

5. The insurer or insurance agent should be consulted to obtain further information about how to secure flood insurance, including the availability, terms and coverage;

6. Standard homeowners insurance policies do not cover damage to property, contents and structure resulting from floods; however, flood insurance may be available through the National Flood Insurance Program which exists in participating communities; and

7. The National Flood Insurance Program coverage contains separate content and structure coverage. A policyholder should consult with the National Flood Insurance Program or his insurer or insurance producer as to whether the coverage selected is appropriate to the policyholder's needs.

(b) The notice shall be provided at new business inception and at least annually thereafter. For the purpose of this subsection, new business inception means when the application is taken; when the coverage is bound; or when the policy is presented to the insured. The notice may be included with other materials sent to the policyholder.

New Rule, R.1997 d.194, effective May 19, 1997.  
See: 28 N.J.R. 5137(a), 29 N.J.R. 2462(b).  
Amended by R.2001 d.75, effective March 5, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).  
Added (a)6 and 7.

#### 11:1-5.6 FAIR plan retention level

The retention level for the FAIR plan established pursuant to N.J.S.A. 17:37A-18 shall be \$35 million.

New Rule, R.1997 d.471, effective November 3, 1997.  
See: 29 N.J.R. 1009(a), 29 N.J.R. 4688(a).

### SUBCHAPTER 6. NEW JERSEY PROPERTY-LIABILITY INSURANCE GUARANTY ASSOCIATION ASSESSMENT PREMIUM SURCHARGE

#### 11:1-6.1 Purpose and scope

(a) This subchapter provides for the recoupment by member insurers of the Association of assessments paid pursuant to N.J.S.A. 17:30A-8a(3).

(b) This subchapter applies to all assessments imposed on member insurers pursuant to N.J.S.A. 17:30A-8a(3) and which have not been recouped as of September 3, 1991. This subchapter does not apply to any assessments imposed on member insurers pursuant to N.J.S.A. 17:30A-8a(9).

#### Case Notes

When Medical Malpractice Reinsurance Association makes assessment against insurers, insurers are entitled to recoup that assessment through surcharges on insureds. In re New Jersey Medical Malpractice

Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Statutory workers' compensation lien for benefits paid to injured employee by workers' compensation insurer was not enforceable against Property-Liability Insurance Guaranty Association. *Sussman v. Ostroff*, 232 N.J.Super. 306, 556 A.2d 1301 (A.D.1989), certification denied 117 N.J. 143, 564 A.2d 865.

Surplus lines insurers held excluded from operation of Property-Liability Insurance Guaranty Association Act, even prior to statutory amendment specifically excluding them from Act. *Railroad Roofing & Building Supply Co., Inc. v. Financial Fire & Casualty Co.*, 85 N.J. 384, 427 A.2d 66 (1981).

#### 11:1-6.2 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 Insurance.

"Department" means the New Jersey Department of Insurance.

"Member insurer" is as defined in N.J.S.A. 17:30A-5f.

#### 11:1-6.3 Establishment of Association assessment premium surcharge

(a) Upon a determination by the Commissioner that a surcharge on premiums is necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3), he or she shall order within 30 days of the due date of an assessment that a surcharge be imposed on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies. The essential terms of the Order shall be published in the New Jersey Register.

(b) The amount of a surcharge shall be established by the Commissioner by Order. In determining the amount of a surcharge the Commissioner shall consider:

1. The amount of any assessment on member insurers imposed by the Association pursuant to N.J.S.A. 17:30A-8a(3);

2. The surcharge amount necessary in the Commissioner's opinion to permit member insurers to recoup any assessment paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) over a reasonable time which shall not be less than one year; and

3. The net direct written premiums for all lines of insurance to which N.J.S.A. 17:30A-1 et seq. applies.

(c) A surcharge imposed pursuant to this subchapter shall apply to all policies for all kinds of insurance, except life insurance, accident and health insurance, workers' compensation insurance, title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance and pet health insurance.

(d) A surcharge imposed pursuant to this subchapter and by applicable Orders of the Commissioner shall be identified to the insured as "New Jersey Property-Liability Insurance Guaranty Association Surcharge" and the amount of the surcharge shall be shown as a separate item on the premium bill rounded to the nearest dollar. The surcharge amount shall not be treated as premium for accounting purposes or for commissions, but must be coded and reported in accordance with instructions issued by the statistical agents under the direction of the Commissioner.

(e) Any change in premium by endorsement subsequent to the effective date of the policy shall reflect the appropriate change in the surcharge. In the case of flat cancellations, the entire surcharge amount shall be returned to the policyholder.

(f) All assessments imposed on member insurers by the Association pursuant to N.J.S.A. 17:30A-8a(3) shall be considered a receivable by the insurer for accounting purposes. The receivable shall also be considered an admitted asset for statutory accounting purposes. Any surcharges on policies as established by this subchapter shall be considered an offset to the receivable by the insurer for accounting purposes. If an insurer ceases to write all lines of business to which N.J.S.A. 17:30A-1 et seq. applies for any reason, the receivable shall be cancelled to the extent it has not been offset by any surcharges collected and the assessment shall be treated as an expense by the insurer for accounting purposes.

(g) Surcharges on premiums for multi-year policies, including perpetual insurance policies, shall be billed annually pursuant to the procedures established by this subchapter and applicable Orders of the Commissioner.

(h) Surcharges collected by an insurer pursuant to this subchapter are not taxable premiums for the purposes of determining the insurer's tax liability pursuant to N.J.S.A. 54:18A-1 et seq.

(i) An insurer shall not be required to collect a surcharge if the expense of collecting the surcharge exceeds the amount of the surcharge.

(j) A surcharge established pursuant to this subchapter shall provide recoupment to insurers for any assessment imposed pursuant to N.J.S.A. 17:30A-8(3). Such assessments shall not be considered obligations within the context of the retaliatory provisions set forth in N.J.S.A. 17:32-15.

(k) Upon a finding by the Commissioner that the surcharge is no longer necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8(3), he or she shall order that imposition of the surcharge be terminated. Upon termination of the surcharge, any debit or credit balance shown on that year's reconciliation form shall remain on the insurer's books to be applied in the annual reconciliation form filed the following year and each year thereafter.

Public Notice: Imposition of surcharge.  
See: 29 N.J.R. 265(a).  
Public Notice: Imposition of surcharge.  
See: 30 N.J.R. 244(b).  
Public Notice: Imposition of surcharge.  
See: 31 N.J.R. 77(b).  
Public Notice: Imposition of surcharge.  
See: 32 N.J.R. 327(b).

#### 11:1-6.4 Reporting requirements

All insurers collecting a surcharge established pursuant to this subchapter shall file by March 1 of each year a reconciliation form on a form to be provided by the Commissioner. The form shall show the assessments paid to the Association and the surcharges collected by the insurer, if any, during the calendar year immediately preceding. This information shall be forwarded to:

New Jersey Department of Insurance  
Division of Financial Examinations  
20 West State Street  
PO Box 325  
Trenton, NJ 08625-0325

Amended by R.1996 d.116, effective March 4, 1996.  
See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

#### 11:1-6.5 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law, including, but not limited to, penalties set forth in N.J.S.A. 17:33-2.

### SUBCHAPTER 7. MEDICAL MALPRACTICE REPORTING REQUIREMENTS

#### 11:1-7.1 Purpose and scope

(a) The purpose of these rules is to implement N.J.S.A. 17:30D-17(a) and (b). These statutory provisions require insurers, insurance associations and licensed medical practitioners to notify the Medical Practitioner Review Panel of any medical malpractice claim settlements, judgments or arbitration awards involving a licensed practitioner, any termination or denial of malpractice insurance coverage to a practitioner, or any surcharge assessed against a practitioner. These proposed rules establish the form and content of the notice required under these statutory provisions.

2. As to all other insurers, including United States branches of alien insurers, the state, districts, territories, commonwealths or possessions under the laws of which the insurer was formed;

“Foreign insurer” means an insurer formed under the laws of a jurisdiction of the United States of America, other than the State of New Jersey.

“Hazardous financial condition” means a financial condition deemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)1 indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, claimants, creditors, or the public.

“Hazardous operations” means operations deemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)2 indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be precarious to the policyholders, claimants, creditors or the general public. “Insurance holding company system” means two or more affiliated persons, one or more of whom or which is an insurer.

“Insurer” means any person or persons, corporation, partnership or company authorized by the laws of this State to transact the business of insurance in this State; except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

“NAIC” means the National Association of Insurance Commissioners.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker’s function.

“Subsidiary” of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

#### 11:1-10.4 General eligibility requirements

(a) In order for a foreign or alien company engaged in the business of property and casualty insurance to be admitted to transact the business of insurance in the State of New Jersey, 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 insurer shall satisfy the Commissioner that it is not in a hazardous financial condition. A hazardous financial condition shall exist when the following factors indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, stockholders or the public:

i. The existence of adverse findings reported in financial condition and market conduct examination reports;

ii. The NAIC Insurance Regulatory Information System ratios and or its related reports have been deemed adverse;

iii. The ratios of commission expense, general insurance expense, policy benefits and reserve increases to annual premium and net investment income could lead to an impairment of capital and surplus;

iv. That the asset portfolio of the insurer, when viewed in light of current economic conditions, is determined by the Commissioner to be of insufficient value, liquidity or diversity to assure the insurer’s ability to meet its outstanding obligations as they mature;

v. The ability of an assuming reinsurer to meet the obligations being assumed and whether the insurer’s reinsurance program provides sufficient protection for the company’s remaining surplus, after taking into account the insurer’s cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

vi. That the insurer’s operating loss in the last 12 month period, or any shorter period of time as the Commissioner may determine, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to stockholders, is greater than 50 percent of such insurer’s remaining surplus for policyholders in excess of the minimum required;

vii. Whether any affiliate of an insurer, subsidiary or reinsurer of such insurer, is insolvent, or, in the opinion of the Commissioner, threatened with insolvency, or delinquent in the payment of its monetary or other obligations;

viii. Whether contingent liabilities, pledges or guarantees which, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer;

ix. Whether any person controlling an insurer is delinquent in making payments of net premiums to such insurer;

x. The age and collectibility of receivables;

xi. Whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, has failed to demonstrate the level of competence and fitness deemed necessary by the Commissioner;

xii. Whether management of an insurer has filed any false or misleading financial statement, or has released any false or misleading financial statement to lending institutions or to the public, or has made a false or misleading entry, or has omitted an entry of a material amount in the books of the insurer;

xiii. Whether, in the opinion of the Commissioner, the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and

xiv. Whether, in the opinion of the Commissioner, the insurer has experienced, or is likely to experience in the foreseeable future, cash flow and/or liquidity problems.

2. The insurer shall satisfy the Commissioner that its financial condition is not such as would render its operations hazardous to the policyholders, stockholders or the general public. Such operations shall be deemed hazardous when the following standards indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be precarious to the policyholder, stockholders or the general public.

i. That the insurer has refused to maintain, or to submit for examination, books, records, accounts, or any other information about the company's affairs deemed relevant by the Commissioner;

ii. That the insurer has concealed or removed records or altered any valuable information from such records, or removed or altered any assets in violation of any applicable state law;

iii. That the insurer has willfully violated its charter or bylaws; and/or

iv. That the insurer has an officer, director or manager who has unlawfully refused to be examined under oath concerning the affairs of the insurer.

3. The insurer shall satisfy the following capital and surplus licensure requirements:

i. An applicant shall satisfy, at a minimum, the statutorily-prescribed minimum capital and surplus requirements for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile, whether or not the applicant desires to transact any of those lines of insurance in the State of New Jersey. The Department shall make an adjustment of surplus regarding all applicant companies as follows:

(1) There shall be deducted from unassigned funds special deposits not held for the protection of all policyholders; and

(2) All applicants shall include in their Annual Statement a provision for unauthorized reinsurance for unearned premiums and losses in connection with the reinsurance in all companies not authorized to transact business in New Jersey. An amount in these items slightly larger than that required for New Jersey shall be acceptable where the liability is based on the calculation for some other state. These penalties may be adjusted for subsequent legal action on license status in the State of New Jersey or in other jurisdictions.

ii. Requirements for an application to meet the minimum capital and surplus amounts for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile may be modified by the Commissioner 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 county 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, districts, territories, commonwealth, possessions or country of domicile.

4. The applicant shall be deemed ineligible if any one of the following conditions exist:

i. An applicant company which has received from the NAIC a "first priority" designation for the calendar year next preceding its application date shall not be considered for admission until such designation has been removed by the NAIC;

ii. An applicant company which is a member of an insurance holding company system, where its parent or subsidiary has received from the NAIC a "first priority" designation, shall not be considered for admission until such designation has been removed by the NAIC from the parent or subsidiary;

iii. An applicant company which has been identified as "second or third priority" and/or has failed four or more Insurance Regulatory Information System (IRIS) tests shall have its application deferred until it has demonstrated to the Commissioner and its state, districts, territories, commonwealth, possessions or country of domicile that these IRIS test results are not indicative of a financial condition that may be hazardous to the general public, policyholders and stockholders; or

iv. An applicant company 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 insurer 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 the State of New Jersey unless the Commissioner has been furnished with evidence that the applicant, under its present control, has been authorized by its/their state(s), district(s), territory(ies), commonwealth(s), possession(s) or country(ies) 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 engaged in such business 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 insurer qualified under (a)5i above shall demonstrate that:

(1) During any three of the last five years, including therein either of the two most current years of business operations, it generated a net income from operations, after Federal taxes, as reported in the Underwriting and Investment Exhibit in the Annual Statement;

(2) Surplus has not decreased due to operations over the five year period in question; and

(3) It has received one of the top three ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following: Standard and Poor's; Dun and Bradstreet; Moody's; and A.M. Best. If the applicant has received a rating of less than one of the top three ratings, the Department shall be so notified even if one of the top three ratings is received as required herein.

iii. The Commissioner may, upon the request of an applicant, on a case by case basis, waive, in the case of (a)5iii(1), (2), (3), (5) and (6) below, or reduce, in the case of (a)5iii(4) below, the five year seasoning requirement required by (a)5i and ii above. In determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisfied, and, in addition, whether any one of the applicable requirements provided in (a)5iii(1) through (6) below have been satisfied. These requirements include:

(1) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least five years. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer who shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State; or

(2) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least one year, and secured admission into New Jersey by having been in operation for at least five years pursuant to (a)5i and ii above. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer, which shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State. The insurer parent shall also be required to have one of the top two ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following: Standard and Poor's; Dun and Bradstreet; Moody's and A.M. Best; or

(3) Whether the applicant is the continuing corporation resulting from a merger or consolidation of insurers, at least one of which has been authorized in its state or country of domicile to transact the kind(s) of insurance business for which the applicant seeks a New Jersey Certificate of Authority and has been actively engaged in such insurance business for at least five years and is currently in good standing; or

(4) Whether the applicant, being an insurance company with a non-insurance company parent, has completed three full years of operation, and, subsequent to its first two years of operation, has available a filed examination report conducted by its state of domicile, which report is in accordance with the New Jersey Department of Banking and Insurance standards for examinations. The first two full years of operations covered by the examination report shall be sufficient to make the report useful and meaningful to the Department. The applicant shall also be required to have experienced profitable operations in two of the three years, including the most current year of business. Additionally, the applicant shall obtain or satisfy all of the following:

(A) A financial guaranty from its ultimate parent that the applicant will meet the minimum required capital and surplus requirements on a quarterly basis, for a period of five years from the date of admission;

(B) The ultimate parent must be a United States corporation actively engaged in business for a period of not less than five years prior to the date of application for the New Jersey Certificate of Authority;

(C) The ultimate parent shall have one of the top two ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following for at least three years prior to application and shall maintain said rating for at least three years after admission: Standard and Poor's; Dun and Bradstreet; and Moody's. The Commissioner may initiate proceedings to revoke authorization for non-compliance with this requirement; and

(D) The ultimate parent shall have a net worth of at least \$25,000,000, which amount shall be set by the Commissioner upon his or her consideration of the general financial condition of the parent and relevant underwriting factors such as, but not limited to, the volume to be written and the type of risk, and any other factors which the Commissioner, in his or her discretion, shall consider to be appropriate; or

(5) Whether the applicant obtains a surety bond or bonds issued by an insurance company or insurance companies approved by the Commissioner and authorized in the State of New Jersey, in an amount to be determined by the Commissioner, with a minimum requirement of \$5,000,000 and issued for a period of time as shall be determined by the Commissioner, but which shall not exceed five years. The Commissioner shall exercise his or her discretion in setting an amount for a surety bond upon consideration of the factors noted in (a)5iii(4)(D) above. This bond shall be prepared in such a way as to meet the requirements of the Department concerning the protection of New Jersey policyholders, claimants and creditors of the applicant insurance company; or

(6) Whether the applicant demonstrates to the Commissioner that a line or lines of insurance in this State for which the applicant is seeking authority is underserved in this State at the time the request for waiver is made. For purposes of this provision "line of insurance" shall be construed to mean a sub-line of business or category of business within the line, and shall not be construed to mean an entire line of business. Any applicant seeking a waiver of the five year seasoning requirement set forth in (a)5i and ii above pursuant to this provision shall submit a written request for such waiver which shall include the following:

(A) Such information and documentation as may be necessary to demonstrate to the Commissioner that there is no reasonable or adequate market among authorized insurers for the type of insurance coverage involved. In making this showing, the applicant shall demonstrate that there is, in fact, a market for the type of coverage involved in the request, that it is presently underserved, and that the applicant will serve that market. A showing that the coverage is presently listed on the Exportable List promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43 and N.J.A.C. 11:1-34 shall be deemed to demonstrate that the coverage is presently underserved in this State;

(B) Documentation that the applicant possesses the requisite underwriting, managerial and financial capability and expertise to write the particular business involved in the request, to the extent the original application for admission does not so demonstrate; and

(C) A certification that the applicant acknowledges that if the request is granted and the applicant is admitted to transact business under such waiver, the applicant's authority to transact business shall be limited only to the type of coverage involved in the request, and that the applicant may not write any other business so long as it does not satisfy the seasoning requirements set forth (a)5i and ii above or any waiver therefrom set forth in (a)5iii (1) through (5) above. This shall not be construed to limit the ability of the applicant to request that the Commissioner remove the restriction upon a showing that it satisfies the seasoning requirements pursuant to (a)5i and ii above, or waiver therefrom set forth in (a)5iii(1) through (5) above, and that it is otherwise qualified to write such business pursuant to law, including, but not limited to, this subchapter.

6. The insurer shall procure a New Jersey Certificate of Authority by establishing compliance with the applicable requirements of N.J.S.A. 17:17-1 et seq. and shall successfully complete an admissions process which shall include a detailed review by the Commissioner of the business affairs and financial condition of the applicant as provided by this subchapter.

(b) An applicant company intending to make a formal application for admission shall first submit a letter of intent which shall consist of the preliminary information set forth in N.J.A.C. 11:1-10.5.

Amended by R.1995 d.347, effective July 3, 1995.  
See: 27 N.J.R. 1737(a), 27 N.J.R. 2582(b).

Added (a)5iii(6).  
Amended by R.2001 d.75, effective March 5, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

**11:1-10.5 Letter of intent**

(a) Prior to the acceptance of a final application for a Certificate of Authority in the State of New Jersey, all foreign and alien insurers engaged in the business of property and casualty insurance who desire to transact the business of insurance in the State of New Jersey shall submit, as a preliminary application, a letter of intent, which shall include the information required in (a)1 through 8 below.

1. The name of the applicant;
2. Where applicable, the name of any person, as defined in this subchapter, or other entity, by whom the applicant is controlled;
3. The applicant's current insurance holding company systems chart;
4. Where applicable, the name of any insurer(s) currently licensed in the State of New Jersey with whom the applicant is affiliated;
5. The type(s) of insurance proposed to be written by the applicant in the State of New Jersey;
6. A certified copy of the applicant's most recent Annual Statement, prepared on the NAIC annual and quarterly statements forms used by New Jersey domestic insurers;
7. A certified copy of the applicant's current Certificate of Authority from its state, district, commonwealth, territory, possession or country of domicile; and
8. The results of the most recent NAIC Insurance Regulatory Information System (IRIS) tests and related communications concerning the applicant, which shall satisfy the requirements of N.J.A.C. 11:1-10.4(a)4i-ii.

**11:1-10.6 Final application**

(a) After submission of the letter of intent as required by N.J.A.C. 11:1-10.5, the applicant shall be instructed by the Department to file the following items:

1. A copy of its charter as currently in force, certified by the lawful custodian of the original document;
2. A copy of its bylaws as currently in force, certified by a senior officer of the company;
3. A statement of the company's financial condition as of December 31 of the preceding calendar year, in the NAIC format, signed and sworn to by the president of the company, its corporate secretary and its treasurer;
4. A Certificate of Compliance under the official seal of the commissioner of insurance of the company's domiciliary state or country;
5. A certified copy of a report of the most recent examination of the company's affairs by the department of insurance or its equivalent, of the state or country in which the company is domiciled;

6. An appointment, by the company, of the Commissioner as attorney for service of process;

7. An application for admission, on a form to be prescribed by the Department, including payment of a non-refundable application fee in the amount set forth in N.J.A.C. 11:1-32.6(a)1;

8. A "statement of opinion" by a qualified actuary relating to loss and loss adjustment expense reserves, pursuant to N.J.A.C. 11:1-21;

9. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as shall be required by the Commissioner;

10. Where applicable, a certified copy of the filing made pursuant to the Holding Company Act of the state, district, territory, commonwealth, possessions or country of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

11. A statement of ownership of the applicant. This statement shall include all shareholders of record who control five percent or more of the outstanding shares of the applicant, directly or indirectly;

12. A copy of any agreements by which the right to conduct or influence any of the affairs of the applicant is transferred to others;

13. Any employment or deferred compensation agreements in which any officer, director or shareholder who controls five percent or more of the outstanding shares of the applicant, directly or indirectly, participates;

14. Any tender offer materials (advertisements, invitations, etc.) if any tender offer has been made by the company or its parent to acquire another company within the three years preceding;

15. Modified NAIC biographical affidavits, to be completed by all directors and senior officers on a form prescribed and provided by the Department;

16. A corporate plan of operation consisting of:

i. A schedule listing the following:

(1) All jurisdictions in which the applicant has applied for authorization to transact the business of insurance during the preceding 10 years and the dates and results of such applications;

(2) All jurisdictions from which the applicant has withdrawn during the preceding 10 years, and the reasons for withdrawal; and

(3) All administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, or its affiliates, or any of its directors or principal officers have been subject, due

to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent in a jurisdiction which does not use this designation of a crime, such actions, orders, proceedings and determinations shall include violations not related to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings, and determinations related thereto.

ii. A description of the applicant's present business plan or plan(s) for conducting an insurance business, including, but not limited to:

- (1) Geographical areas in which business is being written;
- (2) The types of insurance to be written;
- (3) Marketing methods;
- (4) A summary of the methods for establishing premium rates; and
- (5) A description of agency systems, including any managing general agency contracts.

iii. A proposed plan for conducting an insurance business in the State of New Jersey, including, but not limited to:

(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.

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SUBCHAPTER 40. (RESERVED)

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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.  
 Sec: 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 seeking 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;
5. The surety shall not have received from the NAIC a "first priority" designation for the calendar year ending December 31 immediately preceding its application date;
6. If the surety is a member of an insurance holding company system, its parent or subsidiary shall not have received from the NAIC a "first priority" designation; and
7. The surety shall not have been identified as "second or third priority" and/or 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 and/or "priority" identification 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).

**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**

Rating Company A.M. Best Company	Three Highest Rating Categories Best's Ratings:	Ratings Within Three Highest Categories
	1. Superior	A + +, A +
	2. Excellent	A, A-
	3. Very Good	B + +, B +
	----OR----	
	Financial Performance Rating:	
	1. Strong	9, 8
	2. Above average	7, 6
	3. Average	5
Standard & Poor's	1. Superior	AAA
	2. Excellent Financial Security	AA +, AA, AA-
	3. Good Financial Security	A +, A, A-
Moody's	1. Exceptional	Aaa
	2. Excellent	Aa1, Aa2, Aa3
	3. Good	A1, A2, A3

Rating Company	Three Highest Rating Categories	Ratings Within Three Highest Categories	Jurisdiction	Line
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-	(Attach additional sheets if necessary)	
Weiss	1. Excellent 2. Good 3. Fair	A+, A, A- B+, B, B- C+, C, C- (also includes the above ratings with "s" prefix)	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 ___	
Fitch	1. Extremely strong 2. Very strong 3. Strong	AAA AA A	3. The above-referenced surety 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 ___	

**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 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 \_\_\_\_\_.

**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 licensed to transact business in the following jurisdictions for the following lines:

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 received from the NAIC a "first priority" designation for the calendar year ending December 31 immediately preceding its application date. Yes \_\_\_ No \_\_\_

6. If the above-referenced surety is a member of an insurance holding company system, its parent or subsidiary has received from the NAIC a "first priority" designation. Yes \_\_\_ No \_\_\_

7. The above-referenced surety has been identified as "second or third priority" and/or 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 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)

Administrative correction.  
See: 29 N.J.R. 425(b).

\_\_\_\_\_

SUBCHAPTER 42. (RESERVED)

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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.

“Due date” means the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.”

“Fund” means the New Jersey Surplus Lines Insurance Guaranty Fund established pursuant to N.J.S.A. 17:22-6.70 et seq.

“Insolvent insurer” is as defined at N.J.S.A. 17:30A-5 or 17:22-6.72, as applicable.

**11:1-43.3 Unusual hardship**

(a) Pursuant to N.J.S.A. 17:30A-5 and 17:22-6.72, as applicable, a covered claim by the Association or Fund shall not include a claim filed with the Association or Fund, as applicable, after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer, unless the claimant demonstrates unusual hardship, as determined pursuant to this subchapter, and the Commissioner approves of the treatment of the claim as a covered claim.

(b) For purposes of (a) above, a claimant may show unusual hardship by filing information that demonstrates any of the following:

1. The claimant never received notice of the due date for filing claims;
  - i. The claimant shall be presumed to have received notice if the notice was timely mailed to the claimant’s address currently on file with insurer;
2. The mailing address of the claimant in the insurer’s records is erroneous, and the claimant demonstrates that he or she notified the insurer or its agent of a change in address;
3. The claimant was incapable of responding to the notice due to an emergent and extreme medical event or similar emergent and extreme circumstance; or
4. The claimant is deceased, and the claimant’s estate demonstrates that the death occurred within such a time period that the representative of the claimant’s estate did not have sufficient time to advise the insurer or its agent of such circumstance.

(c) Requests for treatment of a claim on the basis of unusual hardship shall contain the following information:

1. The name, address, social security number, telephone number, and date of birth of the claimant making the application;
2. The policy number;

3. The name of the insured, if different than the claimant;

4. A description of the particular reason(s) that constitute unusual hardship as set forth in (b) above; and

5. Copies of all documents required to support the request, including, but not limited to, as applicable:

i. Notice to the insurer or agent of change of address;

ii. Death certificate;

iii. Report from a physician that specifies the type of medical condition or injury that prevented the claimant from filing a timely claim, the date such condition or injury first occurred, the date treatment was initiated, and any other relevant information; and

iv. Any additional information or documentation the Association or Fund, as applicable, or the Commissioner may specifically request from a particular claimant.

(d) Completed requests shall be sent to the Association or Fund at:

New Jersey Property-Liability Insurance Guaranty Association

(or New Jersey Surplus Lines Insurance Guaranty Fund)

Unusual Hardship Request

PO Box 868

466 Southern Blvd.

Chatham, NJ 07928

(e) The Association or Fund, as applicable, shall notify the claimant, or his or her legal representative, by certified mail, return receipt requested, whether it has approved the request for a finding of unusual hardship. The Association or Fund shall concurrently file a copy of its determination with the Department. No determination by the Association or Fund, as applicable, to approve a request for a finding of unusual hardship shall be deemed to constitute acceptance

of the claim otherwise as a covered claim or approval of any payment of the claim.

#### 11:1-43.4 Request for review by the Commissioner

(a) A claimant may request a review by the Commissioner of a determination of the Association or Fund, as applicable, denying a request for a finding of unusual hardship within 20 days of receipt of the Association's or Fund's written decision by submitting to the Commissioner a request for review addressed to:

Office of Financial Solvency

New Jersey Department of Banking and Insurance

20 West State Street

PO Box 325

Trenton, NJ 08625-0325

(b) A request for review shall include those items presented in the initial request, a written statement explaining why the determination of the Association or Fund denying the initial request was incorrect, and any additional documentation in support of the request for review.

1. A copy of the request for review shall be simultaneously filed by the claimant with the Association or Fund, as applicable.

2. The Association or Fund, upon receipt of the request for review, shall forward the claimant's file to the Commissioner for his or her review.

(c) The Commissioner's final decision shall be provided to the Association or Fund, as applicable, and shall be mailed to the claimant or his or her legal representative by certified mail, return receipt requested and by regular mail. The Commissioner's decision shall constitute a final agency decision.

#### 11:1-43.5 Confidentiality

All documents provided by a claimant pursuant to N.J.A.C. 11:1-43.3 shall be confidential and shall not be subject to public inspection or copying pursuant to the "Right-to-Know" law, N.J.S.A. 47:1A-1 et seq.