806 KAR 3:190. Risk-based capital for insurers.

RELATES TO: KRS 304.3-120, 304.3-140, 304.3-240, 304.5-020, 304.5-030, 304.5-040, 304.5-050, 304.5-060, 304.5-070, 304.5-080, 304.5-110, 304.6, 304.7, 304.24-350, 304.33, 304.49-010

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.3-125 authorizes the commissioner to promulgate administrative regulations addressing requirements for additional capital and surplus based on the kind, type, volume, and nature of insurance business transacted, up to the standards prescribed by the National Association of Insurance Commissioners. This administrative regulation establishes risk-based capital requirements for all insurers authorized to transact insurance business in Kentucky.

Section 1. Definitions.

(1) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with Section 3(6) of this administrative regulation.

(2) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions.

(3) "Company action level RBC" means the product of two (2.0) and its authorized control level RBC.

(4) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(5) "Domestic insurer" is defined by KRS 304.1-070(1).

(6) "Foreign insurer" is defined by KRS 304.1-070(2).

(7) "Fraternal benefit society" is defined by KRS 304.29-011.

(8) "Insurer" is defined by KRS 304.1-040.

(9) "Life and health insurer" means any insurer licensed to write insurance as defined in KRS 304.5-020, 304.5-030, and 304.5-040 or a licensed property and casualty insurer writing only accident and health insurance.

(10) "Mandatory control level RBC" means the product of seven-tenths (.70) and the authorized control level RBC.

(11) "NAIC" is defined by KRS 304.7-012(59).

(12) "Negative trend" means, with respect to a life or health insurer or a fraternal benefit society, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the Life or Fraternal RBC instructions.

(13) "Property and casualty insurer" means any insurer licensed to write insurance as defined in KRS 304.5-050, 304.5-060, 304.5-070, 304.5-080, and 304.5-110, except for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

(14) "RBC" means risk-based capital.

(15) "RBC instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC.

(16) "RBC Level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC.

(17) "RBC plan" means a comprehensive financial plan containing the elements specified in Section 4(2) of this administrative regulation.

(18) "RBC report" means the report required in Section 3 of this administrative regulation.

(19) "Regulatory action level RBC" means the product of one and five-tenths (1.5) and its authorized control level RBC.

(20) "Revised RBC plan" means an RBC plan that has been rejected by the commissioner and then revised by the insured.

(21) "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under KRS 304.3-240; and

(b) Any other items as specified in the RBC instructions.

Section 2. The provisions of this administrative regulation shall apply to the following insurers:

(1) All domestic insurers, whether or not they purport to do business in this state;

(2) All insurers who are doing or have done an insurance business in this state and against whom claims arising from that business may exist now or in the future;

(3) All insurers who purport to do an insurance business in this state;

(4) All insurers who have insureds resident in this state;

(5) All other persons organized or in the process of organizing with the intent to do an insurance business in this state;

(6) A fraternal benefit society as defined in KRS Chapter 304, Subtitle 29; and

(7) An industrial insured captive insurer as defined by KRS 304.49-010(8).

Section 3. RBC Reports.

(1) On or prior to March 1, every domestic insurer shall prepare and submit to the commissioner an RBC report for the calendar year just ended.

(2) The RBC report shall be filed in a form and contain information as is required by the RBC instructions.

(3) In addition, every domestic insurer shall file its RBC report with:

(a) The NAIC in accordance with the RBC instructions; and

(b) The insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report no later than:

1. Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

2. The filing date.

(4) Requirements for life and health insurers:

(a) A life and health insurer's or a fraternal benefit society's RBC shall be determined in accordance with the formula set forth in the RBC instructions.

(b) The formula shall take into account and may adjust for the covariance between the following which are determined in each case by applying the factors in the manner set forth in the RBC instructions:

1. The risk with respect to the insurer's assets;

2. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

3. The interest rate risk with respect to the insurer's business; and

4. All other business risks and other relevant risks as are set forth in the RBC instructions.

(5) Requirements for property and casualty insurers:

(a) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.

(b) The formula shall take into account and may adjust for the covariance between the following which shall be determined in each case by applying the factors in the manner set forth in the RBC instructions:

1. Asset risk;

2. Credit risk;

3. Underwriting risk; and

4. All other business risk and other relevant risks as are set forth in the RBC instructions.

(6) If a domestic insurer files an RBC report which in the judgment of the commissioner is inaccurate, then the commissioner shall:

(a) Adjust the RBC report to correct the inaccuracy;

(b) Notify the insurer of the adjustment;

(c) Inform the insurer in writing of the reason for the adjustment; and

(d) Once the RBC report is adjusted, refer to the report as the adjusted RBC report.

Section 4. Company Action Level Event.

(1) A company action level event shall be any of the following events:

(a) The filing of an RBC report by an insurer which indicates that:

1. The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

2. If a life or health insurer or a fraternal benefit society, the insurer has:

a. Total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and three (3.0); and

b. A negative trend; or

3. If a property and casualty insurer, the insurer:

a. Has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and three (3.0); and

b. Triggers the trend test determined in accordance with the trend test calculation included in the Risk-Based Capital Forecasting & Instructions, Property/Casualty;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, if the insurer does not challenge the adjusted RBC report under Section 8 of this administrative regulation; or

(c) If, pursuant to Section 8 of this administrative regulation, an insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) If a company action level event occurs, the insurer shall prepare and submit to the commissioner an RBC plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Propose corrective actions which the insurer intends to take in order to eliminate the company action level event;

(c) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions including:

1. Projections of statutory operating income, net income, capital, or surplus; and

2. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of the insurer's business and problems associated with the insurer's business, including the following:

1. Assets;

2. Anticipated business growth and associated surplus strain;

3. Exposure to risk;

4. Mix of business; and
5. Use of reinsurance.

(3) The RBC plan shall be submitted:

(a) Within forty-five (45) days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report pursuant to Section 8 of this administrative regulation, within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty (60) days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan shall be implemented or is unsatisfactory.

(5) If the commissioner determines that the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory.

(6) Upon notification from the commissioner, the insurer shall prepare a revised RBC plan which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five (45) days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under Section 8 of this administrative regulation, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(7) If there is a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may subject to the insurer's right to a hearing under Section 8 of this administrative regulation, specify in the notification that the notification constitutes a regulatory action level event.

(8) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) The state has an RBC provision substantially similar to Section 9(1) of this administrative regulation; and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing.

(9) If the insurer is required by subsection (8) of this section to file an RBC plan or revised RBC plan with another state, then it shall be filed in that state by the latter of the following time periods:

(a) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(b) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

Section 5. Regulatory Action Level Event.

(1) A regulatory action level event shall be any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to an insurer of an adjusted RBC report that indicates a regulatory action level event, if the insurer does not challenge the adjusted RBC report under Section 8 of this administrative regulation;

(c) If, pursuant to Section 8 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates a regulatory action level event, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for that failure and has cured the failure within ten (10) days after the filing date;

(e) The failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in Section 4(3) of this administrative regulation;

(f) Notification by the commissioner to the insurer that:

1. The RBC plan or revised RBC plan submitted by the insurer is unsatisfactory; and

2. The notification constitutes a regulatory action level event with respect to the insurer, if the insurer has not challenged the determination under Section 8 of this administrative regulation;

(g) If, pursuant to Section 8 of this administrative regulation, the insurer challenges a determination by the commissioner under subsection (1)(f) of this section, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(h) If the insurer has not challenged the determination under Section 8 of this administrative regulation, notification by the commissioner to the insurer that:

1. The insurer has failed to adhere to its RBC plan or revised RBC plan; and

2. The insurer's failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan; or

(i) If, pursuant to Section 8 of this administrative regulation, the insurer challenges a determination by the commissioner under paragraph (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(2) If a regulatory action level event occurs, the commissioner shall:

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform an examination or analysis of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue a corrective order specifying corrective actions as the commissioner shall determine are required.

(3) In determining corrective actions, the commissioner may take into account relevant factors based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, which shall include the results of any sensitivity tests undertaken pursuant to the RBC instructions.

(4) The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five (45) days after the occurrence of the regulatory action level event;

(b) If the insurer challenges the adjusted RBC report pursuant to Section 8 of this administrative regulation and the challenge is not frivolous, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan pursuant to Section 8 of this administrative regulation and the challenge is not frivolous, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) The commissioner may retain actuaries and investment experts and other consultants as may be necessary to:

(a) Review the insurer's RBC plan or revised RBC plan;

(b) Examine or analyze the assets, liabilities, and operations of the insurer; and

(c) Formulate the corrective order with respect to the insurer.

(6) The fees, costs, and expenses relating to consultants shall be borne by the affected insurer.

Section 6. Authorized Control Level Event.

(1) An authorized control level event shall be any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an authorized control level event, if the insurer does not challenge the adjusted RBC report under Section 8 of this administrative regulation;

(c) If, pursuant to Section 8 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates an authorized control level event, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond to a corrective order, if the insurer has not challenged the corrective order under Section 8 of this administrative regulation; or

(e) If the insurer has challenged a corrective order under Section 8 of this administrative regulation and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond to the corrective order subsequent to rejection of modification by the commissioner.

(2) If an authorized control level event occurs with respect to an insurer, the commissioner shall:

(a) Take actions as are required under Section 5 of this administrative regulation regarding an insurer to which a regulatory action level event has occurred; or

(b) Take actions as are necessary to cause the insurer to be placed under regulatory control pursuant to KRS Chapter 304, Subtitle 33 if the commissioner determines it to be in the best interest of the policyholders, creditors of the insurer, and public.

(3) The authorized control level event shall be sufficient grounds for the commissioner to take action under KRS Chapter 304, Subtitle 33. If the commissioner takes actions under this section pursuant to an adjusted RBC report, the insurer shall be entitled to the protections afforded to insurers under the provisions of the section pertaining to summary proceedings.

Section 7. Mandatory Control Level Event.

(1) A mandatory control level event shall be any of the following events:

(a) The filing of an RBC report which indicates that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the insurer of an adjusted RBC report that indicates a mandatory control level event, if the insurer does not challenge the adjusted RBC report under Section 8 of this administrative regulation; or

(c) If, pursuant to Section 8 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates a mandatory control level event, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) If a mandatory control level event occurs for a life insurer or fraternal benefit society:

(a) The commissioner shall take actions as are necessary pursuant to KRS Chapter 304, Subtitle 33.

(b) If the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of KRS Chapter 304, Subtitle 33 pertaining to summary proceedings.

(c) The commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

(3) If a mandatory control level event occurs for a property and casualty insurer:

(a) The commissioner shall take actions as are necessary pursuant to KRS Chapter 304, Subtitle 33.

(b) If an insurer is writing no business and is running-off its existing business, the commissioner may allow the insurer to continue its run-off under the supervision of the commissioner.

(c) The mandatory control level event shall be sufficient grounds for the commissioner to take action under KRS Chapter 304, Subtitle 33.

(d) If the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of KRS Chapter 304, Subtitle 33 pertaining to summary proceedings.

(e) The commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

Section 8. Hearings.

(1) Upon any of the following notifications, the insurer shall have the right to a confidential hearing at which the insurer may challenge any determination or action by the commissioner:

(a) Notification to an insurer by the commissioner of an adjusted RBC report;

(b) Notification to an insurer by the commissioner that:

1. The insurer's RBC plan or revised RBC plan is unsatisfactory; and

2. The notification constitutes a regulatory action level event with respect to the insurer;

(c) Notification to any insurer by the commissioner of the following:

1. The insurer has failed to adhere to its RBC plan or revised RBC plan; and

2. This failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(d) Notification to an insurer by the commissioner of a corrective order.

(2) The insurer shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under subsection (1) of this section.

(3) Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request.

Section 9. Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking.

(1) The following records shall be confidentially disclosed pursuant to the requirements of this administrative regulation and shall be proprietary information that, if disclosed, would create an unfair competitive advantage to competitors and shall be kept confidential by the commissioner:

(a) RBC reports;

(b) RBC plans;

(c) Results or report of an examination or analysis of an insurer performed pursuant to an RBC plan; and

(d) Corrective order.

(2) Comparison of insurer's total adjusted capital to any RBC levels shall be a regulatory tool and shall not be used to rank insurers.

(3) An insurer, agent, broker, or other person engaged in the insurance business shall not disseminate orally or in any manner or cause to be disseminated directly or indirectly to the public an assertion, representation, or statement with regard to RBC levels of any insurer or any component of the calculation.

(4) If a false statement with regard to a comparison of an insurer's total adjusted capital to its RBC levels or an inappropriate comparison is made, and the falsity is substantially proved, an insurer may issue a statement to rebut the false statement.

(5) RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans:

(a) Shall be used solely by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers;

(b) Shall not be used in rate making or as evidence in rate proceedings; and

(c) Shall not be used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

Section 10. Exemption. The commissioner may exempt from the application of this administrative regulation any domestic property and casualty insurer which:

(1) Writes direct business only in this state;

(2) Writes direct annual premiums of $2,000,000 or less; and

(3) Assumes no reinsurance in excess of five (5) percent of direct premium written.

Section 11. Foreign Insurers.

(1) Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report for the calendar year just ended.

(2) The RBC report of a foreign insurer shall be filed as follows:

(a) On the date an RBC report would be required to be filed by a domestic insurer under this administrative regulation; or

(b) Fifteen (15) days after the request is received by the foreign insurer.

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

(4) The commissioner may require a foreign insurer to file an RBC plan if:

(a) A company action level event, regulatory action level event, or authorized control level event exists as determined by:

1. RBC law applicable in the insurer's state of domicile; or

2. This administrative regulation; and

(b) If the insurance commissioner of the insurer's state of domicile fails to require the foreign insurer to file an RBC.

(5) If the commissioner requires the foreign insurer to file an RBC plan pursuant to subsection (4) of this section, the failure of the foreign insurer to file an RBC Plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

(6) If a mandatory control level event with respect to any foreign insurer occurs, and if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer:

(a) The commissioner may make application to the Franklin Circuit Court permitted under KRS Chapter 304, Subtitle 33 with respect to the liquidation of property of foreign insurers found in this state; and

(b) The occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Section 12. Notices.

(1) All notices by the commissioner to an insurer which may result in regulatory action pursuant to this administrative regulation shall be effective upon dispatch if transmitted by registered or certified mail.

(2) If notices are transmitted other than by regular or certified mail, they shall be effective upon the insurer's receipt of the notice.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Risk-Based Capital Forecasting & Instructions, Life" (2011);

(b) "Risk-Based Capital Forecasting & Instructions, Property/Casualty" (2011); and

(c) "Risk-Based Capital Forecasting & Instructions, Fraternal" (2011).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(23 Ky.R. 4029; Am. 24 Ky.R. 122; eff. 8-11-97; TAm eff. 8-9-2007; 38 Ky.R. 1057; 1333; eff. 2-3-12; 38 Ky.R. 1910; 39 Ky.R. 36; eff. 8-6-2012; Crt eff. 2-26-2020.)