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

**031 BUREAU OF INSURANCE**

**Chapter 710: STANDARDS FOR DETERMINING HAZARDOUS FINANCIAL CONDITIONS FOR INSURANCE COMPANIES**

**Section 1. Purpose**

The purpose of this rule is to set forth standards to identify insurance carriers and other risk-bearing entities regulated by the Superintendent in hazardous financial condition and to impose, as appropriate, underwriting restrictions and other supervisory conditions necessary to limit a carrier’s exposure to insurance or investment risk in order to protect the interests of the public, policyholders, holders of certificates of insurance, or claimants.

**Section 2. Authority**

This rule is promulgated pursuant to 24 M.R.S.A. §2317; 24-A M.R.S.A. §§ 12-A, 212, 231(5), 417, 797, 3423, 3424, 4351–4407, 6104, 6714, 6718, and 7111; and 39‑A M.R.S.A. §§ 403(3)(C)(6), 403(3)(E), 403(4-A)(A), and 403(8)(C).

**Section 3. Scope**

This rule applies to all risk-bearing entities regulated by the Superintendent and doing business in this State, as follows:

A. For purposes of this rule, “insurance carrier” means an insurer authorized or required to be authorized under 24-A M.R.S.A. §404, a nonprofit organization authorized to provide benefit plans under 24 M.R.S.A. §2301, a health maintenance organization, or a domestic risk retention group that is a captive insurer.

B. To the limited extent consistent with the nature of the regulated entity’s operations and the scope of the Superintendent’s statutory authority, the provisions of this rule that are applicable to insurance carriers also apply to special purpose reinsurance vehicles, eligible surplus lines insurers, mutual assessment plan insurers, fraternal benefit societies, foreign risk retention groups, multiple-employer welfare arrangements, captive insurers that are not risk retention groups, service contract providers that do not maintain reimbursement insurance policies qualifying under 24-A M.R.S.A. §7103(5)(A), and group workers’ compensation self-insurers.

**Section 4. Factors to Assess Financial Condition**

The Superintendent may consider the following in determining whether the continued transaction of insurance business by any insurance carrier in this state is currently or prospectively hazardous to policyholders, holders of certificates of insurance, claimants, creditors, or the general public:

A. Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries;

B. The National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports;

C. Whether the carrier may have made insufficient provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the carrier, when considered in light of the assets held by the carrier with respect to its reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under the carrier’s policies and contracts;

D. The risk that assuming reinsurer(s) may be unable to fulfill contractual obligations, or that the carrier’s reinsurance program may provide inadequate security after taking into account cash flow, the classes of business written, and the financial condition of the assuming reinsurer(s);

E. The carrier’s operating loss in the last twelve-month period or any shorter intervening period, relative to the carrier’s surplus in excess of minimum requirements, giving appropriate consideration to the carrier’s net capital gains or losses, change in non-admitted assets, cash dividends paid to shareholders, and other relevant factors;

**Drafting Note**: The NAIC model hazardous condition regulation, at Subsections 3(E) and 3(F), specifically identifies operating losses exceeding 50% of the carrier’s remaining surplus cushion (excess over minimum required surplus), or exceeding 20% of the carrier’s remaining surplus cushion after excluding net capital gains, as indicators of hazardous financial condition. These benchmarks are significant considerations in the Superintendent’s review of a carrier’s financial condition, but are not codified in Subsection E because the purpose of Section 4 is to provide a qualitative list of factors for the Superintendent to consider, recognizing that there is no quantitative test that can mechanically determine whether a carrier is or is not in hazardous condition.

F. Whether any affiliate, subsidiary, reinsurer, or obligor is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;

G. Contingent liabilities, pledges, or guaranties which either individually or collectively obligate the carrier to the extent that the solvency of the carrier may be affected;

H. Whether any controlling person of the carrier is delinquent in the payment or transmission of net premiums to the carrier;

I. The age and collectability of receivables;

J. Whether the management, board of directors, or any other person who directly or indirectly controls the operation of the carrier, fails to possess and demonstrate the experience, fitness and business repute necessary to serve the carrier in such position;

K. Whether the carrier has failed to submit required financial filings, including holding company filings, has furnished false or misleading information in required attested financial filings, or failed to provide information sufficient for an adequate understanding of the carrier’s material risks, including the enterprise risk to the carrier posed by its affiliates or insurance holding company system;

L. Whether the carrier has released false or misleading financial statements to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the carrier;

M. Whether the management of the carrier has failed to respond to regulatory inquiries regarding the condition of the carrier or has furnished false and misleading information in response to such an inquiry;

N. Whether the carrier’s historical growth has strained its financial and/or administrative capacity to meet its obligations in a timely manner;

O. Whether the carrier’s projected or actual cash flow will adversely impact the carrier’s need for liquidity;

P. Whether management has established reserves that do not comply with minimum standards established by state insurance laws and other applicable actuarial or financial standards;

Q. Whether management persistently engages in material under-reserving that results in adverse development;

R. Whether transactions involving affiliates, subsidiaries, or controlling persons fail to provide sufficient value, liquidity, or diversity to assure the carrier’s ability to meet its outstanding obligations as they mature; or

S. Such other conditions or circumstances which have resulted or will likely result in a material adverse financial impact upon the carrier’s financial condition or its ability to provide adequate service to its policyholders.

**Section 5. Determination of Hazardous Financial Condition**

A. For the purposes of making a determination of hazardous financial condition, the Superintendent may:

1) Disallow any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

2) Adjust or disallow values of assets and investments relating to, or arising out of transactions with, entities affiliated with the carrier, consistent with the NAIC Accounting Practices and Procedures Manual and any other accounting practices lawfully permitted or prescribed by the Superintendent or by the applicable domiciliary regulator;

3) Disallow the stated value of accounts receivable if collectability of the asset is unlikely based upon aging of the account balance or financial condition of a debtor(s); or

4) In making a determination of surplus, assign a liability value when there is a substantial risk that the carrier will be required to fund within the next twelve months any liability, pledge, or guarantee contingently undertaken by the carrier.

B. In addition to other specific remedies in Title 24-A M.R.S.A., when the Superintendent determines that the continued operation of the carrier in this state is currently or prospectively hazardous to the policyholders, holders of certificates of insurance, claimants, or the general public, the Superintendent may issue an order, pursuant to 24‑A M.R.S.A. §4401(1), requiring the carrier to:

1) Reduce the total amount of present and potential liability for policy obligations by reinsuring all or a portion of risks with appropriately qualified reinsurers;

2) Limit the volume of business being accepted or renewed;

3) Reduce general insurance and commission expenses through methods specified or approved by the Superintendent;

4) Increase capital and/or surplus funds;

5) Obtain prior approval of the Superintendent before payment of any dividend to be distributed or credited to the carrier’s stockholders or policyholders;

6) Seek appropriate appraisals of assets specified by the Superintendent and inform the Superintendent as to the market value thereof;

7) Discontinue non-conforming or unsafe investment practices and institute divestiture procedures respecting assets which constitute ineligible or inappropriate investments;

8) Demonstrate the adequacy of premium rates in relation to risks insured;

9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in any other format as specified by the Superintendent;

10) Correct corporate governance practice deficiencies, and adopt and follow governance practices acceptable to the Superintendent;

11) Provide and adhere to a business plan acceptable to the Superintendent; or

12) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product to the extent that the Superintendent determines to be necessary to improve the financial condition of the carrier.

C. The Superintendent may make and serve the order without notice and before hearing, and must simultaneously serve upon the carrier and other persons involved the notice of hearing scheduling a hearing not less than ten (10) days nor more than thirty (30) days after the notice is served, unless the Superintendent and the carrier mutually agree upon a later time. The Superintendent’s order and notice of hearing shall be served upon the carrier in compliance with the notice provisions of the *Maine Administrative Procedure Act*, Title 5, chapter 375, subchapter IV. The notice of hearing shall state the time and place of hearing, and the conduct, condition, or ground upon which the Superintendent based the order. The Superintendent shall hold all hearings under this subsection privately, unless the carrier requests a public hearing, in which case the hearing shall be public.

**Section 6 Judicial Review**

If the Superintendent has issued an order before hearing as provided in Section 5, any person upon whom such order is served may waive the Superintendent’s hearing and apply for any immediate judicial relief available under law and without first exhausting administrative remedies. Title 24-A M.R.S.A. §236 (appeal from the Superintendent) shall apply as to appeals from the Superintendent’s order made after hearing.

**Section 7. Separability**

If any provisions of this rule be held invalid, the remainder shall not be affected. This rule shall not be construed to abrogate or limit the Superintendent’s authority to take any action authorized by other applicable laws.

**Section 8. Effective Date**

This rule became effective August 2, 1993. The 2014 amendments to this rule become effective August 17, 2014.

STATUTORY AUTHORITY: 24-A M.R.S.A. §731B.

EFFECTIVE DATE:

 August 2, 1993

EFFECTIVE DATE (ELECTRONIC CONVERSION):

 January 14, 1997

AMENDED:

 August 17, 2014 – filing 2014-166

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