

(d) Insurers shall report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

11:1-39.6 Penalties

Failure to comply with the requirements of this subchapter shall result in the imposition of penalties as authorized by law.

SUBCHAPTER 40. RECOUPMENT OF FUGITIVE RECOVERY EXPENSES BY SURETY COMPANIES

11:1-40.1 Purpose and scope

This subchapter authorizes surety companies to recoup fugitive recovery expenses that relate to bail bonds. It further sets forth the various conditions that would govern the recovery of such expenses and requires that surety companies be responsible for the maintenance of records regarding the expenses they incur in recovering a fugitive.

11:1-40.2 Definitions

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

"Defendant" means a person for whom a surety bail bond is written.

"Fugitive" means a defendant:

1. Who failed to appear in court as required by the court;
2. For whom a bench warrant for arrest has been issued; or
3. Whose bail has been forfeited or revoked.

"Fugitive fee" means the amount that may be charged to an indemnitor by a surety pursuant to this subchapter, derived from the actual reasonable expenses incurred in the investigation and apprehension of a fugitive and any filing

fees and court-imposed costs related to an application for the remittance of the previously forfeited bond on that fugitive.

"Indemnitor" means a person who promises to be financially responsible to the surety resulting from a defendant's obligation to appear in court.

11:1-40.3 Conditions for imposition of fugitive fees

(a) By written contract between a surety and an indemnitor, subject to (b) below, a surety may charge an indemnitor a fugitive fee, provided, however, that such a fee shall not exceed:

1. The greater of \$1,500 or 10 percent of the amount of the surety bail bond for a fugitive who is either apprehended or located while in custody within the State of New Jersey; or
2. The greater of \$1,500 or 20 percent of the amount of the surety bail bond for a fugitive who is either apprehended or located while in custody outside the State of New Jersey.

(b) Notwithstanding any computation to the contrary made pursuant to (a) above, in no event shall an indemnitor's obligation to pay a fugitive fee exceed 110 percent of the face amount of the surety bail bond.

(c) Any contract seeking to hold an indemnitor financially responsible for a fugitive fee, and any legal action to collect a fugitive fee, shall be in the name of the surety, and not in the name of an insurance producer, regardless of whether said producer sold the underlying surety bail bond. Any such contract shall be signed by the indemnitor and a duly authorized officer of the surety, with the name and title of said officer clearly set forth in the contract.

(d) Within the meaning of (a) and (b) above, a fugitive fee shall not include the amount of any bail forfeiture assessed by a court, and shall not include any attorneys fees, but may include filing fees and other court-imposed costs related to an application for remittance of the previously forfeited bond. The rights and obligations of the surety company and the indemnitor with respect to the amount of any bail forfeiture assessed by a court shall be governed by the provisions of the surety bond agreement, which provisions shall not be inconsistent with any of the provisions of this subchapter.

11:1-40.4 Records of fugitive fees

Surety companies shall be responsible for the maintenance of case-specific records reflecting the actual expenses incurred in the investigation and apprehension of fugitives and any filing fees and other court-imposed costs incurred in any action for the remittance of the previously forfeited bond issued in each case.

**SUBCHAPTER 41. SURETY BONDS FOR
CONTRACTS INVOLVING THE STATE, LOCAL
CONTRACTING UNITS, BOARDS OF
EDUCATION, STATE COLLEGES AND COUNTY
COLLEGES**

11:1-41.1 Purpose and scope

(a) This subchapter implements the Commissioner's responsibilities pursuant to P.L. 1995, c.384, which statute provides standards for acceptable sureties providing payment and performance bonds for contractors on public works projects. This subchapter sets forth the rating companies that may be considered by contracting officers for purposes of determining whether a surety company may be utilized to provide payment and performance bonds for a public works project pursuant to P.L. 1995, c.384. This subchapter also sets forth the standards for a surety company which does not hold a certificate of authority issued by the United States Secretary of the Treasury to be deemed acceptable by contracting officers to provide payment and performance bonds for a public works project pursuant to P.L. 1995, c.384.

(b) This subchapter shall apply to all surety companies seeking to provide payment and performance bond coverage on a public works project at the expense of the State, contracting unit (as defined in N.J.S.A. 40A:11-2), school district, State college or county college, subject to P.L. 1995, c.384.

11:1-41.2 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 New Jersey Department of Banking and Insurance.

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

"NAIC" means the National Association of Insurance Commissioners.

"Treasury listed" means a surety that holds a current certificate of authority issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. § 9305, that is valid in New Jersey as listed annually in the United States Treasury Circular 570.

"Surety" means an insurer authorized or admitted to transact fidelity and surety business in this State pursuant to N.J.S.A. 17:17-10 or 17:32-1 et seq., as applicable.

Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

11:1-41.3 Rating company

(a) The following rating companies are nationally recognized as providing ratings regarding the claims paying ability

of insurers and may be used to determine whether a surety company is acceptable to provide payment and performance bonds pursuant to P.L. 1995, c.384:

1. A.M. Best Company;
2. Standard and Poor's Insurance Rating Services;
3. Moody's Investors Service, Inc.;
4. Duff and Phelps Credit Rating Company;
5. Weiss Ratings, Inc.; and
6. Fitch Investors Service, L.P.

(b) The three highest rating categories for each of the rating companies in (a) above are set forth in Appendix A to this subchapter incorporated herein by reference.

**11:1-41.4 Treasury listed surety companies and
alternative requirements to Treasury listing**

(a) A surety company which is Treasury listed seeking to provide payment or performance bonds as required by P.L. 1995, c.384 may request to be listed by the Department as an acceptable surety for provision of bonds on public works contracts by filing a certification to that effect in the format of Appendix B to this subchapter incorporated herein by reference.

(b) A surety company that is not Treasury listed which seeks to provide payment or performance bonds as required pursuant to P.L. 1995, c.384 may request to be listed by the Department as an acceptable surety for provision of bonds on public works contracts by filing a certification in the format of Appendix B to this subchapter incorporated herein by reference, that the surety satisfies the following requirements:

1. The surety shall be authorized or admitted to transact fidelity and surety in this State pursuant to N.J.S.A. 17:17-10 or 17:32-1 et seq., as applicable;
2. The surety shall not have been found to be in a hazardous financial condition by the Commissioner, its domiciliary jurisdiction, and all jurisdictions in which it is licensed, as determined pursuant to N.J.A.C. 11:2-27 or such equivalent requirements in other jurisdictions in which the surety is domicile and admitted;
3. The surety's net premium written to surplus as to policyholders shall not exceed a 3:1 premium to surplus ratio, and loss and loss adjustment expense reserve liability to surplus shall not exceed a 4:1 ratio as of the date of its most recently filed annual statement;
4. The surety shall satisfy, at a minimum, the statutorily prescribed minimum capital and surplus or net cash asset requirements for all lines of insurance that it is

authorized to write pursuant to the certificate of authority issued by its domiciliary jurisdiction and all states in which it is licensed to transact business; and

5. The surety shall not have failed four or more Insurance Regulatory Information System (IRIS) tests, unless the applicant demonstrates to the Commissioner and its domiciliary jurisdiction that these IRIS test results are not indicative of the applicant being in a hazardous financial condition.

(c) The Department shall publish in the New Jersey Register a list of surety companies that satisfy the requirements set forth in (a) and (b) above in or about September of each year.

(d) A surety seeking to continue to be listed by the Department as having satisfied the requirements set forth in (b) above shall file with the Department a certification in the format of Appendix B to this subchapter no later than August 1 of each year.

(e) Applications and renewal applications to be listed by the Department shall be sent to:

New Jersey Department of Banking and Insurance
 Division of Insurance
 Office of Financial Exams
 Attention: Surety Company List
 20 West State Street
 PO Box 325
 Trenton, NJ 08625-0325

- Public Notice: List of surety companies acceptable to provide payment or performance bonds.
 See: 29 N.J.R. 4199(a), 29 N.J.R. 4574(a).
- Public Notice: List of surety companies acceptable to provide payment or performance bonds.
 See: 30 N.J.R. 3554(a).
- Public Notice: List of surety companies acceptable to provide payment or performance bonds.
 See: 32 N.J.R. 121(a).
- Public Notice: List of surety companies acceptable to provide payment or performance bonds.
 See: 32 N.J.R. 3343(a).
- Amended by R.2001 d.75, effective March 5, 2001.
- See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).
- Amended by R.2001 d.99, effective March 19, 2001.
- See: 32 N.J.R. 4194(a), 33 N.J.R. 1004(a).
- Deleted former (b)5 and (b)6 and recodified (b)7 as (b)5.
- Public Notice: List of surety companies acceptable to provide payment or performance bonds.
 See: 33 N.J.R. 3376(b).
- Public Notice: List of surety companies acceptable to provide payment or performance bonds.
 See: 34 N.J.R. 3653(a).
- Public Notice: List of surety companies acceptable to provide payment or performance bonds.
 See: 35 N.J.R. 4142(a).
- Public Notice: List of surety companies acceptable to provide payment or performance bonds.
 See: 36 N.J.R. 4331(a).

11:1-41.5 Penalties

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

APPENDIX A

<u>Rating Company</u>	<u>Three Highest Rating Categories</u>	<u>Ratings Within Three Highest Categories</u>
A.M. Best Company	Best's Ratings: 1. Superior 2. Excellent 3. Very Good —OR—	A++, A+ A, A- B++, B+
	Financial Performance Rating: 1. Strong 2. Above average 3. Average	9, 8 7, 6 5
Standard & Poor's	1. Superior 2. Excellent Financial Security 3. Good Financial Security	AAA AA+, AA, AA- A+, A, A-
Moody's	1. Exceptional 2. Excellent 3. Good	Aaa Aa1, Aa2, Aa3 A1, A2, A3
Duff and Phelps Credit Rating Company	1. Highest claims paying ability 2. Very high claims paying ability 3. High claims paying ability	AAA AA+, AA, AA- A+, A, A-
Weiss	1. Excellent 2. Good 3. Fair	A+, A, A- B+, B, B- C+, C, C- (also includes the above ratings with "s" prefix)
Fitch	1. Extremely strong 2. Very strong 3. Strong	AAA AA A

APPENDIX B

REQUEST FOR LISTING BY NEW JERSEY DEPARTMENT OF INSURANCE AS ACCEPTABLE SURETY FOR PROVISION OF BONDS ON PUBLIC CONTRACTS PURSUANT TO P.L. 1995, C.384

COMPANY NAME _____
 ADDRESS _____

TELEPHONE NO. _____
 COMPANY NAIC NUMBER _____

GROUP NAME _____

GROUP NAIC NUMBER _____

I, _____, hereby file this certification on behalf of _____ in connection with this company's application to be listed by New Jersey Department of Banking and Insurance for purposes of providing payment and performance bonds pursuant to P.L. 1995, c.384. I further certify that I am authorized to execute this certified statement on behalf of _____

(Name of Surety)

PART I

1. The above-referenced surety is listed in the most recent United States Treasury Circular 570 issued July 1 of each year. Yes ___ No ___ If yes, go to Part III; if no, complete Part II.

PART II

1. The above-referenced surety is currently listed to transact business in the following jurisdictions for the following lines:

Jurisdiction	Line
_____	_____
_____	_____
_____	_____

(Attach additional sheets if necessary)

2. The above-referenced surety's capital and surplus or net cash assets, as of December 31 immediately preceding is \$ __, as reported in the statutory annual statement for that year. This amount satisfies the statutorily prescribed minimum capital and surplus or net cash asset requirements for all lines of insurance that the surety is authorized to write pursuant to the certificate of authority issued by its domiciliary jurisdiction and all states in which it is licensed to transact business. Yes ___ No ___

3. The above-referenced surety has been found to be in a hazardous financial condition by the Commissioner, its domiciliary jurisdiction, or any jurisdiction in which it is licensed, as determined pursuant to N.J.A.C. 11:2-27 or such other equivalent requirements in other jurisdictions in which the surety is licensed. Yes ___ No ___

If yes, indicate jurisdiction(s) and details regarding such finding below.

4. The above-referenced surety's premium to surplus ratio as of December 31 immediately preceding is ___ and loss and loss adjustment expense reserve liability to surplus ratio for that period is __, as reported in the statutory annual statement for that period.

5. The above-referenced surety has failed four or more IRIS tests. Yes ___ No ___

If yes, provide an explanation that demonstrates that such results are not indicative that the surety is in a hazardous financial condition.

PART III

Dated and signed this ___ day of ____. I hereby certify that the foregoing statements are true and correct to the best

of my knowledge and belief. I further certify that I am aware that the New Jersey Department of Banking and Insurance will rely on this certification in connection with its determination whether the surety satisfies the requirements set forth in N.J.A.C. 11:1-41 for purposes of providing payment and performance bonds pursuant to P.L. 1995, c.384.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

(Signature of Affiant)

Amended by R.2001 d.99, effective March 19, 2001. See: 32 N.J.R. 4194(a), 33 N.J.R. 1004(a).

SUBCHAPTER 42. (RESERVED)

SUBCHAPTER 43. UNUSUAL HARDSHIP FOR COVERED CLAIMS UNDER THE NEW JERSEY PROPERTY-LIABILITY INSURANCE GUARANTY ASSOCIATION AND NEW JERSEY SURPLUS LINES INSURANCE GUARANTY FUND

11:1-43.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the circumstances that shall constitute an "unusual hardship" for the purpose of filing a claim by a claimant with the Association or Fund pursuant to N.J.S.A. 17:30A-1 et seq. or N.J.S.A. 17:22-6.70 et seq., as applicable.

(b) This subchapter shall apply with respect to all claims filed with the Association or Fund after the final date set by the court for filing of claims against the liquidator or receiver of an insolvent insurer.

11:1-43.2 Definitions

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

"Association" means the New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.

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

"Covered claim" is as defined in N.J.S.A. 17:30A-5 or 17:22-6.72, as applicable.

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