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

**031 BUREAU OF INSURANCE**

**Chapter 730: STANDARDS FOR ACCEPTANCE OF REINSURANCE OF WORKERS' COMPENSATION SELF-INSURANCE**

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**Section 1. Purpose and scope**

The purpose of this Rule is to set standards and procedures for insurers and reinsurers to become eligible to accept reinsurance for self-insured workers’ compensation in Maine. This Rule does not apply to reinsurance accounts approved by the Superintendent pursuant to Title 39‑A M.R.S.A. §403(4-A) and accepting reinsurance only from their member group self-insurers.

**Section 2. Authority**

This Rule is adopted pursuant to Title 24-A M.R.S.A. §§ 212, 222, 410, 412, 413, 421, 422, and 731-B, and Title 39-A M.R.S.A. §403.

**Section 3. Definitions**

As used in this Rule, the following terms have the following meanings:

A. **Domestic insurer**. A “domestic” insurer is an insurer or reinsurer formed under the laws of this State.

B. **Foreign insurer**. A “foreign” insurer is an insurer or reinsurer formed under the laws of any state, district, commonwealth, or possession of the United States other than the State of Maine. For purposes of this Rule, notwithstanding Title 24-A M.R.S.A. §6, “foreign insurer” does not include an alien insurer.

C. **Alien insurer**. An “alien” insurer is an insurer, reinsurer, or group of insurers or underwriters authorized to assume reinsurance from Maine cedents on a group basis, formed under the laws of any country other than the United States of America.

**Section 4. General qualifications**

A. If the applicant is a domestic or foreign insurer, it must be licensed in its domiciliary jurisdiction to transact workers’ compensation insurance or workers’ compensation reinsurance.

B. Applicants must maintain deposits or trust funds as indicated hereunder.

(1) A domestic insurer or a foreign insurer licensed in Maine shall make and maintain deposit funds pursuant to Chapter 15 of Title 24-A M.R.S.A. as security to Maine resident beneficiary parties to reinsurance contracts issued by the company. Such deposit funds must be of a market value not less than that required pursuant to Title 24-A M.R.S.A. §412. The Superintendent may require a deposit in excess of the minimum required in §412 based upon the amount of reinsurance the company has in force.

(2) A foreign insurer must have on deposit in this state or some other state of the United States where licensed, funds that inure to the benefit of Maine resident beneficiary parties to reinsurance contracts issued by the company. Such deposited funds must be of a market value not less than that required pursuant to Title 24‑A M.R.S.A. §412. The Superintendent may require a deposit in excess of the minimum required in §412 based upon the amount of reinsurance the company has in force.

(3) An alien insurer must secure its liabilities in a manner approved by the Superintendent, consistent with the requirements of Title 24-A M.R.S.A. §731-B and Bureau of Insurance Rule 740. The trust instrument, letter of credit, or other governing document must either mention the reinsured employer(s) by name or expressly specify that the beneficiaries include all reinsured employers and groups with workers’ compensation self-insurance risk in Maine.

C. All applicants must possess capital and/or surplus adequate to their obligations and must meet basic minimum financial requirements hereunder. An applicant that otherwise possesses funds as required hereunder must also at all times maintain policyholders’ surplus, combined paid-in capital stock, if any, and surplus in reasonable amount, as determined by the Superintendent, in relation to the kinds and amounts of insurance it has in force, or being written and retained by it, net of applicable reinsurance. A domestic insurer must possess capital and surplus based upon the requirements in Title 24‑A M.R.S.A. §410, and free surplus in the amount of at least $20,000,000.

D. An alien insurer must file with the Superintendent on an annual basis a certification of its solvency by its domiciliary regulator and independent certified public or chartered accountant.

**Section 5. Specific qualifications**

A. An applicant must not use a business name deceptively similar to that of any insurer or reinsurer currently holding a valid certificate of authority. No application will be entertained that proposes to use a name that has been reserved pursuant to Title 13‑C or Title 24-A M.R.S.A., until the period of such reservation has expired or the reserved name has been withdrawn.

B. An applicant must have been licensed in its state or country of domicile for a period of time immediately preceding this application adequate to demonstrate to the Superintendent its ability to accept reinsurance for self-insured workers’ compensation risks in the State of Maine.

C. All applicants must demonstrate a reasonable expectation that their insurance and/or reinsurance business, taken as a whole, will operate at a profit, supported by documentation including, but not limited to, historical earnings records for the last 3 years and projections of operating results for the coming 5 years.

D. Where trusteed assets are required hereunder, the trust fund shall be governed by the following provisions:

(1) Trusteed assets must qualify as admitted assets under, and be valued in accordance with, insurance accounting precepts. In addition, trusteed assets must be tangible in nature and readily convertible to cash in secondary markets.

(2) Trust deposits must be maintained in a qualified United States financial institution. For purposes of this regulation, a qualified United States financial institution means an institution that:

(a) Is organized, or in the case of a United States branch or agency office of a foreign banking organization is 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; and

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

(3) Each year on or before March 1, the applicant shall cause the trustee bank or banks to report to the Superintendent in writing, setting forth the balance of the trust, listing the trust’s investments at the end of the preceding year and certifying the date of any planned termination of the trust.

(4) The trust must be established in a form approved by the Superintendent. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for the benefit of the applicant’s United States policyholders and ceding insurers and self-insurers, their assigns and successors in interest. The trust and the applicant are subject to examination as determined by the Superintendent. The trust must remain in effect for as long as the applicant has outstanding obligations due under the reinsurance agreements subject to the trust, or until a qualified successor is appointed.

E. All applicants shall comply with all reserve requirements contained in Title 24‑A M.R.S.A. Chapter 11 Subchapter V and all investment requirements contained in Title 24-A M.R.S.A. Chapter 13, or with comparable laws of the applicant’s state or country of domicile. A foreign or alien insurer must demonstrate to the satisfaction of the Superintendent that its investments are of a quality substantially equal to that required under Chapter 13 for similar funds of like domestic insurers, and must make available to the Superintendent an actuarial opinion substantially in compliance with 24-A M.R.S.A. §993.

F. Alien insurers must also comply with the following requirements. These provisions are not intended to conflict with or override any contractual obligation of the parties to a reinsurance agreement to arbitrate their disputes.

(1) The applicant agrees that in the event of any dispute arising out of the reinsurance agreement, at the request of the ceding self-insurer, it shall:

(a) Submit to the jurisdiction of any court of competent jurisdiction in this State;

(b) Comply with all requirements necessary to give the court jurisdiction; and

(c) Abide by the final decision of the court or of any appellate court in the event of an appeal.

(2) The applicant agrees to designate the Superintendent and any successor in office as its agent to receive service of legal process issued against the applicant in any action, suit, or proceeding instituted by or on behalf of the ceding self-insurer, or in any action, suit, or proceeding against the applicant arising out of any contract or transaction assumed under the reinsurance agreement. The procedures set forth in Title 24-A M.R.S.A. §§ 421 and 422 shall be followed where applicable.

(3) The applicant shall provide a copy of a current report of its examination certified by the public insurance supervisory official of the applicant’s country of domicile, according to the requirements of Section 7 below.

**Section 6. Application**

Every applicant must make an initial filing to the Superintendent of Insurance, which shall include:

A. A written application, on forms to be supplied by the Superintendent, signed under oath by the chief executive officer of the company. Applicants are exempt from providing information hereunder to the extent that such information has been provided as part of a filing to obtain or maintain a certificate of authority in the State of Maine. The application shall contain among other things:

(1) The name and home office address of the applicant.

(2) The location of its principal office in the United States.

(3) The names of officers principal to the conduct of the applicant’s business.

(4) Whether a stock, mutual, or other type of risk organization.

(5) Such other information as may be considered necessary and appropriate by the Superintendent.

B. If the applicant is a corporation, a copy of its Charter and by-laws.

C. If the applicant is a foreign or alien insurer, a certificate of the public insurance supervisory official of its state or country of domicile, showing that it is authorized or qualified in that jurisdiction or insure or reinsure workers’ compensation risks.

D. If the applicant is an alien insurer, a certificate of deposit and a copy of the trust deed pertaining to the deposit, certified by the trustee.

E. If the applicant is a domesticated alien insurer, a copy of the appointment and authority of its U.S. manager having custody of its records.

F. If the applicant is a reciprocal insurer or reinsurer, Certificates of Compliance and Deposit from the domiciliary state and copy of the power of attorney of its attorney-in-fact.

G. A certified copy of the most recent three annual statements filed as required with the supervisory official in the applicant’s state or country of domicile, including all applicable supporting addenda. If the applicant has operated for less than three years, such annual statements as are available.

H. A copy of audited financial statements for the most recent three years accompanied by the independent certified public or chartered accountant’s audit opinion. The financial statements shall be prepared on the basis of statutory insurance accounting principles, or, for an alien insurer, shall be accompanied by a reconciliation to statutory insurance accounting principles, or, with the permission of the Superintendent, a reconciliation to United States GAAP. Also to be included are copies of any comment letters or management letters issued by the certified public or chartered accountant or a statement from the certified public or chartered accountant that states no recommendations have been rendered to management. If the insurer has not operated for three years, it shall provide such audited financial statements as are available.

I. A copy of the current report of examination certified by the supervisory official in the applicant’s state or country of domicile. For purposes of this requirement, a report of examination shall be considered current only if its date of account is within three years of filing of the application, except that the Superintendent may, in his/her discretion, accept a report of examination within a period reasonably proximate to three years from its date of account which is filed by the applicant promptly upon its receipt when issuance of the report by the supervisory official has been delayed by reasons beyond the control of the applicant and which are unrelated to the applicant’s financial condition or compliance with applicable laws, pursuant to Title 24-A M.R.S.A. §413.

J. A listing of reinsurers to whom the applicant retrocedes risks.

K. Any pertinent prospectus, tender offer materials, or details of any mergers, reorganizations or consolidations for the three year time period preceding the date of application.

L. An organizational chart of its holding company system, if applicable.

M. A statement of ownership of applicant, including a listing of the names and addresses of any shareholder(s) who own 5 percent or more of the outstanding shares of the applicant. If the applicant is a wholly owned subsidiary, this requirement shall apply to the parent company.

N. The most recent Form 10-K (and Forms 10-Q since the date of the 10-K) and proxy statement, if the applicant is registered with the Securities and Exchange Commission.

O. A copy of any management agreements by which effective power to manage or influence this class or any other major class of the applicant’s business is transferred to others.

P. Biographical information for all officers and directors. The form prescribed by the National Association of Insurance Commissioners may be substituted for the Maine form. NOTE: Any such data submitted as part of a holding company registration shall be held as confidential information pursuant to Title 24‑A M.R.S.A. §222(13-A).

Q. An acknowledged statement signed by the chief executive officer of the applicant attesting that the applicant’s license is not under suspension or revocation in any jurisdiction except as may therein be disclosed. If such an action has been taken or is being taken, or if a license has been refused or surrendered, an explanation should be provided along with a copy of any order or finding.

R. Such other information as the Superintendent may consider necessary and appropriate.

**Section 7. Approval of forms**

A. Each contract of workers’ compensation reinsurance that is proposed for use in this state must be filed for approval at least 30 days in advance of the intended implementation date. A self-addressed stamped envelope must be included with the submission for use in return correspondence. Insofar as is practicable, a contract so approved may be modified with less than 30 days’ advance filing notice if the Superintendent determines the modifications suggested are not contrary to the provisions of Title 39-A M.R.S.A. §403, or Bureau of Insurance Rules, and are necessary to effect required reinsurance coverage to authorize the self-insurer to operate a plan of workers’ compensation self-insurance.

B. The text of any forms must be printed in at least ten-point type, contain not more than sixteen characters per inch, and must meet the minimum requirements for reading ease as set forth in Title 24-A M.R.S.A. §2441.

C. The filing of forms for approval must be accompanied by the appropriate fee as indicated in Title 24-A M.R.S.A. §601.

**Section 8. Annual filings and report of changes**

A. If the applicant is a United States corporation, on or before April 15 of each year succeeding the initial filing, or if the applicant is an alien insurer, within 75 days subsequent to the close of its elected fiscal year but not later than September 30 in any calendar year, the applicant must file with the Superintendent:

(1) A certified copy of the annual statement for the year immediately preceding.

(2) An audited financial statement for the year immediately preceding.

(3) A copy of the last report of examination by the supervisory official in the applicant’s state or country of domicile.

(4) Any change in the listing of reinsurers to whom the applicant retrocedes risks.

(5) Any pertinent prospectus, tender offer materials, or details of any mergers, reorganizations or consolidations for the most recent year.

(6) Any change in the organizational chart of the holding company system.

(7) Any change in majority ownership of the applicant, or any change in ownership of any shareholder(s) who own 5 percent or more of the outstanding shares of the applicant. If the applicant is a wholly owned subsidiary, this requirement shall apply to the parent company.

(8) The most recent Form 10-K (and Forms 10-Q since the date of the 10-K) and proxy statement, if the applicant is registered with the Securities and Exchange Commission.

(9) Any changes in any management agreements by which effective power to manage or influence over this class or any other major class of the applicant’s business is transferred to others, including copies of any new agreements entered into during the most recent year.

(10) Biographical information for any new officers and directors appointed or elected during the most recent year. The form prescribed by the National Association of Insurance Commissioners may be substituted for the Maine form. NOTE: Any such data submitted as part of a holding company registration shall be held as confidential information pursuant to Title 24-A M.R.S.A. §222(13-A).

(11) An acknowledged statement signed by the chief executive officer of the applicant attesting that the applicant’s license is not under suspension or revocation in any jurisdiction except as may therein be disclosed. If such an action has been taken or is being taken, or if a license has been refused, an explanation should be provided along with a copy of any order or finding.

(12) Such other information as the Superintendent may consider necessary.

B. The applicant must promptly submit to the Superintendent such other information which affects the accuracy of any previous filing or which affects the accuracy of any information filed in the application.

**Section 9. Approval or disapproval of eligibility**

The Superintendent shall, within 45 days upon receipt of a complete application, review and approve or disapprove the applicant as a reinsurer for self-insurer workers’ compensation on risks resident to the State of Maine. If at any time the applicant no longer meets the eligibility requirements of this Rule or violates any provision of Title 24-A M.R.S.A., the Superintendent may terminate the applicant’s authority to accept reinsurance for self-insured workers’ compensation in Maine. The disapproval of applications or termination of authority shall be governed by the procedures established in the *Maine Administrative Procedure Act*, Title 5 M.R.S.A., Chapter 375, and in Title 24-A M.R.S.A., Chapter 3 to the extent applicable.

**Section 10. Severability**

If any provision of this Rule is held invalid, the remainder shall not be affected.

**Section 11. Effective date**

This Rule is effective September 20, 1993. The 2015 Amendments to this Rule are effective December 9, 2015.

STATUTORY AUTHORITY: 24-A M.R.S.A. 212, 222, 410, 412, 413, 421, 422 and 731-8, and 39-A M.R.S.A. §403.

EFFECTIVE DATE:

 September 20, 1993 – filing 93-329

EFFECTIVE DATE (ELECTRONIC CONVERSION): January 14, 1997

AMENDED:

 December 9, 2015 – filing 2015-241

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