

**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

Before the Insurance Administrator  
Department of Consumer and Business Services

In the Matter of Amending OAR 836-011-0300,	)	
836-011-0305, 836-011-0310, 836-011-0320,	)	
836-011-0380 and 836-011-0390, to Require a	)	SUMMARY OF TESTIMONY
Risk Based Capital Trend Test for Property and	)	AND HEARING OFFICER'S
Casualty Insurers	)	RECOMMENDATION
	)	

**Procedures Followed**

On August 10, 2011, the Director filed with the Secretary of State a Notice of Proposed Rulemaking Hearing (Notice), giving notice that the Director proposed to begin rulemaking to adopt rules to require a risk-based capital trend test for property and casualty insurers. The Insurance Division does not have a rule that requires a risk based capital trend test for property and casualty insurers. This proposed rule would trigger a company action level if the risk based capital ratio of the property and casualty insurer falls between 200 and 300 percent and has a combined ratio (underwriting deductions over total revenue) above 120 percent. Basically, this test provides an additional tool to determine whether a property and casualty insurer is maintaining adequate capital and surplus to meet statutory requirements and policyholder obligations. The proposed rule is consistent with a provision in a National Association of Insurance Commissioners Model Rule #312 related to risk based capital for property and casualty insurers.

The Notice announced that a rulemaking hearing would be held on September 27, 2011, and that interested persons could submit comments through October 4, 2011. The notice was filed with a Statement of Need and Fiscal Impact which included a Statement of Statutory Authority, Need for Action, Advisory Committee, Principal Documents Relied Upon and Fiscal and Economic Impact. A copy of the Notice was published in the Secretary of State's Oregon Bulletin of September 2011. Copies of the Statement of Need and Fiscal Impact and the Notice of Proposed Rulemaking were delivered or mailed to Oregon property and casualty insurers, to persons on the Division mailing list established under the Administrative Procedures Act, to legislators who are required by law to be notified, and to the press and to other interested persons. Copies were also made available to interested persons through the Division's e-notify system and were posted on the Division's web site.

The division conducted an advisory committee meeting and solicited information from the participants about the fiscal impact of these rules. The committee reviewed the proposed fiscal impact and agreed that there would be a minimal fiscal impact to property and casualty insurers from this rule. The rules will have no fiscal impact on small businesses.

## Testimony Received and Hearing Officer Recommendation

The hearing was held as scheduled. Jeannette Holman, Senior Policy Analyst was the hearing officer. One person attended the hearing. No members of the public testified at the hearing, and no one submitted written comments.

The hearing officer recommends that the proposed rules be adopted with one change. These rules refer to “RBC instructions” without providing information about how to obtain the instructions. In order to provide clarity in the rule about how to locate the RBC instructions, the hearing officer recommends changing the definition of “RBC instructions” as set forth in OAR 836-011-0305 to include information about how to obtain these instructions. This will address potential issues raised by Smith v. Oregon Department of Corrections, 243 Or. App. 45, \_\_\_ P3d \_\_\_ (May 25, 2011).

The rulemaking was reviewed again for its economic effect on businesses, including small businesses, and there is no need for further change. The rulemaking is within the Director's rulemaking authority, and applicable rulemaking procedures were complied with.

Signed this 25th day of October 2011.

Department of Consumer and Business Services

/s/

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Jeannette Holman, Hearing Officer

This Summary and Recommendation are reviewed and adopted.

Signed this 27th day of October 2011.

Department of Consumer and Business Services

/s/

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Teresa Miller, Insurance Administrator