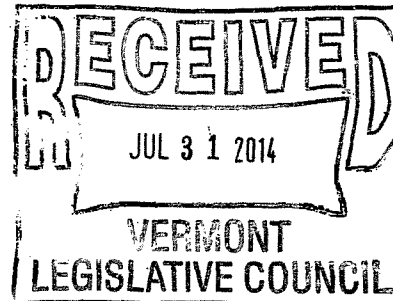


Administrative Procedures – Final Proposed Rule Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).



All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Defining Standards and Commissioner’s Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2 (Revised)

Michael Pieciak, on 7/31/14
 (signature) (date)

Printed Name and Title:
 Michael Pieciak
 (Acting) Commissioner
 Department of Financial Regulation

RECEIVED BY: _____

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Approval received by E-mail.
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2 (Revised)

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

14P-011

3. ADOPTING AGENCY:

Department of Financial Regulation

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Shannon Salembier

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, City Center,
Montpelier, VT 05620-3101

Telephone: 802 828 - 2234 ext.

Fax: -

E-Mail: shannon.salembier@state.vt.us

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://www.dfr.vermont.gov/proposed-rules-and-regulations>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Kaj Samsom

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, City Center,
Montpelier, VT 05620-3101

Telephone: 802 828 - 0184 ext.

Fax: -

E-Mail: kaj.samsom@state.vt.us

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

8 V.S.A. § 15

7. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.

8. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
9. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.
10. THE AGENCY HAS NOT INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
11. THE AGENCY HAS NOT INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

12. **CONCISE SUMMARY (150 WORDS OR LESS):**

The proposed rule amends Regulation 93-2. It sets forth the standards the Commissioner of the Department of Financial Regulation (Commissioner) may use to identify insurers that are in such a hazardous financial condition that the continuance of their business places the public or policy holders at risk. The proposed rule sets forth the Commissioner's power and authority to deal with such companies. Specifically, the amendments expand the list of standards and strengthen the Commissioner's authority with respect to insurers determined to be in a hazardous financial condition.

13. **EXPLANATION OF WHY THE RULE IS NECESSARY:**

The changes in the proposed rule are necessary to continue the Department of Financial Regulation's role of protecting consumers from insolvent or otherwise financially unsound insurance companies. The changes in the proposed rule are also important in order to maintain the Department of Financial Regulation's National Association of Insurance Commissioners (NAIC) accreditation. NAIC accreditation assures regulators in other states that the State of Vermont has met or exceeded the recognized standards for insurance regulation. In turn, accreditation allows Vermont domiciled insurers, as well as the Department of Financial Regulation's regulators, to operate on a reciprocal basis with their colleagues in other states. Accreditation rests on the passage of certain NAIC approved, and industry vetted, statutory and regulatory provisions. These required provisions are

typically based on NAIC models that have been carefully crafted and commented on by regulators from all fifty states and by industry.

14. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

- The Department of Financial Regulation
- Insurance Companies licensed in the State of Vermont
- Consumers

15. BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):

The proposed rule would have a favorable economic impact on the State of Vermont by ensuring the financial soundness of insurance companies and protecting consumers from insurers deemed to be in a hazardous financial condition. The proposed rule impacts insurance companies by expanding the Commissioner's authority to ensure their solvency.

16. A HEARING WAS HELD.

17. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 4/22/2014

Time: 09:00 AM

Location: Department of Financial Regulation, 89 Main Street, City Place, Montpelier, VT 05620

Date:

Time: PM

Location:

Date:

Time: PM

Location:

Date:

Time: PM

Location:

18. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

4/29/2014

19. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Hazardous Financial Condition

Insurance

Solvency

Standards

Commissioner's authority

Run Spell Check

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2 (Revised)

2. ADOPTING AGENCY:

Department of Financial Regulation

3. AGENCY REFERENCE NUMBER, IF ANY:

4. TYPE OF FILING (PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

5. LAST ADOPTED (PLEASE PROVIDE THE TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE):

Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2; Last date of adoption on 06/03/1993.

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES

To: Louise Corliss, SOS
Brian Leven, SOS
Katie Pickens, LCAR
ICAR Members

Date: March 11, 2014

Proposed Rule: Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition – Regulation 93-2 (Revised)
(Department of Financial Regulation)

The following official action was taken at the March 10, 2014 meeting of ICAR.

Present: Chair Michael Clasen, Steve Knudson, Diane Zamos, John Kessler, Dixie Henry, Jon Groveman, Trevor Lewis, and Dirk Anderson
Absent: Scott Bascom
Abstain: Steve Knudson

- The Committee has no objection to the proposed rule being filed with the Secretary of State.
- The Committee approves the rule with the following recommendations.
1. Incorporation by Reference Statement #4: Add that the document is available for review at the office if they aren't able to purchase it.
- The Committee opposes filing of the proposed rule.

cc: Crosby Sherman
Shannon Salembier

Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2 (Revised)

 _____, on 7/31/14
(signature) (date)

Printed Name and Title:
Michael Pieciak
(Acting) Commissioner
Department of Financial Regulation

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2 (Revised)

2. ADOPTING AGENCY:

Department of Financial Regulation

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

- The Department of Financial Regulation
- Insurance Companies licensed in the State of Vermont
- Consumers

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

No impact.

5. COMPARISON:

COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The proposed rule is based on the widely accepted National Association of Insurance Commissioners (NAIC) model regulation and no alternatives were presented. Compared to Regulation 93-2, as well as the option of no rule, the proposed rule better protects the financial interests of consumers by better preventing insolvency of insurance companies. In turn, the proposed rule benefits insurance companies by expanding the Commissioner's authority to ensure their solvency and providing insurance companies with clear notice of the standards the Commissioner may use to identify whether a company is in hazardous financial condition.

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

The proposed rule does not regulate small businesses directly; however it reduces the risk for small businesses by better ensuring the solvency of their insurers. There are no insurance companies in Vermont that qualify as a small business under Vermont law, so therefore 3 V.S.A. § 832a does not apply.

7. GREENHOUSE GAS IMPACT: *EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:*

A. TRANSPORTATION —

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., "THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS" OR "LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE."):

No impact.

B. LAND USE AND DEVELOPMENT —

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., "THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT." OR "THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND /OR AGRICULTURAL LAND."):

No impact.

C. BUILDING INFRASTRUCTURE —

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., "THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS." OR "THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION."):

No impact.

D. WASTE GENERATION / REDUCTION —

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., "THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS." OR "AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A 'METHANE TO ENERGY PROJECT'."):

No impact.

E. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

No impact.

Run Spell Check

Administrative Procedures – Incorporation by Reference Statement

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and why the full text was not reproduced within the rule.


This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Copies of incorporated materials will be held by the Office of the Secretary of State until adoption or formal withdrawal of the rule is complete. Materials will be returned to the agency upon completion of the rule.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I certify that the text of the matter incorporated has been reviewed by an official of the agency. I further certify that the agency has the capacity and intent to enforce the rule entitled:

**Rule Title: Defining Standards and Commissioner's Authority
for Companies Deemed to be in Hazardous Financial
Condition - Regulation 93-2 (Revised)**

 , on 7/31/14
(signature) (date)

Printed Name and Title:

Michael Pieciak

(Acting) Commissioner

Department of Financial Regulation

1. TITLE OF RULE FILING:

Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2 (Revised)

2. ADOPTING AGENCY:

Department of Financial Regulation

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

The National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual includes all statutory accounting guidance that has been adopted by the NAIC.

4. OBTAINING COPIES: (*EXPLAIN HOW THE MATERIAL(S) CAN BE OBTAINED BY THE PUBLIC, AND AT WHAT COST*):

The NAIC Accounting Practices and Procedures Manual is available to purchase from the NAIC at a starting cost of \$395.

These materials are available for review at the Department of Financial Regulation during regular business hours.

5. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

None.

6. REASONS FOR INCORPORATION BY REFERENCE (*EXPLAIN WHY THE AGENCY DECIDED TO INCORPORATE THE MATERIALS RATHER THAN REPRODUCE THE MATERIAL IN FULL WITHIN THE TEXT OF THE RULE*):

The Department of Financial Regulation decided to incorporate the NAIC Accounting Practices and Procedures Manual by reference as the manual is voluminous and would make the rule indordinately long and cumbersome.

7. THE INCORPORATED MATERIALS HAVE BEEN REVIEWED BY THE FOLLOWING OFFICIAL OF THE AGENCY:

Commissioner Susan L. Donegan; Deputy Commissioner of Insurance Crosby Sherman

8. THE ADOPTING AGENCY REQUESTS THAT ALL COPIES OF
INCORPORATED MATERIALS BE RETURNED TO THE AGENCY .

Run Spell Check

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2 (Revised).

2. ADOPTING AGENCY:

Department of Financial Regulation

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Department of Financial Regulation has scheduled a public hearing for 4/22/2014 and will post the proposed rule to the Department's website.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The proposed rule is modeled on the National Association of Insurance Commissioners (NAIC) model Hazardous Financial Condition regulation. In addition to regulators, the insurance industry and trade groups were significantly involved in the creation of the model regulation.

Run Spell Check



State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101
www.dfr.vermont.gov

For consumer assistance
[All Insurance] 800-964-1784
[Securities] 877-550-3907
[Banking] 888-568-4547

To: Office of the Secretary of State
Legislative Committee on Administrative Rules

From: Shannon Salembier, Assistant General Counsel
Department of Financial Regulation

Re: COMMENTS/RESPONSES ON PROPOSED RULE TITLED "Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition."

Date: July 31, 2014

At the Public Hearing for the proposed rule Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition, the Department of Financial Regulation (DFR) received no comments. No written comments were submitted.

Banking
802-828-3307

Insurance
802-828-3301

Captive Insurance
802-828-3304

Securities
802-828-3420

Health Care Admin
802-828-2900

VERMONT DEPARTMENT OF FINANCIAL REGULATION

REGULATION 93-2 (REVISED)

DEFINING STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES
DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

Table of Contents

Section 1.	Authority
Section 2.	Purpose
Section 3.	Standards
Section 4.	Commissioner's Authority
Section 5.	Judicial Review
Section 6.	Separability
Section 7.	Effective Date

Section 1. Authority

This regulation is promulgated pursuant to the authority granted by 8 V.S.A. § 715 and Chapters 101, 123, 125, 139, 141, 142 and 145 and 151.

Section 2. Purpose

The purpose of this regulation is to set forth the standards which the Commissioner may use for identifying, and the powers and authority of the Commissioner with respect to, insurers or other risk bearing entities found to be in such condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance.

This regulation shall not be interpreted to limit the powers granted to the Commissioner by any laws or parts of laws of this state, nor shall this regulation be interpreted to supersede any laws or parts of laws of this state.

Section 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 any insurer transacting an insurance business in this state might be deemed to be hazardous to the policyholders, creditors or the general public. The Commissioner may consider:

- 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 related reports;

- C. The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;
- D. Whether the insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
- E. Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such 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 such policies and contracts;
- ~~EF.~~ The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining 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;
- ~~FG.~~ Whether the insurer's operating loss in the last 12-month period or any shorter period of time including, but not limited to, net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than 50% of the insurer's remaining surplus as regards policyholders that is in excess of the minimum required;
- H. Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- ~~G.~~ ~~Whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligation;~~
- I. Whether a reinsurer, obligor or any entity within the insurer's insurance holding company system, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which in the opinion of the Commissioner may affect the solvency of the insurer including, but not limited to, 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;
- ~~HJ.~~ Contingent liabilities, pledges or guarantees which either individually or collectively involve a total amount which in the opinion of the Commissioner may affect the solvency of the insurer;
- IK. Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

- ~~JL.~~ Whether the age and collectability of receivables involve a total amount which the Commissioner determines adversely affects the solvency of the insurer;
- ~~KM.~~ Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;
- ~~LN.~~ Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry including, but not limited to, whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Commissioner;
- ~~MO.~~ Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement 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 insurer;
- ~~NP.~~ Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;
- ~~ØQ.~~ Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems including, but not limited to, whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice or whether management persistently engages in material under reserving that results in adverse development;
- R. Any other finding determined by the Commissioner to be hazardous to the insurer's policyholders, creditors or general public.

Section 4. Commissioner's Authority

- A. For the purposes of making a determination of an insurer's financial condition under this regulation, the Commissioner may:
- (1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;
 - (2) Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Practices and Procedures Manual, state laws and regulations;

- (3) Refuse 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) Increase the insurer's liability in an amount equal to any 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.
- B. If the Commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders, creditors or the general public, then the Commissioner may, upon his or her determination, issue an order requiring the insurer to:
- (1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
 - (2) Reduce, suspend or limit the volume of business being accepted or renewed;
 - (3) Reduce general insurance and commission expenses by specified methods;
 - (4) Increase the insurer's capital and surplus;
 - (5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
 - (6) File reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;
 - (7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;
 - (8) Document the adequacy of premium rates in relation to the 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 on such format as promulgated by the Commissioner;
 - (10) Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the Commissioner;
 - (11) Provide a business plan to the Commissioner in order to continue to transact business in the state;

- (12) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer.

If the insurer is a foreign insurer, the Commissioner's order may be limited to the extent provided by statute.

- C. Any insurer subject to an order under Subsection B may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to 3 V.S.A. Chapter 25 and such hearing shall be subject to the requirements set forth in 8 V.S.A. § 7041, including, but not limited to, the provision for private hearing, unless insurer requests a public hearing.

Section 5. Judicial Review

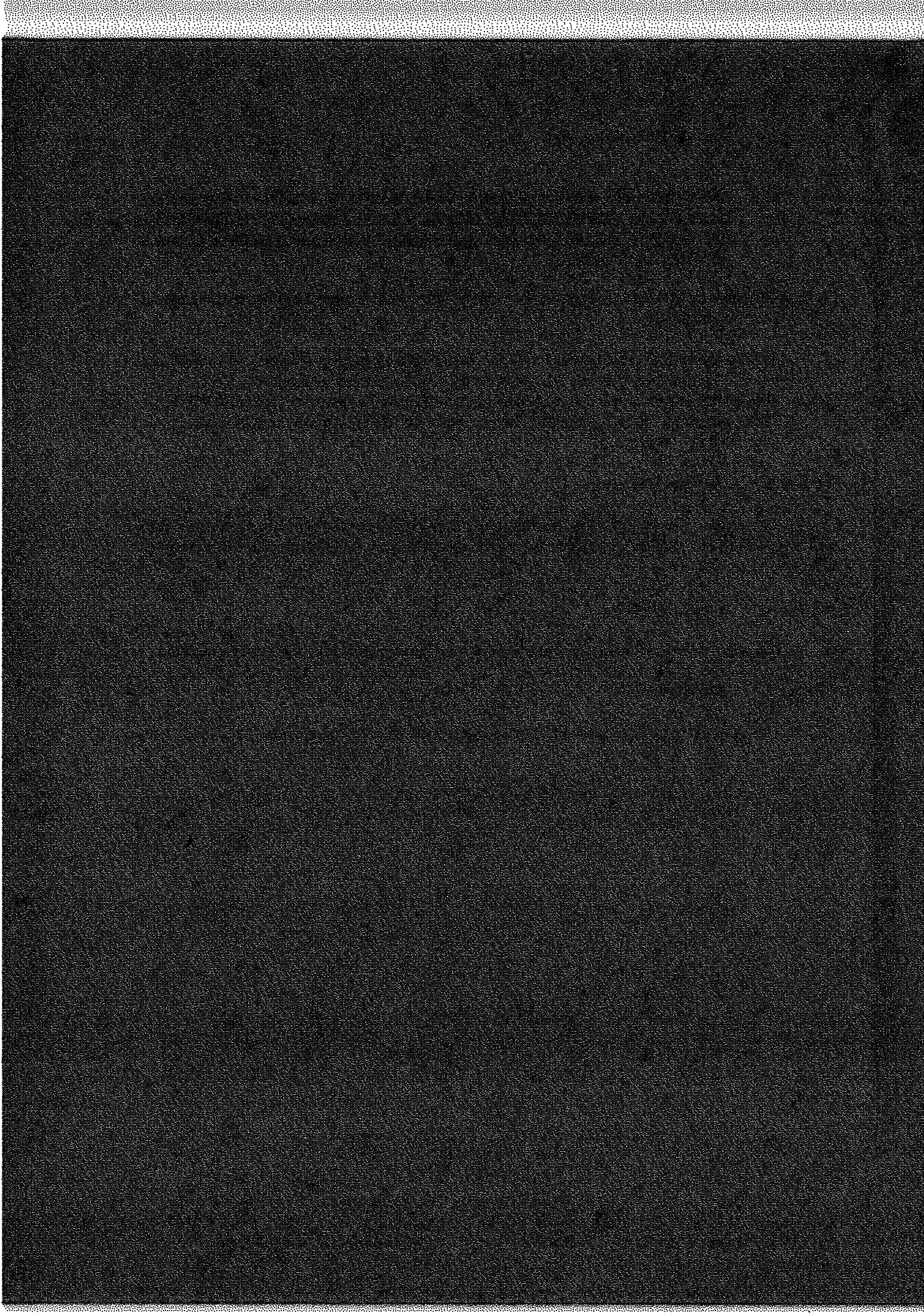
Any order or decision of the Commissioner shall be subject to review in accordance with 8 V.S.A. § ~~7716~~ at the instance of any party to the proceedings whose interests are substantially affected.

Section 6. Separability

If any provisions of this regulation be held invalid, the remainder shall not be affected.

Section 7. Effective Date

This regulation shall become effective ~~June 3, 1993~~ [date of adoption].



Full Clean
Text

VERMONT DEPARTMENT OF FINANCIAL REGULATION

REGULATION 93-2 (REVISED)

**DEFINING STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES
DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION**

Table of Contents

Section 1. Authority
Section 2. Purpose
Section 3. Standards
Section 4. Commissioner's Authority
Section 5. Judicial Review
Section 6. Separability
Section 7. Effective Date

Section 1. Authority

This regulation is promulgated pursuant to the authority granted by 8 V.S.A. § 15 and Chapters 101, 123, 125, 139, 141, 142, 145 and 151.

Section 2. Purpose

The purpose of this regulation is to set forth the standards which the Commissioner may use for identifying, and the powers and authority of the Commissioner with respect to, insurers or other risk bearing entities found to be in such condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance.

This regulation shall not be interpreted to limit the powers granted to the Commissioner by any laws or parts of laws of this state, nor shall this regulation be interpreted to supersede any laws or parts of laws of this state.

Section 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 any insurer transacting an insurance business in this state might be deemed to be hazardous to the policyholders, creditors or the general public. The Commissioner may consider:

- 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;

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- C. The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;
 - D. Whether the insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
 - E. Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such 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 such policies and contracts;
 - F. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining 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;
 - G. Whether the insurer's operating loss in the last 12-month period or any shorter period of time including, but not limited to, net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than 50% of the insurer's remaining surplus as regards policyholders that is in excess of the minimum required;
 - H. Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
 - I. Whether a reinsurer, obligor or any entity within the insurer's insurance holding company system, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which in the opinion of the Commissioner may affect the solvency of the insurer including, but not limited to, 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;
 - J. Contingent liabilities, pledges or guarantees which either individually or collectively involve a total amount which in the opinion of the Commissioner may affect the solvency of the insurer;
 - K. Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;
 - L. Whether the age and collectability of receivables involve a total amount which the Commissioner determines adversely affects the solvency of the insurer;
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- M. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;
 - N. Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry including, but not limited to, whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Commissioner;
 - O. Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement 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 insurer;
 - P. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;
 - Q. Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems including, but not limited to, whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice or whether management persistently engages in material under reserving that results in adverse development;
 - R. Any other finding determined by the Commissioner to be hazardous to the insurer's policyholders, creditors or general public.

Section 4. Commissioner's Authority

- A. For the purposes of making a determination of an insurer's financial condition under this regulation, the Commissioner may:
 - (1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;
 - (2) Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Practices and Procedures Manual, state laws and regulations;
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- (3) Refuse 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) Increase the insurer's liability in an amount equal to any 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.

B. If the Commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders, creditors or the general public, then the Commissioner may, upon his or her determination, issue an order requiring the insurer to:

- (1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
 - (2) Reduce, suspend or limit the volume of business being accepted or renewed;
 - (3) Reduce general insurance and commission expenses by specified methods;
 - (4) Increase the insurer's capital and surplus;
 - (5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
 - (6) File reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;
 - (7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;
 - (8) Document the adequacy of premium rates in relation to the 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 on such format as promulgated by the Commissioner;
 - (10) Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the Commissioner;
 - (11) Provide a business plan to the Commissioner in order to continue to transact business in the state;
 - (12) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written
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by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer.

If the insurer is a foreign insurer, the Commissioner's order may be limited to the extent provided by statute.

- C. Any insurer subject to an order under Subsection B may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to 3 V.S.A. Chapter 25 and such hearing shall be subject to the requirements set forth in 8 V.S.A. § 7041, including, but not limited to, the provision for private hearing, unless insurer requests a public hearing.

Section 5. Judicial Review

Any order or decision of the Commissioner shall be subject to review in accordance with 8 V.S.A. § 16 at the instance of any party to the proceedings whose interests are substantially affected.

Section 6. Separability

If any provisions of this regulation be held invalid, the remainder shall not be affected.

Section 7. Effective Date

This regulation shall become effective [date of adoption].

The Vermont Statutes Online

Title 8: Banking and Insurance

Chapter 1: POLICY AND ADMINISTRATION

8 V.S.A. § 15. Rules, orders and administrative interpretations

§ 15. Rules, orders and administrative interpretations

(a) In addition to other powers conferred by this title and 18 V.S.A. chapter 221, the Commissioner may adopt rules and issue orders as shall be authorized by or necessary to the administration of this title and of 18 V.S.A. chapter 221, and to carry out the purposes of such titles.

(b) The Commissioner may, whether or not requested by any person, issue written advisory interpretations of Part 5 of this title and regulations issued under it, including interpretations of the applicability of any provision of this title and regulations issued under it. Such interpretations shall be presumed to be correct unless found to be clearly erroneous by a court of competent jurisdiction. The Commissioner may make public all or a portion of an advisory interpretation.

(c) The Commissioner may waive the requirements of 15 V.S.A. § 795(b) as the Commissioner deems necessary to permit the Department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the Commissioner under this title, Title 9, or 18 V.S.A. chapter 221.

(d) Upon written request by the Office of Child Support and after notice and opportunity for hearing to the licensee as required under any applicable provision of law, the Commissioner may revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person under this title, 9 V.S.A. chapter 150, and 18 V.S.A. chapter 221 if the Commissioner finds that the applicant or licensee is subject to a child support order and is not in good standing with respect to that order or is not in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed or as of the date of the commencement of revocation proceedings, as applicable. For purposes of such findings, the written representation to that effect by the Office of Child Support to the Commissioner shall constitute prima facie evidence. The Office of Child Support shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the Commissioner based solely upon the written representation with respect to that license revocation or suspension shall be made only for the purposes of that proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from that license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not

be reissued or renewed until the Department receives a certificate issued by the Office of Child Support that the licensee is in good standing with respect to a child support order or is in full compliance with a plan to pay any and all child support payable under a support order. (Added 1999, No. 153 (Adj. Sess.), § 1, eff. Jan. 1, 2001; amended 2009, No. 42, § 33a; 2013, No. 73, § 58, eff. June 5, 2013.)

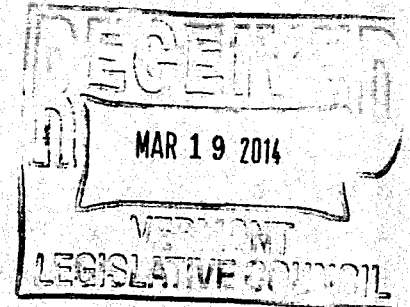


Proposed Rules Postings

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Deadline For Public Comment

Deadline: Apr 29, 2014

Please submit comments to the agency or primary contact person listed below, before the deadline.

Rule Details

Rule Number:	14P011
Title:	Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2 (Revised).
Type:	Standard
Status:	Proposed
Agency:	Department of Financial Regulation
Legal Authority:	8 V.S.A. § 15
Summary:	The proposed rule amends Regulation 93-2. It sets forth the standards the Commissioner of the Department of Financial Regulation (Commissioner) may use to identify insurers that are

in such a hazardous financial condition that the continuance of their business places the public or policy holders at risk. The proposed rule sets forth the Commissioner's power and authority to deal with such companies. Specifically, the amendments expand the list of standards and strengthen the Commissioner's authority with respect to insurers determined to be in a hazardous financial condition.

Persons Affected:

The Department of Financial Regulation, Insurance Companies licensed in the State of Vermont, Consumers.

Economic Impact:

The proposed rule would have a favorable economic impact on the State of Vermont by ensuring the financial soundness of insurance companies and protecting consumers from insurers deemed to be in a hazardous financial condition. The proposed rule impacts insurance companies by expanding the Commissioner's authority to ensure their solvency.

Posting date:

Mar 19,2014

Hearing Information

Information for Hearing # 1

Hearing date:

04-22-2014 09:00 AM [ADD TO YOUR CALENDAR](#)

Location:

Department of Financial Regulation

Address:

89 Main Street, City Place

City:

Montpelier

State:

VT

Zip:

05620

Hearing Notes:

Contact Information

Information for Contact # 1

Level: Primary

Name: Shannon Salembier

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Website: <http://www.dfr.vermont.gov/proposed-rules-and-regulations>

Address: [VIEW WEBSITE](#)

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[SEND A COMMENT](#)

Keyword Information

Keywords:

Hazardous Financial Condition

Insurance

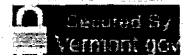
Solvency

Standards

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Proposed State Rules

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to proposals. The public notices for administrative rules are now also available online at <http://vermont-archives.org/aparules/ovnotices.htm>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee or Administrative Rules, State House, Montpelier, Vermont 05602 (828-2231)

**Defining Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition - Regulation 93-2 (Revised).
Vermont Proposed Rule: 14P011**

AGENCY: Department of Financial Regulation

CONCISE SUMMARY: The proposed rule amends Regulation 93-2. It sets forth the standards the Commissioner of the Department of Financial Regulation (Commissioner) may use to identify insurers that are in such a hazardous financial condition that the continuance of their business places the public or policy holders at risk. The proposed rule sets forth the Commissioner's power and authority to deal with such companies. Specifically, the amendments expand the list of standards and strengthen the Commissioner's authority with respect to insurers determined to be in a hazardous financial condition.

FOR FURTHER INFORMATION, CONTACT: Shannon Salembier
Department of Financial Regulation 89 Main Street, City Center,
Montpelier, VT 05620-3101 Tel: 802-828-2234 Email: shannon.
salembier@state.vt.us URL: <http://www.dfr.vermont.gov/proposed-rules-andregulations>.

For Copies: Crosby Sherman Department of Financial Regulation 89 Main Street, City Center, Montpelier VT 05620-3101 Tel: 802-828-4846 Email: crosby.sherman@state.vt.us

3-27-14 T-A