

## INSURANCE

### (a)

#### DEPARTMENT OF BANKING AND INSURANCE OFFICE OF SOLVENCY REGULATION Credit for Reinsurance

#### Adopted Amendments: N.J.A.C. 11:2-28.7 through 28.7B, 28.8, 28.10, 28.12, and 11:2-28 Appendix

#### Adopted New Rule: N.J.A.C. 11:2-28.7E

Proposed: June 6, 2022, at 54 N.J.R. 1004(a).

Adopted: August 11, 2022, by Marlene Caride, Commissioner,  
Department of Banking and Insurance.

Filed: August 11, 2022, as R.2022 d.108, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:51B-1 et seq.

Effective Date: September 6, 2022.

Expiration Date: June 29, 2025.

#### Summary of Public Comment and Agency Response:

**No comments were received.**

#### Federal Standards Statement

The adopted amendments and new rule conform New Jersey regulations to certain covered agreements, which were entered into by the United States government pursuant to 31 U.S.C. § 314 (for detailed information, please see the notice of proposal Summary at 54 N.J.R. 1004(a)). The amendments and new rule ensure that non-United States insurers domiciled in a foreign jurisdiction subject to the covered agreements are not subject to treatment less favorable than that of insurers that are domiciled, licensed, or admitted to do business in New Jersey, as contemplated by 31 U.S.C. § 313. That section would otherwise mandate the preemption of State law insurance measures if the Director of the Federal Insurers Office were to determine that the measure is inconsistent with a covered agreement and results in less favorable treatment of a non-U.S. insurer domiciled in a foreign jurisdiction that is subject to than a U.S. insurer domiciled, licensed, or otherwise admitted in the State. Therefore, the adopted amendments and new rule do not exceed any minimum standards of the Federal government.

**Full text** of the adoption follows:

#### SUBCHAPTER 28. CREDIT FOR REINSURANCE

##### 11:2-28.7 Credit for reinsurance required by law

(a) An insurer may be permitted to take a credit for reinsurance ceded to an assuming insurer which does not meet any of the requirements set forth at N.J.A.C. 11:2-28.3, 28.4, 28.5, 28.6, 28.7A, or 28.7E, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required or provided by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district, or territory of the United States and any lawful national government.

(b) (No change.)

##### 11:2-28.7A Credit for reinsurance from certified reinsurers

(a) Pursuant to N.J.S.A. 17:51B-2.g, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements set forth at N.J.A.C. 11:2-28.3, 28.4, 28.5, or 28.6 that has been certified as a reinsurer in this State at all times for which statutory financial statement credit for reinsurance is claimed pursuant to this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer, in accordance with a rating assigned to the certified reinsurer pursuant to this section. The security shall be in a form consistent with the provisions at N.J.S.A. 17:51B-2.g and this subchapter. The amount of security required in order for full credit to be allowed shall correspond with the requirements as set forth at Exhibit A in the Appendix to this subchapter, incorporated herein by reference.

(b)-(k) (No change.)

##### 11:2-28.7B Certification procedure

(a)-(b) (No change.)

(c) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating, where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

1.-7. (No change.)

8. For certified reinsurers not domiciled in the United States, audited financial statements, regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the Commissioner will consider audited financial statements for the last two years filed with its non-United States jurisdiction supervisor;

9.-11. (No change.)

(d)-(e) (No change.)

(f) The certified reinsurer shall meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers, which is not otherwise public information subject to disclosure shall not be considered a government record subject to public inspection and copying pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. The applicable information filing requirements are, as follows:

1.-3. (No change.)

4. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon application for initial certification, audited financial statements for the last two years filed with the certified reinsurer's supervisor;

5.-7. (No change.)

(g)-(j) (No change.)

##### 11:2-28.7E Reciprocal jurisdictions

(a) Pursuant to N.J.S.A. 17:51B-2.e, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this section.

(b) A "reciprocal jurisdiction" is a jurisdiction, as designated by the Commissioner pursuant to (d) below, that meets one of the following:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance;

2. A U.S. jurisdiction that meets the requirements for accreditation pursuant to the NAIC financial standards and accreditation program; or

3. A qualified jurisdiction, as determined by the Commissioner pursuant to N.J.A.C. 11:2-28.7C, which is not otherwise described at (b)1 or 2 above and which the Commissioner determines meets all of the following additional requirements:

i. Provides that an insurer that has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

ii. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to rules by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

iii. Recognizes the U.S. State regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this State or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the Commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

iv. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Commissioner, in accordance with a memorandum of understanding or similar document between the Commissioner and such qualified jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(c) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this State to an assuming insurer meeting each of the conditions set forth below.

1. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

2. The assuming insurer must have and maintain on an ongoing basis, minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth at (c)7 below, according to the methodology of its domiciliary jurisdiction, in the following amounts:

i. No less than \$250,000,000; or

ii. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(1) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250,000,000; and

(2) A central fund containing a balance of the equivalent of at least \$250,000,000.

3. The assuming insurer must have and maintain on an ongoing basis, a minimum solvency or capital ratio, as applicable, as follows:

i. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as set forth at (b)1 above, the ratio specified in the applicable covered agreement;

ii. If the assuming insurer is domiciled in a reciprocal jurisdiction as set forth at (b)2 above, a risk-based capital (RBC) ratio of 300 percent of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

iii. If the assuming insurer is domiciled in a reciprocal jurisdiction as set forth at (b)3 above, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the Commissioner determines to be an effective measure of solvency.

4. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1, set forth in the chapter Appendix, Exhibit F, of its agreement to the following:

i. The assuming insurer must agree to provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth at (c)2 or 3 above, or if any regulatory action is taken against it for serious noncompliance with applicable law.

ii. The assuming insurer must consent, in writing, to the jurisdiction of the courts of this State and to the appointment of the Commissioner as agent for service of process.

(1) The Commissioner may also require that such consent be provided and included in each reinsurance agreement under the Commissioner's jurisdiction.

(2) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

iii. The assuming insurer must consent, in writing, to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer,

that have been declared enforceable in the territory where the judgment was obtained.

iv. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

v. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this State's ceding insurers, and agrees to notify the ceding insurer and the Commissioner and to provide 100 percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions at N.J.S.A. 17:51B-2.g and 17:51B-3 and N.J.A.C. 11:2-28.9, 28.10, or 28.11. For purposes of this section, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

vi. The assuming insurer must agree, in writing, to meet the applicable information filing requirements as set forth at (c)5 below.

5. The assuming insurer or its legal successor must provide, if requested by the Commissioner, on behalf of itself and any legal predecessors, the following documentation to the Commissioner:

i. For the two years preceding entry into the reinsurance agreement, and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

ii. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

iii. Prior to entry into the reinsurance agreement, and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

iv. Prior to entry into the reinsurance agreement, and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by the ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth at (c)6 below.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

i. More than 15 percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute, as reported to the Commissioner;

ii. More than 15 percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverables on paid losses of 90 days or more, which are not in dispute, and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or

iii. The aggregate amount of reinsurance recoverable on paid losses that are not in dispute, but are overdue by 90 days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement.

7. The assuming insurer's supervisory authority must confirm, to the Commissioner, on an annual basis, that the assuming insurer complies with the requirements set forth at (c)2 and 3 above.

8. Nothing in this subsection precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

(d) The Commissioner shall timely create and publish a list of reciprocal jurisdictions.

1. A list of reciprocal jurisdictions is published through the NAIC Committee Process. The Commissioner's list shall include any reciprocal jurisdiction as defined pursuant to (b)1 and 2 above and shall consider any other reciprocal jurisdiction included on the NAIC list. The Commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, rule, or in accordance with criteria published through the NAIC Committee Process.

2. The Commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, rule, or in accordance with a process published through the NAIC Committee Process, except that the Commissioner shall not remove from the list a reciprocal jurisdiction as defined pursuant to (b)1 and 2 above. Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to N.J.S.A. 17:51B-1 et seq., or N.J.A.C. 11:2-28.1.

(e) The Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth at this section and to which cessions shall be granted credit, in accordance with this section.

1. If an NAIC-accredited jurisdiction has determined that the conditions set forth at (c) above have been met, the Commissioner has the discretion to defer to that jurisdiction's determination and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit, in accordance with this subsection. The Commissioner may accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC in satisfaction of the requirements set forth at (c) above.

2. When requesting that the Commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1, set forth in the chapter Appendix, Exhibit F, and additional information as the Commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

(f) If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured, in accordance with N.J.A.C. 11:2-28.8.

2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions at N.J.A.C. 11:2-28.8.

(g) Before denying statement credit or imposing a requirement to post security with respect to (f) above or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed at (c) above;

2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

3. After the expiration of 90 days or less, as set forth at (g)2 above, if the Commissioner determines that no or insufficient action was taken by the assuming insurer, the Commissioner may impose any of the requirements as set forth in this subsection; and

4. Provide a written explanation to the assuming insurer of any of the requirements set forth in this subsection.

(h) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

11:2-28.8 Reduction from liability for reinsurance ceded to an unauthorized assuming insurer

(a) An insurer shall be permitted to take a reduction from liability for reinsurance ceded to an assuming insurer not meeting the requirements at N.J.A.C. 11:2-28.3, 28.4, 28.5, 28.6, 28.7, or 28.7A through 28.7E in an amount which does not exceed the liabilities carried by the ceding insurer. Such reduction shall be in the amount of the funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security shall be held in the United States, subject to withdrawal solely by and under the exclusive control of the ceding insurer, or in the case of a trust held in a qualified United States financial institution, subject to withdrawal solely by and under the exclusive control of the ceding insurer.

(b) (No change.)

11:2-28.10 Letters of credit qualified pursuant to N.J.A.C. 11:2-28.8 and 28.9

(a)-(d) (No change.)

(e) The letter of credit shall state whether it is subject to and governed by the laws of this State or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, Publication 600 (UCP 600), or the International Standby Practices of the International Chamber of Commerce, Publication 590 (ISP 98), or any subsequent revisions, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(f) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, Publication 600 (UCP 600), or the International Standby Practices of the International Chamber of Commerce, Publication 590 (ISP 98), or any successor publication, then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified at Article 36 of Publication 600 or any other successor publication, occur.

(g)-(j) (No change.)

11:2-28.12 Reinsurance contract

(a) Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements at N.J.A.C. 11:2-28.3, 28.4, 28.5, 28.6, 28.7, 28.7A through 28.7E, or 28.8, unless the reinsurance agreement meets the following standards:

1.-3. (No change.)

APPENDIX

...

EXHIBIT F

FORM RJ-1

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I, \_\_\_\_\_, \_\_\_\_\_  
(name of officer) (title of officer)  
of \_\_\_\_\_, the assuming insurer  
(name of assuming insurer)  
under a reinsurance agreement with one or more insurers domiciled in \_\_\_\_\_, in order to  
(name of state)  
be considered for approval in this state, hereby certify that \_\_\_\_\_ ("Assuming Insurer");  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in New Jersey for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary

to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the commissioner. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

2. Designates the Insurance Commissioner of New Jersey as its lawful attorney in and for the State of New Jersey upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.

5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in New Jersey. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the commissioner, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.

6. Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.

7. Agrees to provide the documentation in accordance with N.J.A.C. 11:2-28.7E(c)5, if requested by the commissioner.

Dated: \_\_\_\_\_ (name of assuming insurer)

BY: \_\_\_\_\_ (name of officer)

\_\_\_\_\_ (title of officer)

**TREASURY—GENERAL**

**(a)**

**DIVISION OF PURCHASE AND PROPERTY  
Procurement Bureau; Contract Compliance and  
Audit Unit; and Distribution Support Services  
Unit**

**Adopted Amendments: N.J.A.C. 17:12-1.5, 1A.2, 5.3,  
5.4, and 5.5**

**Adopted New Rule: N.J.A.C. 17:12-3.5**

Proposed: April 18, 2022, at 54 N.J.R. 709(a).  
Adopted: July 27, 2022, by Elizabeth Maher Muoio, State Treasurer.  
Filed: July 27, 2022, as R.2022, d.106, **without change**.  
Authority: N.J.S.A. 10:5-36.k and o, 52:18A-30.d, 52:25-1 et seq.,  
52:25-16.1, 52:32-17 et seq., 52:34-6 et seq., 52:34-6.2.d, 52:34-  
10.4, 52:34-10.10, 52:34-12.a, and 52:34-13; and Executive  
Order Nos. 34 (1976) and 189 (1988).

Effective Date: September 6, 2022.  
Expiration Date: December 26, 2025.

**Summary of Public Comment and Agency Response:**  
**No comments were received.**

**Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendments and new rule are not subject to any Federal requirements or standards.

**Full text of the adoption follows:**

**SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION; MEANS  
OF PROCUREMENT**

**17:12-1.5 Procurement efficiency program**

In accordance with the provisions at N.J.S.A. 52:27B-56 and in order to maintain the State's procurement operations at a level to meet common industry standards of efficiency, the Director shall make a percentage assessment from the value of all transactions on each contract. The assessment shall be made to the contractor or the using agency, as specified in the RFP.

**SUBCHAPTER 1A. PROCUREMENT METHODOLOGY**

**17:12-1A.2 Exceptions to advertised procurement procedures**

(a) (No change.)

(b) Delegated Purchasing Authority purchases. State using agencies may make purchases pursuant to their assigned Delegated Purchasing Authority under the conditions set forth at (b)1 through 6 below, with provision for exception as set forth at (b)7 below. Records of all Delegated Purchasing Authority purchases shall be maintained by State agencies pursuant to each agency's record retention schedule.

1.-6. (No change.)

7. As established at N.J.S.A. 52:25-23.d, through written order or pursuant to a written request from a State agency, the Director may authorize a State agency to undertake an advertised procurement in excess of the amount delegated to the agency pursuant to N.J.S.A. 52:25-23, but less than \$1,000,000 or the amount stated at N.J.S.A. 52:25-23.d, when the procurement is limited to the needs of the specific agency under the following conditions:

i. When the Director has determined that such purchases or contracts are for the procurement of goods or services that are unique to the operations of that particular using agency and are not common or similar to goods or services used by other State agencies and, therefore, not suitable for leveraging with other State agency procurements;

ii. When a public exigency exists, such as when a public health emergency, pursuant to the Emergency Health Powers Act or a state of emergency has been declared by the Governor and is in effect;

Recodify existing i.-iv. as iii.-vi. (No change in text.)

(c) (No change.)

**SUBCHAPTER 3. PROTEST PROCEDURES**

**17:12-3.5 Filing fees**

(a) In order to cover a portion of the administrative costs associated with protests, all protests submitted to the Division pursuant to this section shall be accompanied by the appropriate filing fee, as indicated in this section.

1. A protest filed pursuant to N.J.A.C. 17:12-3.3(a)2, in response to a notice of intent to award shall be accompanied by the filing fee based upon the estimated contract value as set forth below:

i. An RFP with an estimated contract value less than, or equal to, 10 million dollars (\$10,000,000) shall be accompanied by a filing fee of \$100.00;

ii. Any RFP with an estimated contract value greater than 10 million dollars and one cent and less than 25 million dollars (\$10,000,000.01-\$25,000,000) shall be accompanied by a filing fee of \$250.00;

iii. Any RFP with an estimated contract value greater than 25 million dollars and one cent and less than 50 million dollars (\$25,000,000.01-\$50,000,000) shall be accompanied by a filing fee of \$500.00; and