

CHAPTER 2
INSURANCE GROUP

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 17:17-1 et seq., 17B:17-1 et seq., 34:15-77, and 54:18A-1 et seq.

Source and Effective Date

R.2005 d.350, effective September 21, 2005.
See: 37 N.J.R. 2285(a), 37 N.J.R. 4026(a).

Chapter Expiration Date

Chapter 2, Insurance Group, expires on September 21, 2010.

Chapter Historical Note

Chapter 2, Insurance Group, was adopted and became effective prior to September 1, 1969.

Subchapter 10, Casualty Insurers, Personal Lines Insurance, was adopted as new rules by R.1970 d.71, effective June 26, 1970.

Subchapter 11, Rules Governing Advertisement of Health Insurance, was adopted as new rules by R.1972 d.95, effective May 16, 1972. See: 4 N.J.R. 69(b), 4 N.J.R. 128(d).

Subchapter 12, Mass Marketing of Property and Liability Insurance, was adopted as new rules by R.1974 d.271, effective September 25, 1974. See: 6 N.J.R. 313(d), 6 N.J.R. 408(a).

Subchapter 13, Group Coverage Discontinuance and Replacement, was adopted as new rules by R.1974 d.272, effective February 1, 1975. See: 5 N.J.R. 342(c), 6 N.J.R. 409(a).

Subchapter 17, Unfair Claims Settlement Practices, was adopted as new rules by R.1981 d.407, effective November 2, 1981, operative January 15, 1982. See: 12 N.J.R. 600(f), 13 N.J.R. 774(c), 13 N.J.R. 894(a).

Subchapter 18, Readable Policies, was adopted as new rules by R.1982 d.410, effective November 15, 1982. See: 14 N.J.R. 967(a), 14 N.J.R. 1307(c).

Subchapter 10, Casualty Insurers, Personal Lines Insurance, was repealed by R.1985 d.71, effective February 19, 1985. See: 16 N.J.R. 2920(a), 17 N.J.R. 458(b).

Subchapter 23, Advertisement of Life Insurance and Annuities, was adopted as new rules by R.1985 d.600, effective November 18, 1985. See: 16 N.J.R. 2626(a), 17 N.J.R. 2776(a).

Subchapter 19, Approval of Insurance Schools and Company Training Programs, was adopted as new rules by R.1985 d.608, effective December 2, 1985. See: 16 N.J.R. 2920(b), 17 N.J.R. 2901(b).

Subchapter 1, Educational Requirements for Licensing, was repealed, and Subchapter 19, Approval of Insurance Schools and Company Training Programs, was repealed by R.1989 d.192, effective April 3, 1989. See: 20 N.J.R. 1152(a), 21 N.J.R. 899(b).

Subchapter 26, Annual Audited Financial Reports, was adopted as new rules by R.1989 d.612, effective December 18, 1989. See: 21 N.J.R. 3054(a), 21 N.J.R. 3919(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, Insurance Group, was readopted as R.1991 d.4, effective November 30, 1990, and Subchapter 8, Mid-Term Substitution by Mortgagor of Insurance Policies, was repealed, effective January 7, 1991, by R.1991 d.4. See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).

Subchapter 32, Custodial Deposits, was adopted as new rules by R.1991 d.14, effective January 7, 1991. See: 22 N.J.R. 2640(a), 23 N.J.R. 105(a).

Subchapter 31, Manner of Determining Premium for Perpetual Homeowners Insurance, was adopted as new rules by R.1991 d.139, effective March 18, 1991. See: 22 N.J.R. 601(a), 23 N.J.R. 860(b).

Subchapter 29, Orderly Withdrawal of Insurance Business, was adopted as new rules by R.1991 d.262, effective May 20, 1991. See: 23 N.J.R. 15(b), 23 N.J.R. 1673(a).

Subchapter 35, Relief from Insurer Obligations Under the Fair Automobile Insurance Reform Act of 1990, was adopted as new rules by R.1991 d.519, effective October 21, 1991. See: 23 N.J.R. 660(a), 23 N.J.R. 3166(a).

Subchapter 27, Determination of Insurers in a Hazardous Financial Condition, was adopted as new rules by R.1992 d.292, effective July 6, 1992. See: 23 N.J.R. 3197(a), 24 N.J.R. 2456(a).

Subchapter 33, Workers' Compensation Self-Insurance, was adopted as new rules by R.1993 d.157, effective April 5, 1993. See: 24 N.J.R. 1944(a), 24 N.J.R. 2708(b), 25 N.J.R. 1526(a).

Subchapter 28, Credit for Reinsurance, was adopted as emergency new rules by R.1993 d.448, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4289(a). The provisions of R.1993 d.448 were readopted as R.1993 d.557, effective October 15, 1993. See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

Subchapter 36, Risk Retention Groups and Purchasing Groups, was adopted as emergency new rules by R.1993 d.449, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4298(a). The provisions of R.1993 d.449 were readopted as R.1993 d.558, effective October 15, 1993. See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a).

Subchapter 37, Producer-Controlled Insurers, was adopted as emergency new rules by R.1993 d.450, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4304(a). The provisions of R.1993 d.450 were readopted as R.1993 d.559, effective October 15, 1993. See: 25 N.J.R. 4304(a), 25 N.J.R. 5202(a).

Subchapter 38, Increase in Property and Casualty Capital and Surplus Requirements, was adopted as emergency new rules by R.1993 d.451, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4306(a). The provisions of R.1993 d.451 were readopted as R.1993 d.560, effective October 15, 1993. See: 25 N.J.R. 4306(a), 25 N.J.R. 5204(a).

Subchapter 39, Increase in Capital and Surplus Requirements for Life and Health Insurers, was adopted as emergency new rules by R.1993 d.452, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4309(a). The provisions of R.1993 d.452 were readopted as R.1993 d.561, effective October 15, 1993. See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

Subchapter 40, Life, Health and Annuity Reinsurance Agreements, was adopted as emergency new rules by R.1993 d.453, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4314(a). The provisions of R.1993 d.453 were readopted as R.1993 d.562, effective October 15, 1993. See: 25 N.J.R. 4314(a), 25 N.J.R. 5212(a).

Subchapter 34, Surplus Lines Insurance: Allocation of Premium Tax and Surcharge, was adopted as new rules by R.1993 d.582, effective November 15, 1993. See: 25 N.J.R. 1826(a), 25 N.J.R. 5194(a).

Petition for Rulemaking. See: 26 N.J.R. 2487(b).

Subchapter 41, Windstorm Market Assistance Program, was adopted as new rules by R.1995 d.53, effective January 17, 1995. See: 26 N.J.R. 4304(a), 27 N.J.R. 364(a).

Subchapter 1, Admission Requirements for Foreign and Alien Life and Health Insurers, was adopted as new rules by R.1995 d.80, effective February 6, 1995. See: 26 N.J.R. 4586(a), 27 N.J.R. 559(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Insurance Group, was readopted as R.1996 d.3, effective November 30, 1995, with amendments effective January 2, 1996. See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, Insurance Group, was readopted as R.2001 d.6, effective November 30, 2000. See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Subchapter 14, Procedures for the Conduct of Voting on a Plan of Reorganization of a Domestic Mutual Life Insurer, was adopted as new rules by R.2001 d.84, effective March 5, 2001. See 32 N.J.R. 4330(a), 33 N.J.R. 802(a).

Subchapter 19, Designation of Third Party for Certain Notifications by Senior Citizen Insureds, was adopted as new rules by R.2002 d.210, effective July 1, 2002. See: 34 N.J.R. 366(a), 34 N.J.R. 2315(a).

Subchapter 42, Homeowners' Insurance: Standard Hurricane Deductibles And Expedited Process for Homeowners' Insurance Changes, was adopted as new rules by R.2003 d.450, effective November 17, 2003. See: 35 N.J.R. 1189(a), 35 N.J.R. 5280(b).

Subchapter 43, Treatment of Allocated Deposit-Type Deferred Contract Funds for Purposes of Calculating the Special Purpose Apportionment and the Fraud Assessment, was adopted as new rules by R. 2004, d.407, effective November 1, 2004. See: 36 N.J.R. 2976(a), 36 N.J.R. 4929(a).

Chapter 2, Insurance Group, was readopted by R.2005 d.350, effective September 21, 2005. As part of R.2005, d.350, Subchapter 38, Temporary Waiver from Increase in Property and Casualty Capital and Surplus Requirements, was repealed, effective October 17, 2005. See: Source and Effective Date. See, also, section annotations.

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APPENDIX

SUBCHAPTER 1. ADMISSION REQUIREMENTS FOR FOREIGN AND ALIEN LIFE AND HEALTH INSURERS

11:2-1.1 Purpose

This subchapter establishes the procedures, requirements and standards which govern the application of foreign and alien insurers engaged in the business of life and health insurance for a certificate of authority to transact the business of insurance in this State.

11:2-1.2 Scope

This subchapter applies to all foreign and alien insurers that apply for a certificate of authority to transact the business of life and health insurance in this State. The filing

requirements contained in this subchapter shall not apply to the continuation, renewal or timely reinstatement of existing certificates of authority except where the Commissioner, pursuant to law, shall otherwise require.

11:2-1.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner of the Department of Banking and Insurance of this State.

“Committee on Admissions” means the advisory committee within the Department appointed by the Commissioner to aid in the review of applications for admission to transact the business of insurance in this State and to render to the Commissioner recommendations as to the disposition of such applications.

“Department” means the Department of Banking and Insurance of this State.

“IRIS” means the NAIC Insurance Regulatory Information System.

“NAIC” means National Association of Insurance Commissioners.

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Amended “Commissioner” and “Department”.

11:2-1.4 General eligibility requirements

(a) In order for a foreign or alien insurer to be admitted as a life and health insurer in this State, the requirements in this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1. The applicant shall satisfy the Commissioner that its condition or methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a hazardous financial condition exists, the factors identified in N.J.A.C. 11:2-27.3 shall be considered. A hazardous financial condition shall exist when those factors indicate, either singly or in combination of two or more, that the financial condition of any applicant which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be hazardous to the policyholders, stockholders, claimants, creditors, or the general public. The Commissioner shall further consider any other fact or circumstance that indicates that an insurer’s operations may be hazardous.

2. The applicant shall satisfy at least the minimum capital and surplus requirements of a similar domestic insurer of this State for all lines of insurance that it is authorized to write pursuant to the certificate of authority issued by its place of domicile, whether or not the applicant

desires to transact any of those lines of insurance in this State, subject to the following:

i. In determining whether an applicant meets the minimum capital and surplus requirements, the following shall be deducted from unassigned funds:

(1) The statement value of any and all special deposits not held for the protection of all policyholders;

(2) Reserves and losses reinsured with companies not authorized in New Jersey, accredited as reinsurers in New Jersey, or otherwise in compliance with N.J.S.A. 17:51B-1 et seq., net of any offsets;

(3) The statement value for the portion of assets held in excess of investment limitations for life and health insurers pursuant to N.J.S.A. 17B:20-1 et seq.;

(4) Reserve shortfalls caused by the company holding reserves weaker than those mandated by N.J.S.A. 17B:19, or such other standards provided by administrative rule, actuarial guidelines, or determined necessary by actuarial analysis;

(5) The excess of the statement value over the market value of bonds held by the applicant; and

(6) Off balance sheet guarantees and contingent liabilities for which the company has not previously established a liability in an appropriate amount.

ii. Capital and surplus requirements may be reduced to the level required for the kinds of insurance actually being marketed if the applicant:

(1) Does not transact one or more of the kinds of insurance contained in the certificate of authority issued by its state or country of domicile; and

(2) Submits a resolution by its board of directors stating that it will refrain from transacting the kind(s) of insurance permitted by the certificate of authority issued by its state or country of domicile.

3. An applicant which has total adjusted capital of less than its company action level risk-based capital or which has otherwise triggered a company action level event, as these terms are defined in N.J.A.C. 11:2-39, as of December 31 of the preceding calendar year, shall not be considered for admission until the applicant’s status has improved.

4. The applicant shall be deemed to have its application deferred if any one of the following conditions exist:

i. An applicant which has failed four or more IRIS tests shall have its application deferred until it has demonstrated to the Commissioner and its place of domicile that the IRIS test results are not indicative of a financial condition that may be hazardous to the policyholders, stockholders, claimants, creditors or the general public; or

ii. An applicant which has failed to file with the NAIC an annual statement for the prior year shall have its application deferred until it has filed with the NAIC such annual statement.

5. The applicant shall satisfy the following seasoning requirements:

i. Subject to the provisions of this subchapter, no applicant shall be considered for a certificate of authority to transact the business of insurance in this State unless the Commissioner has been furnished with evidence that the applicant has been authorized by its state or country of domicile to engage in the kind(s) of insurance business for which the applicant seeks a

certificate of authority, and has in fact been actively, continuously and successfully engaged in such business, without a change in control, for a period of at least five years prior to the date of the application for the New Jersey certificate of authority.

ii. An applicant qualified under (a)5i above shall demonstrate that:

(1) During any three of the last five years, including therein the two most recent years of business operations, it generated a net gain from operations, after Federal taxes, as reported in the annual statement; and

v. A statement indicating whether or not the insurer's controlling producer or producers have been notified of the requirements of N.J.S.A. 17:22D-1 et seq. and these rules.

Amended by R.1996 d.3, effective January 2, 1996. See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-37.6 Confidentiality of documents

All documents submitted to the Commissioner pursuant to this subchapter are confidential and not public documents as defined in the Public Records Act, N.J.S.A. 47:1A-1 et seq.

11:2-37.7 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

APPENDIX A

PRODUCER-CONTROLLED INSURER INFORMATION REPORT FORM

Calendar Year Ending December 31, _____

Instructions: All licensed property and casualty insurers domiciled in New Jersey, or domiciled in another state that is not a NAIC "accredited state" having in effect a law substantially similar to N.J.S.A. 17:22D-1 et seq., are required to complete annually either Section I or Section II of this form. Section I certifies that the requirements of New Jersey law have been reviewed and there is no controlling producer information to be reported. Section II should be completed for each producer who "controls" a reporting insurer. Completed reporting forms are due annually, on or before April 1 of each year.

SECTION I

To be completed by Insurers that are not Producer-Controlled

I certify that

(Name of Insurer)

(Address of Insurer)

is not issuing any property and casualty insurance coverages that are or may be reportable pursuant to the provisions of N.J.S.A. 17:22D-1 et seq. and N.J.A.C. 11:2-37.1 et seq.

Date Authorized signature

Title

SECTION II

To be completed by Producer-Controlled Insurers (A separate Report Form should be completed and filed for each controlling producer.)

Calendar Year Ending December 31, _____

Name of Reporting Insurer: _____

Address: _____

Name of Controlling Producer: _____

Address: _____

- 1. Insurer's admitted assets as of September 30 of calendar year pursuant to N.J.S.A. 17:22D-3a: \$ _____
2. Gross premiums written, calendar year: \$ _____
3. Percentage that gross premiums written represent of admitted assets: _____%
4. Net premiums written, calendar year: \$ _____
5. Amount of commissions paid to controlling producer, calendar year: \$ _____
6. Percentage that commissions paid represent of net premiums written: _____%
7. Comparable amounts and percentage paid to noncontrolling producers for placement of the same kinds of insurance:
Net premiums written: \$ _____
Commissions paid: \$ _____
Percentage: _____%
8. Attach the information required by N.J.S.A. 17:22D-3e: An opinion of an independent casualty actuary reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including losses incurred but not reported, on business placed by the controlling producer.
9. We have notified our controlling producer(s) of the requirements of N.J.S.A. 17:22D-1 et seq. and N.J.A.C. 11:2-37.1 et seq.

I certify that the above information is accurate and complete.

Date Authorized signature

Title

Amended by R.1996 d.3, effective January 2, 1996. See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

SUBCHAPTER 38. (RESERVED)

SUBCHAPTER 39. INCREASE IN CAPITAL AND SURPLUS REQUIREMENTS FOR INSURERS

Subchapter Historical Note

The name of Subchapter 39, Increase in Capital and Surplus Requirements For Life and Health Insurers, was changed to Increase in Capital and Surplus Requirements for Insurers by R.1997 d.186, effective May 5, 1997. See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

11:2-39.1 Purpose and scope

(a) The purpose of this subchapter is to provide a framework for the establishment of uniform risk-based capital and surplus requirements for all insurers authorized, admitted or eligible to transact business pursuant to Title 17 or Title 17B of the New Jersey Statutes, and to implement the provisions of N.J.S.A. 17:17-6 et seq., and 17B:18-67 et seq. (enacted August 9, 1993), which provide new minimum capital and surplus requirements and authorize the Commissioner to increase these requirements for individual insurers based upon the insurer's business risks.

(b) This subchapter shall apply to all insurers authorized, admitted or eligible to transact business pursuant to Title 17 or Title 17B of the New Jersey Statutes. This subchapter shall not apply to mortgage guaranty insurers, financial guaranty insurers, or title insurers.

(c) This subchapter also shall not apply to any domestic property/casualty insurer that writes direct business only in this State; writes direct annual premiums of not more than \$2 million; and assumes no reinsurance in excess of five percent of direct premiums written.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a), inserted reference to admitted and eligible insurers, substituted reference to transacting business for reference to writing health, life, and annuity business, and amended N.J.S.A. references; and added (b) and (c).

11:2-39.2 Definitions

(a) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Adjusted RBC Report" means an RBC Report which has been adjusted by the Commissioner in accordance with N.J.A.C. 11:2-39.3(d).

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Corrective order" means an order issued by the Commissioner in accordance with N.J.A.C. 11:2-39.5(b).

"Department" means the Department of Banking and Insurance.

"Domestic insurer" means an insurer formed under the laws of this State.

"Foreign insurer" means an insurer formed under the laws of a jurisdiction of the United States other than this State.

"Life/health insurer" means an insurer authorized or admitted to transact life, health or annuities business pursuant to N.J.S.A. 17B:18-35 et seq., or 17B:23-1 et seq., as applicable, or an authorized or admitted property/casualty insurer writing only accident and health insurance.

"NAIC" means the National Association of Insurance Commissioners.

"NAIC RBC Instructions" means the form of the Risk-Based Capital Report and instructions for completing such form adopted by the NAIC, as such form and instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

"NAIC RBC Report" means the Risk-Based Capital Report prepared pursuant to the NAIC RBC Instructions as set forth in N.J.A.C. 11:2-39.3.

"Negative trend" means with respect to a life/health insurer a negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the NAIC RBC Instructions.

"Property/casualty insurer" means an insurer authorized, admitted or eligible to transact business pursuant to N.J.S.A. 17:17-1 et seq., 17:32-1 et seq., or 17:22-6.40 et seq., as applicable.

"RBC" means Risk-Based Capital.

"RBC Instructions" means the NAIC RBC Instructions as supplemented by the Commissioner.

"RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

1. "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;

2. "Regulatory Action Level RBC" means, with respect to any insurer, the product of 1.5 and its Authorized Control Level RBC;

3. "Authorized Control Level RBC" means, with respect to any insurer, the number determined under the risk-based capital formula in accordance with the RBC Instructions; and

4. "Mandatory Control Level RBC" means, with respect to any insurer, the product of .70 and its Authorized Control Level RBC.

"RBC Plan" means a comprehensive financial plan containing the elements specified at N.J.A.C. 11:2-39.4(b). If the Commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the "Revised RBC Plan."

"RBC Report" means the NAIC RBC Report as supplemented pursuant to the RBC Instructions.

"Total adjusted capital" means an insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed pursuant to N.J.S.A. 17:23-1 et seq., and

17B:21-1 et seq., increased or decreased by such other items, if any, as the RBC Instructions may provide.

Amended by R.1993 d.561, effective November 15, 1993.

See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

Added "Domestic insurer", "Foreign insurer", "Life/health insurer", and "Property/casualty insurer"; and amended "NAIC RBC Report", "Negative trend", and "Total adjusted capital".

Amended by R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Added "Commissioner" and "Department".

Amended by R.2005 d.350, effective October 17, 2005.

See: 37 N.J.R. 2285(a), 37 N.J.R. 4026(a).

In (a), deleted "Life" preceding "Risk-Based" in "NAIC RBC Instructions" definition, and substituted "11:2-39.3" for "11-2-29.3" in "NAIC RBC Report" definition.

11:2-39.3 RBC reports

(a) Every domestic insurer shall, on or before each March 1 (the "filing date"), prepare and submit to the Commissioner an RBC Report as of the preceding December 31. The RBC Report shall be sent or delivered to:

New Jersey Department of Banking and Insurance
Office of Financial Examinations, RBC Reports
20 West State Street
PO Box 325
Trenton, New Jersey 08625-0325

(b) If at any time the Commissioner believes that the financial condition of an insurer may have materially changed, the Commissioner may request in writing an updated RBC Report from the insurer. In such event, the insurer shall, on or before the 45th day following such request (the "filing date"), prepare and submit to the Commissioner at the address in (a) above an RBC Report as of the last day of the calendar month coincident with or last preceding the date of the request.

(c) Every domestic insurer shall also file its NAIC RBC Report with the NAIC in accordance with the NAIC RBC Instructions. In addition, if the insurer has been notified in writing by the insurance department of any state in which the insurer is authorized to do business, the insurer shall file its NAIC RBC Report with such state by the filing date or, if later, within 15 days from receipt of notice to file.

(d) If an insurer files an RBC Report which in the judgment of the Commissioner is inaccurate, then the Commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report so adjusted shall be referred to as an Adjusted RBC Report.

(e) The calculation of an insurer's Required Surplus as set forth in an RBC Report filed and accepted by the Com-

missioner pursuant to (a) or (b) above, or as adjusted by the Commissioner pursuant to (d) above, shall be deemed to be a redetermination of the insurer's minimum statutory capital and surplus requirement pursuant to N.J.S.A. 17:17-16 and 17B:18-70.

1. If an insurer disagrees with the minimum capital and surplus as determined above, it may request a hearing as provided at N.J.A.C. 11:2-39.9.

2. An insurer requesting a hearing shall do so upon filing an RBC Report, or within 20 days of receipt of notice from the Commissioner of an adjustment.

3. Failure to request a hearing shall be deemed to be a waiver of the right to a hearing on the redetermined minimum capital and surplus requirement for the insurer.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a) and (b), deleted reference to specified types of insurers; in (a), changed filing date from March 15 to March 1 and amended Department reference in delivery address; in (d), added last sentence; and in (e), inserted additional N.J.S.A. reference.

11:2-39.4 Company action level event

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

1. The filing of an RBC Report by an insurer which indicates that:

i. 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; or

ii. If a life/health insurer, the insurer 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 2.5 and has a negative trend;

2. The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in (a)i or ii above, provided the insurer does not challenge the Adjusted RBC Report under N.J.A.C. 11:2-39.9; or

3. If the insurer, under N.J.A.C. 11:2-39.9, challenges an Adjusted RBC Report that indicates the event in (a)i or ii above, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a company action level event, a domestic insurer shall within 45 days **prepare and submit** to the Commissioner an RBC Plan which shall:

1. Identify the conditions which contribute to the company action level event;

2. Set forth corrective actions which the insurer intends to take that are reasonably expected to result in the elimination of the company action level event;

3. Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and

giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and/or surplus. (The projections of both new and renewal business shall include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

4. Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

5. Identify the quality of, and problems associated with, the insurer's business including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance in each case, if any.

(c) Within 60 days after the submission by a domestic insurer of an RBC Plan or a Revised RBC Plan to the Commissioner, the Commissioner shall notify the insurer whether such Plan shall be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines that the 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 Plan satisfactory, in the judgment of the Commissioner. The Commissioner may, at his or her discretion, subject to the insurer's right to a hearing under N.J.A.C. 11:2-39.9, specify in the notification that the notification constitutes a regulatory action level event. 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:

1. Within 45 days after the notification from the Commissioner; or

2. If the insurer challenges the notification from the Commissioner under N.J.A.C. 11:2-39.9, within 45 days after a notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(d) 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:

1. Such state has a confidentiality provision substantially similar to N.J.A.C. 11:2-39.10(a); and

2. The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:

i. Fifteen days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or

ii. The date on which the RBC Plan or Revised RBC Plan is filed under (b) or (c) above.

Amended by R.1993 d.561, effective November 15, 1993.
See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).
Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a)1ii, inserted "If a life/health insurer,"; and in (b)1, deleted "in the insurer" following "the conditions".

11:2-39.5 Regulatory action level event

(a) "Regulatory action level event" means, with respect to any insurer, any of the following events:

1. The filing of an RBC Report by an 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;

2. The notification by the Commissioner to an insurer of an Adjusted RBC Report that indicates the event in (a)1 above, provided the insurer does not challenge the Adjusted RBC Report under N.J.A.C. 11:2-39.9;

3. If the insurer, under N.J.A.C. 11:2-39.9, challenges an Adjusted RBC Report that indicates the event in (a)1 above, 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 an RBC Report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the Commissioner and has cured the failure within 10 days after the filing date;

5. The failure of the insurer to comply with the filing deadlines set forth at N.J.A.C. 11:2-39.4(b) and (c);

6. Notification by the Commissioner to the insurer that:

i. An RBC Plan or Revised RBC Plan submitted by the insurer is, in the judgment of the Commissioner, unsatisfactory; and

ii. Such notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under N.J.A.C. 11:2-39.9;

7. If the insurer, under N.J.A.C. 11:2-39.9, challenges a determination by the Commissioner pursuant to (a)6 above, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected such challenge;

8. Notification by the Commissioner to the insurer that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan, but only if such 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 and the Commissioner has so stated in the notification, provided the insurer has not challenged the determination under N.J.A.C. 11:2-39.9; or

9. If the insurer, under N.J.A.C. 11:2-39.9, challenges a determination by the Commissioner pursuant to (a)8 above, the notification by the Commissioner to the insurer

that the Commissioner has, after a hearing, rejected the challenge.

(b) In the event of a regulatory action level event, the Commissioner shall for a domestic insurer, and may for a foreign insurer pursuant to N.J.A.C. 11:2-39.12:

1. Require the insurer to prepare and, within 45 days, submit an RBC Plan or, if applicable, a Revised RBC Plan;

2. Perform such examination or analysis as the Commissioner deems necessary of the assets, liabilities and operations of the insurer including a review of its RBC Plan or Revised RBC Plan; and

3. Subsequent to the examination or analysis, issue a corrective order specifying such corrective actions as the Commissioner shall determine are required.

(c) In determining corrective actions, the Commissioner may take into account such factors as are deemed 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 RBC Instructions.

(d) 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 RBC Plan or Revised RBC Plan, examine and 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 such other affiliated or controlling party as directed by the Commissioner.

Amended by R.1993 d.561, effective November 15, 1993.

See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a)8, substituted "company action level" for "regulatory action level"; and in (a)9, deleted exception to notification where failure of insurers to adhere to plan has no adverse effect on its ability to eliminate the Regulatory action level event.

11:2-39.6 Authorized control level event

(a) "Authorized control level event" means any of the following events:

1. The filing of an RBC Report by an insurer which indicates that the insurer's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but not less than its Authorized Control Level RBC;

2. The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates an event in (a)1 above, provided the insurer does not challenge the Adjusted RBC Report under N.J.A.C. 11:2-39.9;

3. If the insurer, under N.J.A.C. 11:2-39.9, challenges an Adjusted RBC Report that indicates an event in (a)1 above, 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 comply with the filing deadline set forth at N.J.A.C. 11:2-39.5(b)1, unless the insurer has provided an explanation for such failure which is satisfactory to the Commissioner and has cured such failure within 10 days after the deadline;

5. The failure of the insurer to respond, in a manner satisfactory to the Commissioner, to a corrective order, provided the insurer has not challenged the corrective order under N.J.A.C. 11:2-39.9; or

6. If the insurer has challenged a corrective order under N.J.A.C. 11:2-39.9 and the Commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the Commissioner, to the corrective order subsequent to rejection or modification by the Commissioner.

(b) In the event of an authorized control level event with respect to an insurer, the Commissioner shall:

1. Take such actions as are required under N.J.A.C. 11:2-39.5 regarding an insurer with respect to which a regulatory action level event has occurred; or

2. If the Commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control pursuant to N.J.S.A. 17:30C-1 et seq., or 17B:32-31 et seq., as applicable. In the event the Commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the Commissioner to take action under the said Act, and the Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in the said Act.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (b)2, inserted additional N.J.S.A. reference.

11:2-39.7 Mandatory control level event

(a) "Mandatory control level event" means any of the following events:

1. The filing of an RBC Report which indicates that the insurer's total adjusted capital is less than its Mandatory Control Level RBC;

2. Notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in (a)1 above, provided the insurer does not challenge the Adjusted RBC Report under N.J.A.C. 11:2-39.9; or

3. If the insurer, under N.J.A.C. 11:2-39.9, challenges an Adjusted RBC Report that indicates the event in (a)1 above, notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a mandatory control level event as set forth in (a) above:

1. With respect to a life/health insurer, the Commissioner shall take actions necessary to cause a domestic insurer to be placed under regulatory control pursuant to N.J.S.A. 17B:32-31 et seq. In that event, the mandatory control level event shall be deemed sufficient grounds for the Commissioner to take action under the said Act, and the Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in the said Act. In the event the Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under provisions of the said Act. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the mandatory control level event if he or she finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

2. With respect to a property/casualty insurer, the Commissioner shall take such actions as are necessary to place the insurer under regulatory control pursuant to N.J.S.A. 17:30C-1 et seq., or, in the case of an insurer that is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the Commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the Commissioner to take action under the said Act and the Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in the said Act. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 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 90 day period.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

Subdivided (b); in (b)1, inserted "With respect to a life/health insurer,;" and added (b)2.

11:2-39.8 Filings of RBC Plans

A filing of an RBC Plan pursuant to N.J.A.C. 11:2-39.4(b) or 39.5(b) shall be sent or delivered to:

New Jersey Department of Banking and Insurance
Office of Financial Examinations
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

Amended N.J.A.C. references and amended Department reference in delivery address.

11:2-39.9 Hearings

(a) An insurer shall have the right to a departmental hearing, on a record, at which the insurer may challenge any determination or action by the Commissioner.

(b) The insurer shall notify the Commissioner of its request for a hearing within five days upon:

1. Notification to the insurer by the Commissioner of an Adjusted RBC Report;

2. Notification to the insurer by the Commissioner that:

i. The insurer's RBC Plan or Revised RBC Plan is unsatisfactory; and

ii. Such notification constitutes a regulatory action level event with respect to such insurer;

3. Notification to any insurer by the Commissioner that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event or regulatory action level event with respect to the insurer in accordance with its RBC Plan or Revised RBC Plan;

4. Notification to the insurer by the Commissioner of a corrective order with respect to the insurer; or

5. Increased requirements pursuant to N.J.S.A. 17:17-16 or 17B:18-70, as applicable.

(c) Upon receipt of the insurer's request for a hearing, the Commissioner shall set a date for the hearing, which date shall be no less than 10 nor more than 20 days after the date of the Commissioner's notice to the insurer granting the hearing.

(d) All matters pertaining to a hearing or to an increase of capital or surplus pursuant to these rules shall be confidential and not subject to subpoena or public inspection, except to the extent that the Commissioner finds release of information necessary to protect the public.

(e) Failure to request a hearing upon filing of an RBC Report or failure to request a hearing within 20 days of notice of an Adjusted RBC Report shall be deemed a waiver of an insurer's right to a hearing pursuant to N.J.S.A. 17:17-16 or 17B:18-70, as applicable.

Amended by R.1993 d.561, effective November 15, 1993.
See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (b)5 and (e), inserted additional N.J.S.A. reference.

11:2-39.10 Confidentiality and prohibition on announcements

(a) All RBC Reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and RBC Plans (including the results or reports of any examination or analysis of an insurer performed pursuant hereto and any corrective order issued by the Commissioner pursuant to examination or analysis) with respect to any domestic insurer or foreign insurer which are filed with the Commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the Commissioner. This information shall not be made public and/or be subject to subpoena, other than by the Commissioner and then only for the purpose of enforcement actions taken by the Commissioner pursuant to this subchapter or any other provision of the insurance laws of this State.

(b) The comparison of an insurer's total adjusted capital to any of its RBC Levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under the provisions of this subchapter, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC Levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC Levels (or any of them) or an inappropriate comparison of any other amount to the insurer's RBC Levels is published in any written publication and the insurer is able to demonstrate to the Commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(c) RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the Commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the Commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor 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.

Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).
Added (c).

11:2-39.11 Supplemental provisions

The provisions of this subchapter are supplemental to any other provisions of the laws of this State, and shall not preclude or limit any other powers or duties of the Commissioner under such laws including, but not limited to, N.J.S.A. 17B:32-31 et seq. and N.J.A.C. 11:2-27.

11:2-39.12 Foreign insurers

(a) Any foreign insurer shall, upon the written request of the Commissioner, submit to the Commissioner an RBC Report as of the end of the calendar year just ended the later of the filing date or within 15 days after the request is received by the foreign insurer.

(b) Any foreign insurer admitted or eligible to transact business pursuant to Title 17 or Title 17B of the New Jersey Statutes shall promptly submit to the Commissioner a copy of any RBC Plan or Revised RBC Plan that is filed with the insurance commissioner of any other state.

(c) In the event of a company action level event, regulatory action level event or authorized control level event with respect to any foreign insurer under the RBC requirements applicable in the state of domicile of the insurer, or if there are no such requirements, under this subchapter, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC Plan in a manner substantially similar to that specified under N.J.A.C. 11:2-39.4, the Commissioner may require the foreign insurer to file an RBC Plan with the Commissioner. In such event, 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 business in this State.

(d) In the event of an authorized control level event or a mandatory control level event with respect to any foreign insurer, 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, the Commissioner may make application to the Superior Court pursuant to N.J.S.A. 17:30C-1 et seq., or 17B:32-31 et seq., as applicable, with respect to the liquidation of property of foreign insurers found in this State, and the occurrence of the authorized control level event or mandatory control level event shall be considered adequate grounds for the application.

Amended by R.1993 d.561, effective November 15, 1993.
See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).
Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (b) inserted reference to eligible insurers and substituted "pursuant to Title 17 or Title 17B of the New Jersey Statutes" for "in this State"; in (c), inserted reference to authorized control event and inserted "under the RBC requirements . . . under this subchapter,"; and in (d), inserted additional N.J.S.A. reference.

11:2-39.13 Severability clause

If any provision of this subchapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are severable.

11:2-39.14 Notices

All notices by the Commissioner to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail to the insurer's mailing address as provided pursuant to N.J.A.C. 11:1-25 or, in the case of any other transmission, shall be effective upon the insurer's receipt of such notice.

11:2-39.15 Phase-in provision

(a) A life/health insurer subject to this subchapter may request a temporary waiver of the minimum capital and surplus requirements set forth in N.J.S.A. 17B:18-67 et seq. as follows:

1. The insurer must make application in writing to the Commissioner by October 15, 1993. The waiver request shall be forwarded to:

New Jersey Department of Banking and Insurance
Office of Financial Examinations, Capital and Surplus Waivers
20 West State Street
PO Box 325
Trenton, New Jersey 08625-0325

2. Filing the waiver request shall constitute a regulatory action level event. The insurer shall prepare and file an RBC Plan with the Commissioner at the same address as set forth above, but the time for filing the RBC Plan shall be extended to 120 days. After such review, examination and analysis as is deemed necessary, the Commissioner shall issue a corrective order which may include an appropriate limited waiver of the minimum capital and surplus requirements. In no event shall the corrective order temporarily waive the applicable capital and surplus requirements for a period of more than five years.

3. If the insurer is responding to the corrective order in a manner satisfactory to the Commissioner, then the filing of an RBC Report shall not constitute an authorized control level event or a mandatory control level event.

4. Solely for the purpose of this subsection, an insurer's RBC Plan may be limited to a certification that its capital and surplus meet the minimum requirements set

forth in N.J.S.A. 17B:18-67 et seq. as of December 31, 1993. Such certification shall be signed by the insurer's Chief Executive Officer and shall have the effect of terminating the regulatory action level event. The Commissioner may request that the insurer submit additional documentation to support the certification, if necessary.

(b) For RBC Reports required to be filed by life/health insurers with respect to 1993, the following requirements shall apply in lieu of the provisions of N.J.A.C. 11:2-39.5, 39.6 and 39.7:

1. In the event of a regulatory action level event under N.J.A.C. 11:2-39.5(a)1, 2 or 3, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.4.

2. In the event of a regulatory action level event under N.J.A.C. 11:2-39.5(a)4, 5, 6, 7, 8 or 9 or an authorized control level event, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.5 with respect to the insurer.

3. In the event of a mandatory control level event with respect to an insurer, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.6 with respect to the insurer.

(c) For RBC Reports required to be filed by property/casualty insurers with respect to 1996, the following requirements shall apply in lieu of the provisions of N.J.A.C. 11:2-39.5, 39.6 and 39.7.

1. In the event of a regulatory action level event under N.J.A.C. 11:2-39.5(a), 2 or 3, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.4.

2. In the event of a regulatory action level event under N.J.A.C. 11:2-39.5(a)4, 5, 6, 7, 8 or 9 or an authorized control level event, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.5.

3. In the event of a mandatory control level event with respect to an insurer, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.6 with respect to the insurer.

Amended by R.1993 d.561, effective November 15, 1993.

See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a), substituted "A life/health insurer" for "An insurer"; in (a)1, amended Department reference in delivery address; in (b), inserted "by life/health insurers"; in (b)2, inserted additional N.J.A.C. reference; and rewrote (c).

SUBCHAPTER 40. LIFE, HEALTH AND ANNUITY REINSURANCE AGREEMENTS

11:2-40.1 Purpose and scope

(a) The purpose of this subchapter is to provide standards for reinsurance agreements pursuant to which a ced-

ing insurer may reduce a liability or establish an asset on any financial statements filed with the Department.

(b) This subchapter shall apply to the following:

1. All domestic insurers authorized to transact life insurance, accident and health insurance or annuity business in this State;

2. All foreign and alien insurers authorized to transact life insurance, accident and health insurance or annuity business in this State which otherwise are not subject to rules in their state of domicile that are substantially similar to those contained herein;

3. All reinsurers authorized to effect life, accident and health or annuity reinsurance agreements in this State; and

4. All reinsurance agreements entered into by an entity subject to this subchapter, except as N.J.A.C. 11:2-40.5 may apply.

(c) This subchapter shall not apply with respect to assumption reinsurance agreements or group term reinsurance. N.J.A.C. 11:2-40.4(a)1, 4, 6 and 7 shall not apply to catastrophe, stop-loss or other nonproportional reinsurance. N.J.A.C. 11:2-40.4(a)4, 6 and 7 shall not apply to other term reinsurance.

Amended by R.1993 d.562, effective November 15, 1993.

See: 25 N.J.R. 4314(a), 25 N.J.R. 5212(a).

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

In (c) added group term reinsurance and inserted "other" preceding "term insurance".

11:2-40.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Actuary" means a Member of the American Academy of Actuaries or a Fellow of the Society of Actuaries or a Fellow of the Casualty Actuarial Society who is qualified by training and experience, pursuant to the standards promulgated by the Actuarial Standards Board, to provide the opinions required in this subchapter.

"Assumption reinsurance" means reinsurance whereby the reinsurer assumes from the ceding insurer all risks, obligations, duties and rights arising under a policy; following assumption, a policy is treated by all persons as if the reinsurer were the insurer which had issued the policy.

"Authorized" means that an insurer has a certificate of authority issued by the Commissioner to act as an insurer in this State pursuant to Title 17 or 17B of the New Jersey Statutes.

"Catastrophe reinsurance" means reinsurance of the risk that the aggregate number or dollar amount of claims incurred under a set of policies as a result of a single event or occurrence, such as an accident or a storm, will exceed a defined threshold number or amount.

"Ceding insurer" means an insurer which procures indemnification for itself from another insurer with respect to all or part of an insurance risk associated with one or more policies issued by the former insurer, should losses be sustained.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"Domestic" means an entity formed under the laws of this State.

"Insurer" means any person or entity transacting the business of life, accident or health insurance, or annuities.

"LTC" means long-term care insurance.

"Policy" means any life insurance, health insurance or annuity policy or contract, as defined pursuant to N.J.S.A. 17B:17-3, 4 and 5, which is not reinsurance.

"Reinsurance" means a contractual arrangement whereby an insurer, for some consideration, agrees to indemnify a ceding insurer for all or part of a loss which the ceding insurer may incur under one or more policies that the ceding insurer has or will issue. This term is intended to include facultative reinsurance, automatic reinsurance agreements, reinsurance agreements of pools and associations, and such other similar reinsurance arrangements by whatever name or device.

"Reinsurance credit" means the amount of a liability reduction or the asset established as permitted by this subchapter.

"Reinsurer" means an insurer which agrees to provide reinsurance.

"Renewable term reinsurance" means term reinsurance which is renewable, automatically or at the option of the ceding insurer, for successive terms at rates not exceeding those guaranteed in the reinsurance agreement.

"Significant risk" means an element of risk associated with a policy such that the actual experience of an insurer related to such element will have a direct and material effect on the profit or loss realized by the insurer as a consequence of having issued or assumed such policy.