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**IDAPA 18
TITLE 01
Chapter 66**

**18.01.66 - DIRECTOR'S AUTHORITY FOR COMPANIES DEEMED TO BE
IN HAZARDOUS FINANCIAL CONDITION**

000. AUTHORITY.

This rule is adopted and promulgated by the Director pursuant to Idaho Code Sections 41-211, 41-327 and 41-3309, and Title 67, Chapter 52, Idaho Code. (10-1-93)

001. TITLE AND SCOPE.

The purpose of this rule is to set forth the standards which the Director may use for identifying insurers 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 rule shall not be interpreted to limit the powers granted the Director by any laws or parts of laws of this state, nor shall this rule be interpreted to supersede any laws or parts of laws of this state. (10-1-93)

002. (RESERVED).

003. APPEALS.

Any order or decision of the Director shall be subject to appeal in accordance with Chapter 52, Title 67, Idaho Code, at the instance of any party to the proceedings whose interests are substantially affected. (10-1-93)

004. -- 010. (RESERVED).

011. STANDARDS.

The following standards, either singly or a combination of two (2) or more, may be considered by the Director 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 Director may consider: (10-1-93)

01. Examination Reports. Adverse findings reported in financial condition and market conduct examination reports. (10-1-93)

02. NAIC Insurance Regulatory Information System. The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports. (10-1-93)

03. Expense Ratios. 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. (10-1-93)

04. Asset Portfolio. 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. (10-1-93)

05. Reinsurance Program. 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. (10-1-93)

06. Operating Loss. The insurer's operating loss in the last twelve (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 fifty percent (50%) of such insurer's remaining surplus as regards policyholders in excess of the minimum required. (10-1-93)

07. Insolvency Of Affiliate, Subsidiary Or Reinsurer. Whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations. (10-1-93)

08. Contingent Liabilities. Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the Director may affect the solvency of the insurer. (10-1-93)

09. Controlling Person. Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer. (10-1-93)

10. Receivables. The age and collectibility of receivables. (10-1-93)

11. Competence Of Management. 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. (10-1-93)

12. Failure To Respond To Inquiries. 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. (10-1-93)

13. False Or Misleading Financial Statements. 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. (10-1-93)

14. Extensive Growth. 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. (10-1-93)

15. Cash Flow. Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems. (10-1-93)

012. DIRECTOR'S AUTHORITY.

01. Determination Of Financial Condition. For the purposes of making a determination of an insurer's financial condition under this rule, the Director may: (10-1-93)

a. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding; (10-1-93)

b. Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates; (10-1-93)

c. 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; (10-1-93)

d. 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 twelve (12) month period. (10-1-93)

02. Issuance Of Order. If the Director determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the Director may, upon his determination, issue an order requiring the insurer to: (10-1-93)

a. Reduce the total amount of present and potential liability for policy benefits by reinsurance; (10-1-93)

b. Reduce, suspend or limit the volume of business being accepted or renewed; (10-1-93)

c. Reduce general insurance and commission expenses by specified methods; (10-1-93)

- d. Increase the insurer's capital and surplus; (10-1-93)
- e. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders; (10-1-93)
- f. File reports in a form acceptable to the Director concerning the market value of an insurer's assets; (10-1-93)
- g. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Director deems necessary; (10-1-93)
- h. Document the adequacy of premium rates in relation to the risks insured; (10-1-93)
- i. File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the Director. (10-1-93)

03. Hearing. Any insurer subject to an order under Subsection 012.02 may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to Section 550 to the extent not inconsistent with this subsection. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the Director based the order. Unless mutually agreed between the Director and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in Ada County or in some other place convenient to the parties designated by the Director. He shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public. (10-1-93)

013. SEVERABILITY.

If any provisions of this rule be held invalid, the remainder shall not be affected. (10-1-93)

014. -- 999. (RESERVED).

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