

(b) "Complications of pregnancy" shall mean:

1. Conditions (when the pregnancy is not terminated) whose diagnoses are distinct from pregnancy but are adversely affected by pregnancy or are caused by pregnancy, such as, acute nephritis, nephrosis, cardiac decompensation, missed abortion, and similar medical and surgical conditions of comparable severity, but shall not include false labor, occasional spotting, physician-prescribed rest during the period of pregnancy, morning sickness, hyperemesis gravidarum, preeclampsia, and similar conditions associated with the management of a difficult pregnancy not constituting a nosologically distinct complication of pregnancy; and

2. Nonelective caesarean section, ectopic pregnancy, which is terminated, and spontaneous termination of pregnancy, which occurs during a period of gestation in which a viable birth is not possible.

(c) General provisions include the following:

1. No person engaged in the business of life and health insurance in this State shall treat complications of pregnancy more restrictively than any other sickness or illness under any contract of insurance issued for delivery in New Jersey.

2. A contravention of the preceding paragraph shall be deemed evidence of an unfair trade practice in the conduct of business of insurance in this State in violation of N.J.S.A. 17B:30-1 et seq.

New Rule, R.1976 d.161, effective September 1, 1976.
See: 8 N.J.R. 196(b), 8 N.J.R. 300(b).

SUBCHAPTER 5. FIRE AND CASUALTY INSURANCE

11:1-5.1 FAIR Plan surcharge

(a) On August 3, 1988, the Commissioner of Banking and Insurance ascertained and determined that the net value of the New Jersey Insurance Development Fund, as of December 31, 1987, was more than five percent of the premiums written on basic property insurance in New Jersey in calendar year 1987. Accordingly, no further surcharge on said premiums and no further payments to said Fund shall be made.

(b) Application of surcharge when imposed by the Commissioner of Banking and Insurance shall be as follows:

1. A surcharge shall be imposed in an amount prescribed in an order of the Commissioner of Banking and Insurance on premiums of the following policies and endorsements effective on or after the date fixed by the Commissioner in his or her order.

i. All fire, extended coverage and other allied lines coverage (property damage and time element) written under the fire policy.

ii. All burglary and theft policies.

iii. Commercial multiple peril policies. For the purpose of this computation, 65 percent of the commercial multiple peril premium shall constitute the premium subject to the surcharge, except that on individual risks where such percentage appears unreasonable, a company may use actual division by line, provided the company maintains a separate record of those risks.

iv. Policies issued under the homeowners policy program. For the purpose of this computation, 85 percent of the homeowners premium shall constitute the premium subject to surcharge, except that on individual risks where such percentage appears unreasonable, a company may use actual division by line provided the company maintains a separate record on those risks.

2. The surcharge, if deemed necessary by the Commissioner of Banking and Insurance, shall apply to all new and renewal policies effective on or after the date fixed by the Commissioner in his or her order and to the additional premiums on all endorsements effective on or after that date.

3. Policies written for a term longer than one year with an effective date on or after the date fixed by the Commissioner in his or her order shall be charged, if deemed necessary by the Commissioner of Banking and Insurance, in accordance with this section.

4. Return of the surcharge, if any is charged by order of the Commissioner of Banking and Insurance, is permitted on policy activity such as endorsement decreasing premium and cancellations effective the date fixed by the Commissioner in his or her order.

5. For policies with an effective date on or after the date fixed by the Commissioner in his or her order, which are subject to audit, the surcharge, if any is charged by order of the Commissioner of Banking and Insurance, shall be based on the audited premium.

6. The surcharge, if deemed necessary by the Commissioner of Banking and Insurance, shall be charged in full. Rounding to the nearest whole dollar is not permitted.

7. If a surcharge is deemed necessary by the Commissioner of Banking and Insurance, commissions and premium taxes shall not be payable thereon, and the insurer is prohibited from absorbing such surcharge as an inducement for insurance or for any other reason.

(c) If a surcharge is deemed necessary by the Commissioner of Banking and Insurance, the surcharge shall be collected by each insurer and paid over to the State Treasurer.

er of New Jersey, not later than March 1 and September 1 of each year.

(d) The method of billing shall be as follows:

1. If a surcharge is deemed necessary by the Commissioner of Banking and Insurance, the surcharge shall be a separate charge to the insured in addition to the premium to be paid and shall be shown separately or combined with the Guaranty Association charge.

2. If a surcharge is deemed necessary by the Commissioner of Banking and Insurance, when the surcharge is combined with the Guaranty Association charge, it shall be identified as "Surcharges," and when it is shown separately, it shall be identified as "Surcharge."

New Rule, R.1977 d.231, effective July 1, 1977.

See: 9 N.J.R. 278(f), 9 N.J.R. 371(b).

Amended by R.1978 d.78, effective March 2, 1978.

See: 10 N.J.R. 67(a), 10 N.J.R. 165(a).

Amended by R.1984 d.426, effective October 1, 1984.

See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a).

This section was originally codified as 11:1-5.4. Section substantially amended.

Public Notice: Recertification to the Legislature of the need for continuation of the notice of cancellation and nonrenewal requirement applicable to fire and casualty insurance policies, excluding accident and health policies for the fiscal year commencing July 1, 1985.

See: 17 N.J.R. 1939(a).

Amended by R.1989 d.478, effective September 5, 1989.

See: 21 N.J.R. 1816(a), 21 N.J.R. 2796(a).

Provisions for surcharge and for payments to the New Jersey Insurance Development Fund deleted and replaced with references to orders of the Commissioner of Insurance.

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Case Notes

The cost of use of money deposited by policyholder of insurance company in connection with its issuance of perpetual homeowner's policies held subject to both premiums tax and assessment under the NJ Insurance Premium Tax and the NJ Insurance Underwriting Association Act, respectively; cost of deposit money to be calculated by multiplying the deposit amount by the interest rate representing the cost of money. *Mutual Insurance Co., v. Gluck*, 9 NJ Tax 55 (TC 1987) affirmed 10 N.J.Tax 234.

11:1-5.2 Notice of cancellation and nonrenewal of fire and casualty coverage

(a) All fire and casualty policies of insurance, except accident and health policies, shall provide for the issuing company to give:

1. Thirty days' written notice to the insured of the cancellation of any policy;
2. Thirty days' written notice of cancellation of any policy to any mortgagee mentioned in said policy; and
3. Thirty days' written notice to the insured of said company's intent not to renew any policy.

(b) Provisions of policies to be effective on or after July 1, 1977, which are issued by any company doing business in New Jersey and provide for less than 30 days' notice of cancellation and nonrenewal shall be null and void, with the following exceptions:

1. Provisions for cancellations for nonpayment of premium or for "moral hazard" (such as insurance fraud) under N.J.S.A. 17:29C-2;
2. Provisions for cancellations and nonrenewal notice which are controlled by N.J.S.A. 17:29C-6 et seq., (Automobile insurance), 39:6A-3 and rules promulgated thereunder (No-fault insurance).
3. Provisions in New Jersey FAIR Plan policies for five day notice to the insured and 10 days notice to the mortgagee with respect to any of the following properties or in any of the following circumstances:

- i. Buildings which are unoccupied and accessible to unauthorized persons.
- ii. Buildings which have been subject to damage by a peril insured against and the damage is not repaired or remedied within a reasonable time after the damage occurred.
- iii. Buildings which are in danger of collapse because of serious structural conditions.
- iv. The insured has been indicted for or convicted of arson or burning with intent to defraud, or there is evidence of incendiarism or attempt threat by the insured or representative of the insured.
- v. Buildings which have an exceptional degree of hazard, such as fire ruins or dilapidated condition.
- vi. Buildings which have any of the following conditions existing:

- (1) Repeated failure to furnish heat, water, sewer or public lighting;
- (2) Failure to correct conditions dangerous to life, health or safety;
- (3) Failure to maintain the building in accordance with applicable law;
- (4) Failure to pay property taxes for two quarters.

vii. Building with any of the rental units in the building unoccupied and left unprotected against trespass. A rental unit will be deemed to be unprotected against trespass when an entrance door to such unit or an exterior door to a hall, stairway, or other common passage leading to such unit is missing, unlocked, not capable of being locked, or otherwise unsecured, or when a door or window in such unit which is accessible to entry has not been replaced or boarded up. If the owner remedies the condition that left the unit or units unprotected against trespass and so notifies the association within the 15-day time period for appeal to the association as provided by N.J.A.C. 11:1-5.3(c), then the association shall grant the appeal and the insurance shall continue without lapse.

- viii. Buildings from which fixed and salvageable items have been or are being removed and the insured can give no reasonable explanation for such removal.
- ix. Buildings which have been condemned.
- x. When there is reasonable knowledge and belief that the property is endangered and is not reasonably protected from possible arson for profit.

Emergency New Rule, R.1974 d.259, effective September 20, 1974.
See: 6 N.J.R. 407(a).

“New Jersey Special Joint Underwriting Association.”

Emergency Amendment, R.1974 d.274, effective October 2, 1974.

See: 6 N.J.R. 436(b).

New Rule, R.1977 d.185, effective July 1, 1977.

See: 9 N.J.R. 177(c), 9 N.J.R. 282(b).

Originally designated 11:2-17.1; codified at 11:1-5.5.

Amended by R.1979 d.219, effective June 6, 1979.

See: 11 N.J.R. 249(e), 11 N.J.R. 348(b).

Recertification of 11:1-5.5.

See: 15 N.J.R. 810(a).

Recertification of 11:1-5.5.

See: 16 N.J.R. 2018(a).

Amended by R.1984 d.426, effective October 1, 1984.

See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a).

Recodified from 11:1-5.5.

Public Notice: Recertification to Legislature of the need for continuance of the Notice of cancellation and nonrenewal of fire and casualty coverage.

See: 18 N.J.R. 1623(a).

Amended by R.1990 d.107, effective February 5, 1990.

See: 21 N.J.R. 3240(b), 22 N.J.R. 391(a).

Changes at (b)3 regarding the provisions of fire and casualty insurance policies issued by the FAIR Plan.

Public Notice: Recertification to Legislature.

See: 22 N.J.R. 3057(b).

Public Notice: Recertification to Legislature.

See: 23 N.J.R. 2883(b).

Public Notice: Recertification to the Legislature of need for notice of cancellation and nonrenewal of fire and casualty insurance.

See: 24 N.J.R. 3181(a).

Public Notice: Recertification to Legislature.

See: 26 N.J.R. 4452(c).

Public Notice: Recertification to Legislature.

See: 27 N.J.R. 3492(a).

Public Notice: Recertification to Legislature.

See: 28 N.J.R. 3834(c).

Public Notice: Recertification to Legislature.

See: 29 N.J.R. 3368(a).

Public Notice: Recertification to Legislature.

See: 31 N.J.R. 2007(a).

Public Notice: Recertification to Legislature.

See: 32 N.J.R. 2959(b).

Public Notice: Recertification to Legislature.

See: 33 N.J.R. 2711(a).

Public Notice: Recertification to Legislature.

See: 34 N.J.R. 3138(a).

Case Notes

Regulation governing insurer's giving of notice of policy cancellation and nonrenewal did not obligate insurer to provide notice of nonrenewal of multiperil policy to mortgagee. *Howard Sav. Bank v. Liberty Mut. Ins. Co.*, 285 N.J.Super. 491, 667 A.2d 390 (A.D.1995).

Cancellation of homeowners' policy was governed by statute and regulation on notice of cancellation and nonrenewal of fire and casualty coverage. *DiGiacomo v. Saladino*, 279 N.J.Super. 96, 652 A.2d 223 (A.D.1995).

Insurer was required to demonstrate objective reason for exercising rights under clause allowing cancellation for any reason other than

nonpayment of premium. *Harvester Chemical Corp. v. Aetna Cas. & Sur. Co.*, 277 N.J.Super. 421, 649 A.2d 1296 (A.D.1994), certification denied 139 N.J. 441, 655 A.2d 443.

Insurer had to give insured written notice when it did not to renew from any source other than insured. *Echevarias v. Lopez*, 240 N.J.Super. 104, 572 A.2d 671 (A.D.1990).

Statutory obligation to provide written notice of nonrenewal exists despite broker's assurance that insured does not intend to renew. *Echevarias v. Lopez*, 240 N.J.Super. 104, 572 A.2d 671 (A.D.1990).

Casualty policy for trailer park had expired where broker had sent timely and proper notice and insured chose not to renew. *Insinga v. Hegedus*, 231 N.J.Super. 562, 555 A.2d 1183 (A.D.1989).

Insurer could not claim broker was primarily responsible for nonrenewal notices. *Insinga v. Hegedus*, 231 N.J.Super. 562, 555 A.2d 1183 (A.D.1989).

Insurer held liable for fire loss where it failed to give notice of policy expiration as required by rule (citing former N.J.A.C. 11:1-5.5). *Barbara Corp. v. Bob Maneely Insurance Agency*, 197 N.J.Super. 339, 484 A.2d 1292 (App.Div.1984).

11:1-5.3 FAIR Plan short notice cancellation procedures

(a) When a notice of cancellation is served by mail, three days from the date of mailing shall be added to the otherwise applicable notice period.

(b) The association shall submit to the Commissioner, no later than three days after the last day of each month, a copy of all short notice cancellations issued during that month.

(c) The association shall notify the insured of any cancellation in a writing setting forth the reason or reasons for cancellation and the effective date. The writing shall advise the insured of a right to appeal the cancellation to the association within 15 days of the date of mailing, and if the appeal is denied, to the Department of Banking and Insurance. This hearing shall not be considered a contested case under the Administrative Procedure Act (APA). The appeal shall be processed in the following manner:

1. Upon issuance of a short notice cancellation, the file will be placed into special suspense, for a period of 15 days from the date of mailing of notice. If no written notice of appeal is received from the insured or his representative within that period, cancellation will be processed and return premium (if any) forwarded to the producer of record.

2. If timely written request for appeal is received, the following steps will be taken:

- i. The N.J.I.U.A. appeals committee will review and determine the appeal within five working days from receipt of request for appeal. If the result of the appeal is favorable, a letter advising the insured or his representative, the producer and the mortgagee (if any) of favorable action will be sent together with reinstatement notice stating that no lapse in coverage has occurred.

- ii. If the appeals committee denies the appeal for reinstatement, a letter advising the insured or his repre-

sentative, the producer or mortgagee (if any) of this action and a right to appeal to the Commissioner will be sent; a copy will be forwarded to the Department of Banking and Insurance.

(1) The file will remain in suspense for 30 days awaiting notice of appeal to the Commissioner.

(2) Upon receipt of the appeal request, the Department of Banking and Insurance will notify N.J.I.U.A. and advise that the file should be held in suspense for an additional period.

(3) If, after 35 days have elapsed from the association's decision to deny appeal and no notification has been received from the Department of Banking and Insurance of a pending appeal, cancellation will be processed and premium returned (if any) to the producer of record.

(4) The Department of Banking and Insurance will advise N.J.I.U.A. of its decision. If the appeal is granted, the policy will be reinstated without lapse. If the appeal is denied, cancellation will be processed and premium returned (if any) to the producer of record.

New Rule, R.1975 d.210, effective July 23, 1975.

See: 7 N.J.R. 273(a), 7 N.J.R. 369(b).

"New Jersey Special Joint Underwriting Association charge".

Amended by R.1976 d.134, effective May 5, 1976.

See: 8 N.J.R. 197(a), 8 N.J.R. 300(a).

Repealed by R.1977 d.17, effective January 26, 1977.

See: 8 N.J.R. 559(a), 9 N.J.R. 93(a).

New Rule, R.1979 d.219, effective June 6, 1979.

See: 11 N.J.R. 249(e), 11 N.J.R. 348(b).

Amended by R.1984 d.426, effective October 1, 1984.

See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a).

Recodified from 11:1-5.6.

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Rewrote (c).

11:1-5.4 Distribution of fire insurance premium tax

(a) Fire insurance premium taxes paid by insurers not domiciled in the State of New Jersey are required to be distributed to the respective Firemen's Relief Association in which the property is situated.

(b) A three digit Firemen's Relief Association Code, published in the ISO New Jersey Public Fire Protection Classifications Manual, has been promulgated by the Insurance Services Office (ISO) for the purpose of coding the policies to properly allocate the premium taxes.

(c) The following steps shall be taken to assure correct tax distribution:

1. All agents, surplus lines agents and brokers producing fire insurance on any risks located in New Jersey are required to properly describe the risk and its location on the Policy Declaration Sheet.

2. The description of the property shall contain the complete address at which the property is located including the legal name of the municipality and the Firemen's Relief Association Code as promulgated by the Insurance Services Office.

3. All insurance companies writing fire insurance on property located in New Jersey shall require their agents to designate the Firemen's Relief Association by code on each Policy Declaration Sheet and disclose the complete address at which the property is located including the legal name of the municipality.

4. Each insurance company shall use the Firemen's Relief Association code as promulgated by the Insurance Services Office in making its annual report pursuant to N.J.S.A. 54:18-1 to the respective treasurers of the duly incorporated Firemen's Relief Association in which any property on which the company has taken a fire insurance risk is located.

New Rule, R.1979 d.356, effective September 10, 1979.

See: 11 N.J.R. 347(b), 11 N.J.R. 520(c).

Amended by R.1984 d.426, effective October 1, 1984.

See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a).

Recodified from 11:1-5.8.

11:1-5.5 Notice regarding flood damage coverage

(a) All fire and casualty insurers, including the New Jersey Insurance Underwriting Association (FAIR Plan), that write homeowners insurance, as defined in N.J.A.C. 11:2-41.2, shall provide their policyholders at least annually with a notice that includes the following information:

1. A homeowners insurance policy does not cover property damage from floods.

2. Flood means a general and temporary condition of partial or complete inundation of normally dry land area from:

i. The overflow of inland or tidal waters;

ii. The unusual and rapid accumulation or runoff of surface waters from any source;

iii. Mudslides (that is, mudflows) that are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current;

3. Flood also includes the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding cyclical levels, which results in the partial or complete inundation of normally dry land area;

4. A separate policy of flood insurance may be available to cover flood damage at an additional premium;

(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. (RESERVED)

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).

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 | A+, A, A- B+, B, B- |

| | | |
|--------------------------|--|--|
| Rating <u>Company</u> | Three Highest Rating <u>Categories</u> 3. Fair | Ratings Within Three Highest Categories <u>C+, C, C-</u> (also includes the above rat- ings 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
(Name and Title)
behalf of _____ in connection with this
(Name of Surety)
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:

| <u>Jurisdiction</u> | <u>Line</u> |
|---------------------|-------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

(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.

“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 07928-0868

(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.