

1 **Risk-Based Capital Reporting**

2 **836-011-0300 (Amended)**

3 **Statutory Authority; Statutes Implemented**

4 (1) OAR 836-011-0300 to [836-011-0440] **836-011-0390** apply to insurers that are subject to the
5 capital and surplus requirements of ORS 731.554 and insurers that are subject to the capital and
6 surplus requirements of 731.566.

7 (2) OAR 836-011-0300 to [836-011-0440] **836-011-0390** are adopted pursuant to the authority of
8 ORS 731.244, 731.554, 731.574 and 733.210 for the purpose of implementing 731.554 and
9 731.574.

10 Stat. Auth.: ORS 731.244, ORS 731.554 & ORS 733.210

11 Stats. Implemented: ORS 731.554 & ORS 731.574

12 Hist.: ID 7-1995, f. & cert. ef. 11-15-95

13 **836-011-0305**

14 **Definitions**

15 As used in OAR 836-011-0300 to [836-011-0440] **836-011-0390**:

16 (1) "Adjusted RBC report" means a risk-based capital (RBC) report that has been adjusted by the
17 Director in accordance with OAR 836-011-0310(5).

18 (2) "Corrective order" means an order issued by the Director specifying corrective actions that
19 the Director has determined are required.

20 (3) "NAIC" means the National Association of Insurance Commissioners.

21 (4) "Life or health insurer" means an insurer transacting life insurance or health insurance or both
22 or an insurer authorized to transact property and casualty insurance but writing only health
23 insurance.

24 (5) "Property and casualty insurer" means an insurer transacting property and casualty insurance,
25 or either, but does not include an insurer transacting only monoline mortgage guaranty insurance,
26 financial guaranty insurance or title insurance, or an insurer authorized to transact property and
27 casualty insurance but writing only health insurance.

28 (6) "Negative trend" means, with respect to a life or health insurer, negative trend over a period
29 of time, as determined in accordance with the "trend test calculation" included in the RBC
30 instructions.

1 (7) "RBC instructions" means the RBC report, including risk-based capital instructions adopted
2 by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in
3 accordance with the procedures adopted by the NAIC **and identified by the Department of**
4 **Consumer and Business Services to be applicable to the RBC report period. RBC**
5 **instructions may be obtained by contacting the Insurance Division of the Department of**
6 **Consumer and Business Services using the contact information provided on the Insurance**
7 **Division website at: <http://insurance.oregon.gov/Contactus.html> .**

8 (8) "RBC level" means an insurer's company action level RBC, regulatory action level RBC,
9 authorized control level RBC, or mandatory control level RBC, defined as follows:

10 (a) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its
11 authorized control level RBC;

12 (b) "Regulatory action level RBC" means the product of 1.5 and its authorized control level
13 RBC;

14 (c) "Authorized control level RBC" means the number determined under the risk-based capital
15 formula in accordance with the RBC instructions; and

16 (d) "Mandatory control level RBC" means the product of .70 and the authorized control level
17 RBC.

18 (9) "RBC plan" means a comprehensive financial plan containing the elements specified in OAR
19 836-011-0320(2). If the Director rejects the RBC plan and it is revised by the insurer with or
20 without the Director's recommendation, the plan shall be called the "revised RBC plan."

21 (10) "RBC report" means the report required in OAR 836-011-0310.

22 (11) "Total adjusted capital" means the sum of:

23 (a) An insurer's statutory capital and surplus as determined in accordance with the statutory
24 accounting applicable to the annual financial statements required to be filed under ORS 731.574;
25 and

26 (b) Such other items, if any, as the RBC instructions may provide.

27 Stat. Auth.: ORS 731.244, ORS 731.554 & ORS 733.210

28 Stats. Implemented: ORS 731.554 & ORS 731.574

29 Hist.: ID 7-1995, f. & cert. ef. 11-15-95

30 **836-011-0310**

31 **RBC Reports**

- 1 (1) Each domestic insurer shall, on or prior to each March 1 (the "filing date"), prepare and
2 submit to the Director a report of its RBC levels as of the end of the calendar year just ended, in
3 a form and containing such information as is required by the RBC instructions. In addition, each
4 domestic insurer shall file its RBC report:
- 5 (a) With the NAIC in accordance with the RBC instructions; and
- 6 (b) With the insurance commissioner in any state in which the insurer is authorized to do
7 business, if the insurance commissioner has notified the insurer of its request in writing, in which
8 case the insurer shall file its RBC report not later than the later of:
- 9 (A) 15 days from the receipt of notice to file its RBC report with that state; or
- 10 (B) The filing date.
- 11 (2) A life or health insurer's RBC shall be determined in accordance with the formula set forth in
12 the RBC instructions. The formula shall take into account (and may adjust for the covariance
13 between) the following, determined in each case by applying the factors in the manner set forth
14 in the RBC instructions:
- 15 (a) The risk with respect to the insurer's assets;
- 16 (b) The risk of adverse insurance experience with respect to the insurer's liabilities and
17 obligations;
- 18 (c) The interest rate risk with respect to the insurer's business; and
- 19 (d) All other business risks and such other relevant risks as are set forth in the RBC instructions.
- 20 (3) A property and casualty insurer's RBC shall be determined in accordance with the formula set
21 forth in the RBC instructions. The formula shall take into account (and may adjust for the
22 covariance between) the following, determined in each case by applying the factors in the
23 manner set forth in the RBC instructions:
- 24 (a) Asset risk;
- 25 (b) Credit risk;
- 26 (c) Underwriting risk; and
- 27 (d) All other business risks and such other relevant risks as are set forth in the RBC instructions.
- 28 (4) An excess of capital over the amount produced by the risk-based capital requirements
29 contained in OAR 836-011-0300 to [836-011-0440] **836-011-0390** and the formulas, schedules
30 and instructions referenced in 836-011-0300 to [836-011-0440] **836-011-0390** is desirable in the
31 business of insurance. Accordingly, insurers should seek to maintain capital above the RBC

1 levels required by 836-011-0300 to [836-011-0440] **836-011-0390**, additional capital is used and
2 useful in the insurance business and helps to secure an insurer against various risks inherent in,
3 or affecting, the business of insurance and not accounted for or only partially measured by the
4 risk-based capital requirements contained in 836-011-0300 to [836-011-0440] **836-011-0390**.

5 (5) If a domestic insurer files an RBC report that in the judgment of the Director is inaccurate,
6 the Director shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of
7 the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC
8 report as so adjusted is an "adjusted RBC report" for purposes of OAR 836-011-0300 to [836-
9 011-0440] **836-011-0390**.

10 Stat. Auth.: ORS 731.244, ORS 731.554 & ORS 733.210
11 Stats. Implemented: ORS 731.554 & ORS 731.574
12 Hist.: ID 7-1995, f. & cert. ef. 11-15-95

13 **836-011-0320**

14 **Company Action Level Event**

15 (1) "Company action level event" means any of the following events:

16 (a) The filing of an RBC report by an insurer indicating that:

17 (A) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC
18 but less than its company action level RBC; [*or*]

19 (B) If a life or health insurer, the insurer has total adjusted capital that is greater than or equal to
20 its company action level RBC but less than the product of its authorized control level RBC and
21 2.5 and has a negative trend; **or**

22 **(C) If a property and casualty insurer, the insurer has total adjusted capital that is greater**
23 **than or equal to its company action level RBC but less than the product of its authorized**
24 **control level RBC and 3.0 and triggers the trend test determined in accordance with the**
25 **trend test calculation included in the property and casualty RBC instructions.**

26 (b) The notification by the Director to the insurer of an adjusted RBC report that indicates an
27 event in subsection (a) of this section, if the insurer does not challenge the adjusted RBC report
28 under OAR 836-011-0360; or

29 (c) If, pursuant to OAR 836-011-0360, an insurer challenges an adjusted RBC report that
30 indicates the event in subsection (a) of this section, the notification by the Director to the insurer
31 that the Director has, after a hearing, rejected the insurer's challenge.

32 (2) In the event of a company action level event, the insurer shall prepare and submit to the
33 Director an RBC plan that shall:

- 1 (a) Identify the conditions contributing to the company action level event;
- 2 (b) Contain proposals of corrective actions that the insurer intends to take and would be expected
3 to result in the elimination of the company action level event;
- 4 (c) Provide projections of the insurer's financial results in the current year and at least the four
5 succeeding years, both in the absence of proposed corrective actions and giving effect to the
6 proposed corrective actions, including projections of statutory operating income, net income,
7 capital and surplus. The projections for both new and renewal business must include separate
8 projections for each major line of business and separately identify each significant income,
9 expense and benefit component, if the Director so requires;
- 10 (d) Identify the key assumptions affecting the insurer's projections and the sensitivity of the
11 projections to the assumptions; and
- 12 (e) Identify the quality of and problems associated with the insurer's business, including but not
13 limited to its assets, anticipated business growth and associated surplus strain, extraordinary
14 exposure to risk, mix of business and use of reinsurance, if any, in each case.
- 15 (3) The insurer shall submit the RBC Plan:
- 16 (a) Not later than the 45th day after the company action level event; or
- 17 (b) If the insurer challenges an adjusted RBC report pursuant to OAR 836-011-0360, not later
18 than the 45th day after the Director's notification to the insurer that the Director has, after a
19 hearing, rejected the insurer's challenge.
- 20 (4) Not later than the 60th day after an insurer has submitted an RBC plan to the Director, the
21 Director shall notify the insurer whether the RBC plan shall be implemented or is unsatisfactory,
22 in the judgment of the Director. If the Director determines the RBC plan is unsatisfactory, the
23 notification to the insurer shall set forth the reasons for the determination and may set forth
24 proposed revisions that will render the RBC plan satisfactory, in the judgment of the Director.
25 Upon notification from the Director, the insurer shall prepare a revised RBC plan, which may
26 incorporate by reference any revisions proposed by the Director, and shall submit the revised
27 RBC plan to the Director:
- 28 (a) Not later than the 45th day after the notification from the Director; or
- 29 (b) If the insurer challenges the notification from the Director under OAR 836-011-0360, not
30 later than the 45th day after a notification to the insurer that the Director has, after a hearing,
31 rejected the insurer's challenge.
- 32 (5) In the event of a notification by the Director to an insurer that the insurer's RBC plan or
33 revised RBC plan is unsatisfactory, the Director at the Director's discretion, subject to the
34 insurer's right to a hearing under OAR 836-011-0360, may specify in the notification that the
35 notification constitutes a regulatory action level event.

1 (6) A domestic insurer that files an RBC plan or revised RBC plan with the Director shall file a
2 copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in
3 which the insurer is authorized to transact insurance if such a state has an RBC provision
4 substantially similar to [section 4, chapter 638, Oregon Laws 1995] ORS 731.752, and the
5 insurance commissioner of that state has notified the insurer of its request for the filing in
6 writing. The insurer shall file the copy in that state not later than the later of the following:

7 (a) The 15th day after receipt of the notice to file a copy of its RBC plan or revised RBC plan
8 with the state; or

9 (b) The date on which the RBC plan or revised RBC plan is filed under section (3) or (4) of this
10 rule, as applicable.

11 Stat. Auth.: ORS 731.244, ORS 731.554 & ORS 733.210

12 Stats. Implemented: ORS 731.554 & ORS 731.574

13 Hist.: ID 7-1995, f. & cert. ef. 11-15-95

14 **836-011-0380**

15 **Supplemental Provisions; Exemption**

16 (1) 836-011-0300 to [836-011-0440] 836-011-0390 are supplemental to any other provisions of
17 the laws of this state, and do not preclude or limit any other powers or duties of the Director
18 under such laws, including, but not limited to, OAR 836-011-0100 to 836-011-0120.

19 (2) OAR 836-011-0300 to [836-011-0440] 836-011-0390 do not apply to any domestic insurer
20 transacting property and casualty insurance that:

21 (a) Writes direct business only in this state;

22 (b) Writes direct annual premiums of \$2 million or less; and

23 (c) Assumes no reinsurance in excess of five percent of direct premium written.

24 Stat. Auth.: ORS 731.244, ORS 731.554 & ORS 733.210

25 Stats. Implemented: ORS 731.554 & ORS 731.574

26 Hist.: ID 7-1995, f. & cert. ef. 11-15-95

27 **836-011-0390**

28 **Foreign Insurers**

29 (1) A foreign insurer shall, upon the written request of the Director, submit to the Director an
30 RBC report as of the end of the calendar year just ended on the later of:

1 (a) The date by which an RBC report would be required to be filed by a domestic insurer under
2 OAR 836-011-0300 to [836-011-0440] **836-011-0390**; or

3 (b) The 15th day after the request is received by the foreign insurer.

4 (2) A foreign insurer shall, at the written request of the Director, promptly submit to the Director
5 a copy of any RBC plan that is filed with the insurance commissioner of any other state.

6 (3) In the event of a company action level event, regulatory action level event or authorized
7 control level event with respect to any foreign insurer as determined under the statute or rule
8 governing risk based capital reporting applicable in the state of domicile of the insurer (or, if no
9 such statute or rule is in force in that state, under the provisions of OAR 836-011-0300 to [836-
10 011-0440] **836-011-0390**), if the insurance commissioner of the state of domicile of the foreign
11 insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that
12 state's statute or rule governing risk-based capital reporting (or, if no such statute or rule is in
13 force in that state, under 836-011-0320), the Director may require the foreign insurer to file an
14 RBC plan with the Director. In such event, the failure of the foreign insurer to file an RBC plan
15 with the Director shall be grounds to order the insurer to cease and desist from writing new
16 insurance business in this state.

17 (4) In the event of a mandatory control level event with respect to any foreign insurer, if a
18 domiciliary receiver has not been appointed with respect to the foreign insurer under the
19 rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the
20 Director may apply for an order under ORS 734.190 with respect to the conservation of property
21 of foreign insurers found in this state, and the occurrence of the mandatory control level event
22 shall be considered adequate grounds for the application under 734.150(1) or (4).

23 Stat. Auth.: ORS 731.244, ORS 731.554 & ORS 733.210

24 Stats. Implemented: ORS 731.554 & ORS 731.574

25 Hist.: ID 7-1995, f. & cert. ef. 11-15-95

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