60A.63 REGULATORY ACTION LEVEL EVENT.

Subdivision 1. **Definition.** "Regulatory action level event" means, with respect to an insurer, any of the following events:

(1) the filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital;

(2) the notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in clause (1), provided the insurer does not challenge the adjusted risk-based capital report under section 60A.66;

(3) if, pursuant to section 60A.66, the insurer challenges an adjusted risk-based capital report that indicates the event in clause (1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(4) the failure of the insurer to file a risk-based capital report by March 1, unless the insurer has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten days after March 1;

(5) the failure of the insurer to submit a risk-based capital plan to the commissioner within the time period set forth in section 60A.62, subdivision 3;

(6) notification by the commissioner to the insurer that:

(i) the risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(ii) the notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under section 60A.66;

(7) if, pursuant to section 60A.66, the insurer challenges a determination by the commissioner under clause (6), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(8) notification by the commissioner to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event according to its risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under section 60A.66; or

(9) if, pursuant to section 60A.66, the insurer challenges a determination by the commissioner under clause (8), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

Subd. 2. **Commissioner's duties.** In the event of a regulatory action level event, the commissioner shall:

(1) require the insurer to prepare and submit a risk-based capital plan, or, if applicable, a revised risk-based capital plan;

(2) examine or analyze as the commissioner considers necessary the assets, liabilities, and operations of the insurer including reviewing its risk-based capital plan or revised risk-based capital plan; and

(3) subsequent to the examination or analysis, issue a corrective order specifying the corrective actions the commissioner determines are required.

Subd. 3. **Corrective action.** In determining corrective actions, the commissioner may take into account factors considered relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan must be submitted:

(1) within 45 days after the occurrence of the regulatory action level event;

(2) if the insurer challenges an adjusted risk-based capital report pursuant to section 60A.66 and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(3) if the insurer challenges a revised risk-based capital plan pursuant to section 60A.66 and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

Subd. 4. **Examination and review.** The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's risk-based capital plan or revised risk-based capital plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or other party as directed by the commissioner.

History: *1995 c 253 s 5*