under the Act and/or assumed under a self-insurance plan.*

*Objectives:*

*Liquidity - To provide the liquidity needed to pay when due, all of the obligations required or authorized by law and/or assumed under a self-insured plan.*

*Return - To maximize the return on investments within the constraints of the liquidity, risk and maturity objectives.*

*Risk - To provide an acceptable level of financial risk to which trust assets are exposed within the constraints of the liquidity, return and maturity objectives.*

*Maturity - The maximum maturity of any individual investment in the portfolio shall be ten (10) years. The maximum maturity of any individual investment may be fifteen (15) years with the prior written approval of the Superintendent and cash flow that is adequate to meet all obligations required or authorized under the Act.*

*Investment Mix - The mix of investments in the portfolio shall limit the use of higher risk investments to a portion of those funds that will not be needed to pay near-term obligations. Investment mix must also consider maturity, portfolio risk, duration and portfolio diversification.*

*Guidelines:*

*Discretion of Trustee Bank. Within the guidelines established by this policy the Trustee Bank will safeguard/protect and invest trust assets in holdings that are allowed under Title 39-A M.R.S.A. or are otherwise approved by the Superintendent. This should include a description of how the fund will provide the Trustee Bank with information to determine appropriate liquidity and maturity requirements.*

*Investment Restrictions. A listing of permitted investments, including any limitations on the portion of the investment portfolio that may be invested in any particular class.*

*Liquidity Requirements. A general description of liquidity requirements.*

*Maturity Restrictions. A listing of maturity restrictions.*

f. All legal documents including bylaws, trust documents, and indemnity agreements;

g. A documented system of accounting and internal control which safeguards program assets and provides for financially sound operation of the program;

h. Member reports on safety and loss control;

i. Verification of computation and collection of premiums, including payroll audits;

j. Member claims reporting records;

k. The group's financial statements;

l. A reconciliation of all bank accounts to trust statements;

m. Records of any funds kept on hand; and

n. A payroll audit for each member as required by section III(K)(2).

2. **Records Open to Inspection; Timing.** A group self-insurer's records or records held by its service agents must be open to inspection by representatives of the Superintendent during regular business hours. All records shall be retained for periods of time sufficient to ensure their availability for audit and review purposes. All payroll records shall be kept for a minimum of six (6) years. Claim records must be kept a minimum of six (6) years after the date the claim is closed.

**J. Confidentiality of Filings*.*** All applications and reports filed with the Superintendent in connection with a self-insured plan are confidential to the extent prescribed in Title 39-A M.R.S.A. § 403(15). This paragraph is not intended to limit the Superintendent's ability to obtain information which is relevant to the performance of self-insurance regulatory responsibilities. All required reports submitted by a service company for any self-insurer it services shall be treated as if they are submitted by the self-insurer directly.

**K. Interim Audits or Reports***.*

1. **Annual Group Financial Statements and Actuarial Review.** Audited financial statements and an actuarial review must be submitted to the Superintendent within six (6) months after the close of the plan year, unless this deadline is extended by the Superintendent.

2. **Payroll Audit.** An audit of the payroll of each member must be performed by an organization which is qualified to perform these services and which is acceptable to the Superintendent, within 120 days following the close of the plan year. This audit must verify that the payrolls are reported in the proper amounts and are in the proper rate classifications.

3. **Payroll and Claims Audits**. Each group self-insurer’s payroll and claims records may be audited at the discretion of the Superintendent, for cause. Audits must be performed by independent accountants, actuaries, claims examiners, payroll auditors, or other appropriate professionals acceptable to the Superintendent. The cost of such audits shall be borne by the party examined. The Superintendent must give thirty (30) days notice prior to the audit, unless, in the opinion of the Superintendent, there has been a change in financial condition of the self-insurer that could impact its claims paying ability. In such a case, the Superintendent may proceed without giving notice.

4. **Actuarial Reviews**. An actuarial review of the reserves and liabilities of a group self-insurer may be required by the Superintendent when necessary.

5. **Renewal Filings**. Any reports, audits, or other filings required to be filed with a renewal application may be filed earlier when available.

6. **On-site Reviews**. An examination of the affairs, transactions, accounts, records and assets of each group self-insurer and of any person as to any matter relevant to the affairs of the group self-insurer may be conducted annually or as often as the Superintendent determines advisable. In lieu of an on-site examination, and with the approval of the Superintendent, the group self-insurer may agree to forward all required documents to the Superintendent for review at the Bureau of Insurance. The Superintendent will give the group self-insurer thirty (30) days advance notice of the examination, unless the Superintendent has evidence of noncompliance with statute or rule. The expense of examination of a group self-insurer must be borne by the group that is examined.

**L. Requests for Extension of Time for Filings**. If a group self-insurer requires additional time to file a required report, a request for an extension of time for filing must be made in writing by the self-insurer or its service company no later than five (5) working days prior to the filing deadline. Extensions, if granted, shall be in writing with notice mailed to the self-insurer and any service company authorized to file reports respecting the self-insurer. Such extension will establish a new onetime due date.

**M. Reportable Events**. Whenever any of the following events will occur, the group self-insurer must notify the Superintendent thirty (30) days prior to the occurrence of the event or as soon as the group self-insurer knows or should have known of the occurrence of the event:

1. **Reduction in membership.** Coverage revenue to the group is reduced by more than twenty-five percent (25%) as a result of discontinued membership, whether by expulsion of members or otherwise, or by reduction in members' payrolls;

2. **Failure to Renew Reinsurance.** Failure to obtain renewal of reinsurance coverage consistent with the funding model applicable to the relevant fund year;

3. **Change in Service Providers.** A change in service providers;

4. **Change in Reinsurance.** Any proposed change in the approved reinsurance program, including, but not limited to, retention or attachment point, limits of coverage, carrier, policy forms, or endorsements. Notice must also be given to the Maine Self-Insurance Guarantee Association;

5. **Merger of Members.** Consolidation, merger, or combined treatment of two (2) or more members as one (1); and

6. **Addition of New Members.**  The addition of any participating employer or employers.

**N. Termination of Self-Insurance Option.** A group self-insurance plan may be terminated in the following ways: voluntary termination, non-renewal by the Superintendent, or revocation by the Superintendent.

1. **Voluntary Termination**. A group may voluntarily terminate its self-insurance program, in whole or in part, by submitting a termination plan to the Superintendent of Insurance at least forty-five (45) days before terminating its program. The plan must comply with the requirements of law and this section.

2. **Non-renewal of self-insurance authority**. The Superintendent may refuse to renew self-insurance approval for any reason listed in Title 39-A M.R.S.A. § 403(6) or 403(13). Any group self-insurer non-renewed by the Superintendent may request a hearing pursuant to Title 24-A M.R.S.A. section 229. Any Non-Renewal Order issued by the Superintendent will prescribe terms and conditions of a termination plan.

3. **Revocation of self-insurance authority**. The Superintendent may revoke self-insurance approval for any reason listed in Title 39-A M.R.S.A. § 403(6) or § 403(13) only after a hearing held in accordance with the requirements of Title 5 M.R.S.A. Chapter 375 Subchapter IV and Title 24-A M.R.S.A. Chapter 3. Any Revocation Order issued by the Superintendent will prescribe terms and conditions of a termination plan.

4. **Termination Plan**. A termination plan submitted under § 403 (14) must include the following provisions:

a. A description of the proposed type of security to be posted for the purpose of discharging claims liabilities and other obligations under the Workers' Compensation Act including an agreement that the security must be maintained until all claims are paid and that the amount is subject to adjustment by the Superintendent, not less frequently than annually, based upon actuarial review.

b. If a Trust Fund is to be utilized for security, a plan which makes provision for 1) payment of fees and related expenses for claims adjustment, including defense attorney fees, other attorney fees as may be required by law, and such other incidental costs and expenses as may be necessary to administer and operate the Trust Fund; and 2) payment to the Bank Trustee such reasonable expenses as approved by the Superintendent and as agreed upon in writing by the self-insurer and the Bank Trustee, including, but not limited to, counsel, actuarial and accounting fees incurred by the Bank Trustee in the administration of the Trust Fund until such time as all obligations of the self-insurer under the Workers' Compensation Act are paid in full.

c. A plan identifying how claims administration will be handled and an agreement that the group self-insurer is under a continuing obligation to notify the Superintendent of any changes in contracts with service agents. The plan may include a proposal to contract with a third party administrator licensed in the State of Maine for the purpose of handling the administration of all claims and must include the name of the resident Maine licensed claims adjuster who will be adjusting the claims. The plan must describe the procedure in place that will assure the payment of claims obligations including identification of specific time periods for which claims handling administration is being delegated.

d. An agreement that the self-insurer will provide the following when required by the Superintendent:

i. An actuarial review of estimated outstanding loss and loss adjustment expense reserves, evaluated at the ninety percent (90%) confidence level, unless another confidence level is required by the Superintendent, for the self-insured liability period for which the plan is being proposed performed by a qualified actuary and an annual review thereafter;

ii. Complete loss runs for the self-insured period being terminated. The loss runs must show paid and reserved amounts for medical, indemnity and expenses for each policy period including the number of open claims, reopened claims, and closed claims;

iii. The identity and amount of those claims reimbursed by the reinsurer or total expected to be reimbursed;

iv. A list of all open claims for which benefits are being paid; a description of each injury; the current status, including whether contested or uncontested, degree of permanent impairment, and degree of incapacity, of the claim; the current weekly benefit being paid; and the age of the claimant; and

v. The current reserve on each open claim and a description of how the reserve amount was determined.

e. An agreement that the group self-insurer will continue to be subject to informational filings respecting financial condition and actuarial evaluations of claims and claim expense reserves and loss transfers when requested by the Superintendent to ensure that claims are adequately secured.

5. **Termination Without Approved Plan.** If the group attempts to terminate its plan without an approved plan, the Superintendent will issue an order prescribing the terms and conditions of the termination.

**O. Group Administration and Operations**.

1. **The Governing Body**. The governing body of each group self insurer is solely responsible for all operations of the group self-insurer, including responsibilities delegated to service providers. The governing body is responsible for safeguarding group assets, providing for the orderly functioning of the program and hiring or contracting for the performance of services which allow for smooth operations of the group.

a. The governing body must be held to account, in a fiduciary relationship, for any misuse or bad faith misapplication of funds. All funds of any type must remain under the control of the governing body or its authorized bonded representative, except that a licensed service agent's imprest account for payment of compensation benefits and expenses may be established for use by a service company.

b. The governing body must collect delinquent accounts resulting from any unpaid premiums by members and must invest available funds in acceptable investments as provided in Title 39-A M.R.S.A. § 403(9). The governing body shall be restricted from making any type of investment with the intent to trade, dispose or sell the security on margin, to pledge or hypothecate assets so held or to engage in arbitrage respecting any securities. The governing body shall submit to the Superintendent for approval any plans to borrow money in the name of the group self-insurer.

c. The governing body may not use a premium discount plan different from that approved for the principal workers' compensation advisory rating organization in this State unless the Superintendent determines that it is actuarially sound and notifies the self-insurer in writing of the determination.

d. Each approved group shall have a rating plan that is reviewed and approved annually by the Superintendent. Any request for an adjustment to a rating plan to be effective at other than the annual renewal date shall be filed with the Superintendent not less than sixty (60) days before the proposed effective date. Such request must be accompanied by sufficient evidence, including certification by a qualified actuary, that the proposed rate for each payroll classification is adequate to cover expected losses and expenses for that payroll classification.

2. **Bylaws**. The bylaws must be filed with the Superintendent and provide for the following:

a. Qualifications for group membership, including financial and underwriting criteria for initial membership as well as continuing membership;

b. The method for selecting the governing body, including the term of office of each officer;

c. The method for amending the bylaws;

d. A process for defining delinquent premium payments and any other debts and appropriate penalties;

e. The procedures for cancellation or termination of members, including, but not limited to cancellation for nonpayment of charges, for adverse loss experience and for failure to comply with the group management manual;

f. The responsibilities and duties delegated to any administrator, manager, or other service provider;

g. A mechanism for resolving disputes between members and the group self-insurer; and

h. A description of the basis for distributing any surplus funds among members and the basis for assessing group members to make up any deficit.

3. **Admission of New Members**. Prospective new members of a group self-insurer must submit an application for membership to the governing body, on a form approved by the Superintendent. The governing body may approve the application for membership pursuant to the established admission standards of the group self-insurer that are on file with the Superintendent. Copies of the application for membership, the indemnity agreement, on the Superintendent's prescribed form, and proof that the person signing the application for membership has the authority to do so must then be filed with the Superintendent. Each group self-insurer shall be prohibited from accepting as a member any employer who has any incurred but undischarged debt relating to workers' compensation obligations under the Act. A valid cancellation for reason of nonpayment of premium constitutes sufficient proof of such debt. If, after acceptance of an employer as a member, a group self-insurer obtains evidence that such employer has an outstanding debt relating to workers' compensation obligations under the Act, the governing body must issue a 30-day notice of cancellation to the employer. Upon satisfactory payment of all outstanding debt, the employer may be reinstated by the group self-insurer.

a. Members shall receive a certificate of coverage from the governing body on a form acceptable to the Superintendent.

4. **Termination of Members**. Individual members may elect to terminate their participation in a self-insurance group program pursuant to the group bylaws. Members may be expelled by the governing body for reasons designated in the group's bylaws. Prior to any termination or cancellation, not less than thirty (30) days notice shall be given to the member and at least ten (10) days notice shall be given to the Superintendent and the Workers' Compensation Board.

a. Requirements at Termination. When a member leaves a group, a payroll audit for the terminating member shall be performed. The governing body will collect any additional premium due or refund premium overpayment. An adjustment of funding to the 95th confidence level for the departing member will be made consistent with the provisions of subsection E(4) of this Rule. The governing body will provide timely notice to the departing member of its continued obligations under the indemnity agreement.

b. The governing body of a group self-insurer, upon receipt of notice of the filing of a petition for voluntary or involuntary bankruptcy of a member employer of the group shall take, at a minimum, the following actions:

i. determine the amount, if any, of premiums receivable, unpaid assessments or other deferred and uncollected balances owed by the member and so advise any trustee in bankruptcy thereof; and

ii. initiate those steps necessary to terminate prospective coverage for the member employer as permitted by order of the bankruptcy court. If a trustee in bankruptcy arranges for prepayment of coverage for the member in any proceeding under chapter 11 of the United States Bankruptcy Code, as now or hereafter amended, coverage may be continued for such period of prepayment provided that a safety margin respecting the member is maintained at the 95th confidence level consistent with the provisions of subsection III(E)(4) of this rule.

6. **Member changes**. Each member of a group self-insurance plan shall be responsible for promptly reporting to the group in which it participates changes in the names, addresses, organizational structure, majority ownership, as well as any additions or deletions of businesses or subsidiaries which participate in the program. Such changes shall be reported to the governing body by letter within ten (10) days following the effective date of the change. The governing body will in turn report such changes to the Superintendent within five (5) days of receipt of notification by the member.

EFFECTIVE DATE: September 23, 1981

AMENDED: May 30, 1982 - Sec. 1, 2, 3

REPEALED AND REPLACED: January 9, 1995

AMENDED: June 3, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION): January 14, 1997

AMENDED: February 8, 1997

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 18, 2025