

(b) This subchapter shall apply to all insurers, including reciprocal insurance exchanges, authorized, admitted or eligible to transact the business of property and casualty insurance in this State.

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), deleted second sentence, stating that subchapter provides procedures to increase statutory minimum requirements.

### 11:2-38.2 Definitions

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

“Capital” means par value per share multiplied by the number of issued shares, or in the case of no-par shares, the total stated value.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Insurer” means any stock or mutual insurance corporation, including a reciprocal insurance exchange, authorized, admitted or eligible to transact the business of property and casualty insurance in this State pursuant to N.J.S.A. 17:17-1 et seq.

“Surplus” means the net worth of an insurer as reported in its annual statement. For a stock insurer, surplus means net worth less minimum capital. For a mutual insurer, surplus means its net worth.

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

### 11:2-38.3 Requests for temporary waiver of capital and surplus requirements

(a) An insurer transacting business in this State as of August 9, 1993 may request a two-year temporary waiver from the minimum capital and surplus requirements set forth at N.J.S.A. 17:17-6 and 17:17-7, by making application in writing to the Commissioner on or before October 8, 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  
CN 325  
Trenton, NJ 08625-0325

(b) The Commissioner shall approve a temporary waiver requested pursuant to (a) above provided the insurer complies with the requirements set forth in (c) through (f).

(c) With the exception of (c)7 and (i) below, within 120 days of making application to the Commissioner for a temporary waiver of the statutory minimum capital and surplus requirements, the insurer shall additionally submit to the Department at the same address as set forth in (a) above, a proposed financial plan, which shall include the following:

1. The insurer’s current capital and/or surplus as reflected in the last filed quarterly statement;

2. The reason(s) for the insurer’s inability to meet the minimum capital and/or surplus requirements set forth at N.J.S.A. 17:17-6 and 17:17-7;

3. The insurer’s proposed method and time frame for meeting the statutory minimum capital and/or surplus requirements, including the source(s) and amount(s) of additional funding;

4. A five-year projection, beginning December 31 of the following year and for the subsequent four years, of the following certified by a qualified actuary and accompanied by a narrative explaining the sources of anticipated premium and all assumptions made in developing the entire projection:

i. Assets, liabilities and surplus and other funds in the format of the Assets page and the Liabilities and Surplus and Other Funds page in the Annual Statement representing the insurer’s five successive year-ends;

ii. Underwriting and investment income in the format of the Underwriting and Investment Exhibit, Statement of Income in the Annual Statement for each of the five years;

iii. The following information by line of business for each of the five years (the line of business classifications shall be those set forth in the Underwriting and Investment Exhibit, Part Two in the Annual Statement):

(1) Premiums earned;

(2) Losses incurred;

(3) Loss expenses incurred; and

(4) Ratios of the sum of the losses and loss expenses to premium earned;

(5) Net premiums written; and

iv. The projected values required in the Underwriting and Investment Exhibit, Part Four—Expenses in the Annual Statement; and

5. Any other information requested by the Commissioner which is relevant to the evaluation of a specific temporary waiver request.

6. In the case of a request for an extension pursuant to (g) below of a two-year waiver granted under (b) above, the insurer's proposed financial plan shall additionally include a report of the insurer's progress in meeting the minimum capital and/or surplus requirements.

7. Certain insurers transacting business in this State as of August 9, 1993 may, instead of filing the financial plan pursuant to (c)1 through 6 above, file a limited financial plan with the Department as follows:

i. Insurers intending to meet the statutory minimum capital and surplus requirements by deleting unused lines of business from its certificate of authority shall file within 120 days of making application to the Commissioner for a temporary waiver of the requirements, a limited financial plan which shall include a concise, accurate description of the specific course of action the insurer will follow to comply with the statutory capital and surplus requirements. These insurers may request in writing from the Commissioner a waiver from filing an orderly plan of withdrawal pursuant to N.J.A.C. 11:2-29.

ii. Insurers intending to meet the statutory minimum capital and surplus requirements by completing certain corporate and/or accounting adjustments to either capital stock or surplus accounts, shall file within 120 days of making application to the Commissioner for a temporary waiver of the requirements, a limited financial plan which shall include a concise, accurate description of the specific course of action the insurer will follow to comply with the statutory capital and surplus requirements.

(d) Upon receipt of the insurer's financial plan in (c) above, the Department shall provide the insurer with written notice of its approval of, or of any deficiencies in, the financial plan's proposed method for meeting the minimum capital and/or surplus requirements.

(e) Within 60 days of receipt of the Department's notice in (d) above informing the insurer of the deficiencies in its proposed financial plan, the insurer shall resubmit a revised financial plan correcting all deficiencies to the Department at the address set forth in (a) above.

(f) All data or information contained in the plan under (c) above is confidential and will not be disclosed by the Department to any person other than its employees and representatives.

(g) An insurer may request an extension of a two-year waiver granted by the Commissioner under (b) above not to exceed the five-year statutory compliance period set forth in N.J.S.A. 17:17-6 and 17:17-7 by submitting to the Department at least 90 days prior to the expiration of the two-year waiver, the items set forth in (c) above. The Department shall evaluate the insurer's extension request by following the procedures set forth in (d) through (f) above.

(h) If an insurer fails to request a temporary waiver of the minimum capital and/or surplus requirements pursuant to the procedures set forth in this section, the Department shall conclude that the insurer has met the minimum capital and/or surplus requirements. If, in fact, the insurer is unable to meet the minimum statutory capital and/or surplus requirements, the insurer shall be subject to suspension or revocation of its authority to do business in this State pursuant to N.J.S.A. 17:17-19.

(i) An insurer filing for a temporary waiver of the statutory capital and surplus requirements pursuant to (a) through (f) above, but which meets the requirements prior to expiration of the 120-day period for filing a financial plan with the Department, shall not be required to file a financial plan with the Department pursuant to N.J.A.C. 11:2-38.3(c). The insurer shall be required to file with the Department, within 120 days of applying for a waiver, a certification signed by the insurer's Chief Executive Officer, stating that the insurer has met the statutory capital and surplus requirements. The Commissioner may request that the insurer submit additional documentation to support the certification, if necessary.

Amended by R.1993 d.560, effective November 15, 1993.  
See: 25 N.J.R. 4306(a), 25 N.J.R. 5204(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).

#### 11:2-38.4 Fines and penalties

Failure to comply with this subchapter may result in an insurer's suspension or revocation of authority to do business in the State of New Jersey.

Recodified from 11:2-38.6 and amended by R.1997 d.186, effective May 5, 1997.  
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).  
Former section, "Procedures for increasing capital and surplus requirements", was repealed.

#### 11:2-38.5 (Reserved)

Repealed by R.1997 d.186, effective May 5, 1997.  
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).  
Section was "Hearing requirements and procedures".

#### 11:2-38.6 (Reserved)

Recodified to 11:2-38.4 by R.1997 d.186, effective May 5, 1997.  
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

## 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).