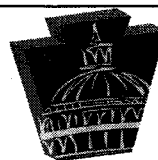


# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency:

Insurance Department

(2) Agency Number:

Identification Number: 11-243

RECEIVED

MAY 25 2010

12:00 p.m.

INDEPENDENT REGULATORY  
REVIEW COMMISSION

IRRC Number:

2851

(3) Short Title:

Standards to Define Insurers Deemed to be in Hazardous Financial Condition

(4) PA Code Cite:

31 Pa. Code, Chapter 160

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:

Peter J. Salvatore, Regulatory Coordinator

1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429

Secondary Contact:

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
  - Certification by the Governor
  - Certification by the Attorney General

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

## Regulatory Analysis Form

The purpose of this rulemaking is to amend Chapter 160, adopted in 1993, to update and clarify standards used to identify insurers in hazardous financial condition and specify corrective actions to be taken to minimize the number and impact of insurer insolvencies. It is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC) entitled "Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition" (Model Regulation 385) and included in the NAIC's Financial Regulation Standards and Accreditation Program.

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: 05/31/10
- B. The date or dates on which public meetings or hearings will be held: NA
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: 10/15/10
- D. The expected effective date of the final-form regulation: 01/01/11
- E. The date by which compliance with the final-form regulation will be required: 01/01/11
- F. The date by which required permits, licenses or other approvals must be obtained: NA

(10) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

**SECTION II. STATEMENT OF NEED**

(11) State the statutory authority for the regulation. Include specific statutory citation.

Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) regarding the general rulemaking authority of the Department; Article V of The Insurance Department Act of 1921 (40 P.S. §§ 221.1—221.63) regarding the suspension of business; sections 5.1 and 10 of the Health Maintenance Organization Act (40 P.S. §§ 1555.1 and 1560) regarding the authority and supervision of health maintenance organizations; sections 2456 and 2457 of Article XXIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.2456—2457) regarding notice of deficiencies and sanctions of fraternal benefit societies.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No. However, because of the regulation's significance in efforts to prevent insolvencies, the Department expects that the amendments to the NAIC model will be incorporated into the financial regulation standards the Department must meet to maintain its accreditation by the NAIC.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The rulemaking is needed to update and strengthen the Department's ability to identify solvency concerns and prevent insurer insolvencies. Insurance consumers will benefit to the extent the rulemaking promotes a financially sound insurance industry that has the ability to fulfill its contractual obligations under insurance policies.

## Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No adverse effects are anticipated as a result of this rulemaking. The rulemaking will update and strengthen the Department's regulatory authority in efforts to prevent insolvencies. The rulemaking should have no adverse impact on insurers, given the benefits of up-to-date, effective solvency standards to their long-term financial stability.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

The rulemaking applies to all types of insurers doing or purporting to do business in this Commonwealth. As of March 1, 2010, there were 1,687 licensed insurers, 286 of which were domestic insurers.

**SECTION III: COST AND IMPACT ANALYSIS**

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The rulemaking should impose no additional costs on licensed insurers. The strengthened regulatory standards are based on existing solvency and reporting requirements and are consistent with national standards expected to be adopted by all states participating in the NAIC Financial Regulation Standards and Accreditation Program.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no material costs or savings to state government associated with this rulemaking.

**Regulatory Analysis Form**

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Regulation Analysis Form

The rulemaking benefits efforts to minimize insolvencies by updating existing regulatory standards to reflect current requirements and concerns. The rulemaking benefits the insurance industry by clarifying standards used to assess an insurer's financial stability, thereby assisting management's efforts to avoid the pitfalls that require or trigger regulatory intervention. There are no anticipated adverse effects or costs associated with the rulemaking.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Comments on this rulemaking were requested from The Insurance Federation of Pennsylvania, Inc., The Pennsylvania Association of Mutual Insurance Companies, the Pennsylvania Fraternal Congress, the Pennsylvania Institute of Certified Public Accountants, Highmark, Inc., Capital Blue Cross, Independence Blue Cross, and Blue Cross of Northeastern Pennsylvania. The comments received were considered in the development of the proposed rulemaking. In addition, the regulatory process provides for a 30-day public comment period subsequent to publication of the proposed rulemaking in the *Pennsylvania Bulletin*.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No other regulatory schemes were considered. The amendment to Chapter 160 is necessary to update the standards of the chapter in accordance with standards promulgated by the NAIC.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

## Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states. Adoption of the rulemaking is necessary for Pennsylvania to continue to meet national standards for the financial regulation of the insurance industry.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The rulemaking reflects but does not change current reporting requirements under statutory accounting principles.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking recognizes and incorporates the particular statutory authority and specific terminology relating to fraternal benefit societies.



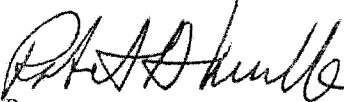
CDL-1

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to  
form and legality. Attorney General



By \_\_\_\_\_  
(Deputy Attorney General)

**MAY 20 2010**

\_\_\_\_\_  
Date of Approval

→ Check if applicable.  
Copy not approved. Objections  
attached.

Copy below is hereby certified to be a true and correct  
copy of a document issued, prescribed or promulgated  
by:

Insurance Department

\_\_\_\_\_  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-243

DATE OF ADOPTION: \_\_\_\_\_

BY: \_\_\_\_\_



Joel Ario

Insurance Commissioner  
TITLE: \_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR  
SECRETARY)

Copy below is hereby approved as to form and  
legality. Executive or Independent Agencies



BY: \_\_\_\_\_  
Andrew C. Clark

**APR 23 2010**

\_\_\_\_\_  
DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)  
(CHIEF COUNSEL, INDEPENDENT AGENCY)  
(STRIKE INAPPLICABLE TITLE)

→ Check if applicable. No Attorney General  
approval or objection within 30 days after  
submission.

NOTICE OF PROPOSED RULEMAKING

INSURANCE DEPARTMENT

STANDARDS TO DEFINE INSURERS DEEMED TO BE IN  
HAZARDOUS FINANCIAL CONDITION

31 Pa. Code, Chapter 160

§§ 160.1-160.6

## **Preamble**

The Insurance Department (Department) proposes to amend Chapter 160 of the Department's regulations (relating to Standards to Define Insurers Deemed to be in Hazardous Financial Condition) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) regarding the general rulemaking authority of the Department; Article V of The Insurance Department Act of 1921 (40 P.S. §§ 221.1—221.63) regarding the suspension of business; sections 5.1 and 10 of the Health Maintenance Organization Act (40 P.S. §§ 1555.1 and 1560) regarding the authority and supervision of health maintenance organizations; sections 2456 and 2457 of Article XXIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.2456—2457) regarding notice of deficiencies and sanctions of fraternal benefit societies.

### ***Purpose***

The purpose of this rulemaking is to amend Chapter 160, adopted in 1993, to update and clarify standards used to identify insurers in hazardous financial condition and specify corrective actions to be taken to minimize the number and impact of insurer insolvencies. It is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC) entitled "Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition" (Model Regulation 385) and included in the NAIC's Financial Regulation Standards and Accreditation Program.

The amendments in this rulemaking are based upon updates made in 2009 to the NAIC model, which was updated to provide timely and effective guidance for financial regulation. Because of the regulation's significance in efforts to prevent insolvencies, the Department expects that the amendments to the NAIC model will be incorporated into the financial regulation standards the Department must meet to maintain its accreditation by the NAIC.

### ***Explanation of Regulatory Requirements***

The following is a description of the changes contained in the proposed rulemaking:

Section 160.1 (relating to purpose) is being clarified consistent with updates to the NAIC model and language in the authorizing statutes.

Section 160.2 (relating to definitions) is being amended to update the citation within the definition of "Act" and to add definitions for "Department," "NAIC," and "statutory accounting practices" consistent with use of these terms in state financial regulation, including 31 Pa. Code, Chapter 147 (relating to annual financial reporting requirements).

Section 160.3 (relating to standards) is being updated to make the introductory paragraph consistent with updates to § 160.1 (relating to purpose); add language in §§ 160.3(2), (3) and (19) relating to current financial reporting requirements and analytical tools; clarify terminology in §§ 160.3(4) and (7) relating to minimum financial requirements; and strengthen or add standards in §§ 160.3(8), (14) and (18) consistent with updates to the NAIC model.

Section 160.4 (relating to commissioner's authority) is being clarified to replace the reference to "insurance law of the Commonwealth" with "statutory accounting practices," a more specific and newly defined term.

Section 160.5 (relating to commissioner's summary orders) is being updated to include a reference to current law relating to fraternal benefit societies in §§ 160.5(a) and (c); recognize the consideration of a need to increase an insurer's capitalization in § 160.5(4); and add corrective actions relating to deficiencies in corporate governance and premium rates in §§ 160.5(12) and (13) consistent with current statutory and regulatory requirements in Pennsylvania and updates to the NAIC model.

### ***Affected Parties***

The chapter applies to all types of insurers doing or purporting to do business in Pennsylvania, as provided under the scope and definitions of the authorizing statutes.

### ***Fiscal Impact***

#### *State Government*

The rulemaking will strengthen, clarify and update existing regulatory requirements. There will be no material increase in cost to the Department as a result of this rulemaking.

#### *General Public*

The public will benefit to the extent the rulemaking strengthens financial solvency regulatory requirements for insurers, thereby promoting the ability of the insurance industry to meet obligations under insurance policies and the Department's ability to minimize the number and impact of insurer insolvencies.

#### *Political Subdivisions*

The rulemaking will not impose additional costs on political subdivisions.

#### *Private Sector*

The strengthened requirements in the rulemaking should impose no additional costs on insurers currently subject to state financial reporting and solvency requirements.

### ***Paperwork***

The rulemaking updates and strengthens existing standards and authority used by the Department in financial regulation of insurers and would impose no additional paperwork requirements.

### ***Effectiveness/Sunset Date***

The rulemaking will become effective upon publication in final form in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

### ***Contact Person***

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to [psalvatore@state.pa.us](mailto:psalvatore@state.pa.us) or faxed to (717) 705-3873.

### ***Regulatory Review***

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on May 25, 2010, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has, as required by the Regulatory Review Act, provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of that material is available to the public upon request.

The IRRC will notify the Department of any objections to any portion of the proposed rulemaking within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

*Joel Ario*  
*Insurance Commissioner*

CONTINUING SHEET FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
Pursuant to Commonwealth Documents Law

ANNEX A

TITLE 31. INSURANCE, PART VIII. MISCELLANEOUS PROVISIONS, CHAPTER 160.  
STANDARDS TO DEFINE INSURERS DEEMED TO BE IN HAZARDOUS FINANCIAL  
CONDITION

160.1	Purpose.
160.2	Definitions.
160.3	Standards
160.4	Commissioner's authority.
160.5	Commissioner's summary orders.
160.6	Judicial Review

**§ 160.1. Purpose.**

This chapter sets forth the standards which the Commissioner may use for identifying insurers found to be in a condition that renders the continuance of their business financially hazardous to the general public, [or to ]holders of their policies or certificates of insurance, or creditors.

**§ 160.2. Definitions.**

**In addition to the terms defined in Article V of The Insurance Department Act of 1921 (40 P.S. §§ 221.1—221.63), [T]the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:**

*Act*—The Insurance Department Act of [one thousand nine hundred and twenty one] **1921** (40 P. S. §§ 1—[297.4]**326.7**)

[*Commissioner*—The Insurance Commissioner of the Commonwealth.]

**Department**—**The Insurance Department of the Commonwealth.**

**NAIC**—**The National Association of Insurance Commissioners or successor organization.**

**Statutory accounting practices**--**Practices and procedures prescribed by the Accounting Practices and Procedures Manuals published by the NAIC, or as otherwise prescribed or provided by specific statutes, regulations, orders or rulings of the Commonwealth or the Department.**

*Surplus*—The amount in excess of admitted assets over total liabilities.

### § 160.3. Standards.

The following standards, either singly or a combination of two or more, may be considered by the Commissioner to determine whether the continued operation of an insurer transacting an insurance business in this Commonwealth might be deemed to be financially hazardous to the [policyholders, creditors or the ]general public, **holders of policies or certificates of insurance, or creditors**. The Commissioner may consider one or more of the following:

(1) A failure by the insurer to maintain working capital, as required by law or regulation, based on the nature, type and volume of insurance being transacted by the insurer.

(2) Material adverse findings relating to an insurer's financial condition reported in financial condition or market conduct examination reports[.]; **audit reports and other communications required under Chapter 147 (relating to annual financial reporting requirements); or actuarial opinions, reports, work papers or summaries**.

(3) [The financial ratios and related reports generated by the National Association of Insurance Commissioners Insurance Regulatory Information System.] **Financial analysis ratios, analyst team reports and other financial analytical results produced by the NAIC**.

(4) Whether the insurer's net loss from operations in the last 12-month period or shorter period of time, excluding net realized capital gains, is greater than 20% of the insurer's surplus **in excess of the statutorily required minimum capital and surplus**.

(5) Whether the insurer's asset portfolio when viewed in light of current economic conditions with respect to value, liquidity or diversity is sufficient to assure the company's ability to meet its outstanding obligations as they mature.

(6) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

(7) Whether the insurer's net loss in the last 12-month period or a shorter period of time, including, change in nonadmitted assets, net realized and unrealized capital gain or loss, cash dividends paid to shareholders, and other direct charges against surplus is greater than 50% of the insurer's surplus in excess of the **statutorily required** minimum capital and surplus[ required].

(8) Whether [an affiliate, subsidiary, or] **a reinsurer, obligor or any entity within the insurer's insurance holding company system** is insolvent, threatened with insolvency or delinquent in payment of monetary or other obligations.

(9) Contingent liabilities, pledges or guaranties in relationship to the insurer's surplus.

(10) Whether a controlling person, under the laws relating to insurance holding companies, of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer.

(11) The age and collectibility of receivables.

(12) Whether the management of an insurer, including officers, directors or another person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in that position.

(13) Whether management of an insurer has failed to respond to inquiries by the Commissioner or members of the Commissioner's staff relative to the condition of the insurer or has furnished false or misleading information concerning the inquiries.

(14) Whether management of an insurer has done one of the following:

(i) Filed a false or misleading sworn financial statement, or released a false or misleading financial statement to lending institutions or to the general public.

(ii) Made a false or misleading entry, or omitted an entry of material amount in the books of the insurer.

**(iii) Established reserves that do not comply with minimum standards as required by law, regulation, statutory accounting practices and accepted actuarial standards and principles.**

**(iv) Engaged in material under-reserving that resulted in continued adverse development reported in financial statements filed with the Department.**

(15) Whether the insurer reports significant increases in premium writing either before or after reinsurance ceded to an extent that it lacks adequate financial and administrative capacity to meet its obligations as they fall due.

(16) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems, or both.

(17) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.

**(18) Whether the insurer has made adequate provision, in accordance with accepted actuarial standards and principles, for the anticipated cash flows required to meet its contractual obligations and related expenses, considering the value, liquidity, diversity and investment earnings of assets held as reserves to meet those obligations and expenses, and other actuarial items, including considerations anticipated to be received and retained**

under policies and contracts.

**(19) The insurer has failed to file financial statements as required by law or regulation or to make filings required under Article XIV of The Insurance Company Law (40 P.S. §§ 991.1401—991.1413) within the time allowed by law and, after written demand by the Commissioner, has failed to provide a satisfactory explanation for that failure.**

**§ 160.4. Commissioner's authority.**

For the purpose of making a determination of an insurer's financial condition under this chapter, the Commissioner may restate the value of assets and liabilities to conform to [insurance law of the Commonwealth] **statutory accounting practices**, including the following:

(1) Disregarding a credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding.

(2) Making appropriate adjustments to asset values attributable to investments in or transactions with controlling persons, subsidiaries or affiliates.

(3) Refusing to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor.

(4) Increasing the insurer's liability in an amount equal to a contingent liability, pledge or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

(5) Making appropriate adjustments to liability values attributable to losses and loss adjustment expenses due to considerations, such as those elaborated in the "Statement of Principles Regarding Property and Casualty Loss and Loss Adjustment Expense Reserves" which is promulgated by the Casualty Actuarial Society.

(6) Making appropriate adjustments to liability values due to considerations elaborated in the accident and health reserve standards in sections 301.1 and 311.1 of the act (40 P. S. §§ 71.1 and 93).

(7) Making appropriate adjustments to liability values in accordance with the life insurance reserve standards in section 301 of the act.

**§ 160.5. Commissioner's summary orders.**

(a) If the Commissioner has reasonable cause to believe that the continued operation of an insurer transacting insurance business in this Commonwealth is financially hazardous to the [policyholders, or the ]general public, **holders of policies or certificates of insurance, or creditors,** the Commissioner may, upon the Commissioner's determination, issue an order under Article V of the act (40 P. S. §§ 221.1—221.63) **or notice of deficiency under Article XXIV of**



**The Insurance Company Law of 1921 (40 P.S. §§ 991.2456—2457).** The order **or notice** may list the requirements for the insurer to abate the determination, including the following:

(1) Reducing the total amount of present and potential liability for policy benefits by reinsurance.

(2) Reducing, suspending or limiting the volume of business being accepted or renewed.

(3) Reducing general insurance and commission expenses by specified methods.

(4) Increasing the insurer's **capital or surplus, or both.**

(5) Suspending or limiting the declaration and payment of dividends by an insurer to its stockholders or to its policyholders.

(6) Filing reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets and the value of its loss **reserves** or policy **reserves**, or both[, reserves].

(7) Limiting or withdrawing from certain investments or discontinuing certain investment practices to the extent the Commissioner deems necessary.

(8) Documenting the adequacy of premium rates in relation to the risks insured.

(9) Documenting the adequacy of the return on invested assets in relation to the current interest credits in interest sensitive policies.

(10) Filing, in addition to regular annual statements, interim financial reports on a form approved by the Commissioner.

(11) Filing comprehensive business plans utilizing a format approved by the Commissioner and completed in accordance with instructions. Business plans filed under this paragraph will be given confidential treatment, will not be subject to subpoena and will not be made public by the Commissioner or another person without the prior written consent of the insurer to which it pertains.

**(12) Correcting deficiencies in corporate governance practices and adopting and utilizing governance practice acceptable to the Commissioner.**

**(13) Adjusting premium rates for non-life insurance products written by the insurer as the Commissioner deems necessary to improve the insurer's financial condition, notwithstanding other provisions of law that limit the frequency or amount of premium rate adjustments.**

(b)[If the insurer is a foreign insurer]**For insurers not incorporated or organized under the laws of the Commonwealth,** the Commissioner's order **or notice** provided for [in] **under** subsection (a) may be limited to the extent provided by [statute] **law.**

(c) An insurer subject to an order **or notice** under subsection (a) is entitled to a hearing to review that order in accordance with Article V of the act (40 P. S. § 221.10) **or Article XXIV of The Insurance Company Law of 1921 (40 P.S. § 991.2456(c))**, 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to the general rules of administrative practice and procedure).

**§ 160.6. Judicial review.**

An order or decision of the Commissioner will be subject to judicial review in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).



May 25, 2010

Mr. Kim Kaufman  
Executive Director  
Independent Regulatory Review Comm.  
333 Market Street  
Harrisburg, PA 17101

Re: Insurance Department Proposed Regulation No. 11-243, Standards to Define Insurers Deemed to be in Hazardous Financial Condition.

Dear Mr. Kaufman:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 160

The purpose of this rulemaking is to amend Chapter 160, adopted in 1993, to update and clarify standards used to identify insurers in hazardous financial condition and specify corrective actions to be taken to minimize the number and impact of insurer insolvencies. It is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC) entitled "Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition" (Model Regulation 385) and included in the NAIC's Financial Regulation Standards and Accreditation Program.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in black ink that reads "Peter J. Salvatore".

Peter J. Salvatore  
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

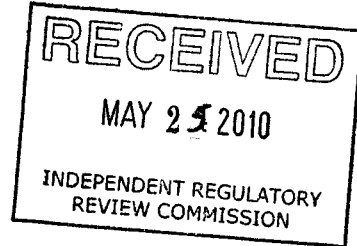
I.D. NUMBER: 11-243

SUBJECT: STANDARDS TO DEFINE INSURERS DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

AGENCY: DEPARTMENT OF INSURANCE

**TYPE OF REGULATION**

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions                      b. Without Revisions



**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
5/25/10	<i>[Signature]</i>	HOUSE COMMITTEE ON INSURANCE
5/25/10	<i>[Signature]</i>	MAJORITY CHAIRMAN <u>REP. ANTHONY DELUCA</u>
5-25	<i>[Signature]</i>	SENATE COMMITTEE ON BANKING & INSURANCE
5/25	<i>[Signature]</i>	MAJORITY CHAIRMAN <u>SEN. DONALD C. WHITE</u>
5/25/10	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
5/25/10	<i>[Signature]</i>	LEGISLATIVE REFERENCE BUREAU