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RULE ADOPTIONS

**TREASURY--GENERAL
DIVISION OF REVENUE AND ENTERPRISE SERVICES
DIVISION OF COMMERCIAL RECORDING**

48 N.J.R. 1700(a)

Adopted New Rules with Amendments: N.J.A.C. 17:35

Expedited Service, Preclearance Service, Trade Mark/Service Mark Program, and Facsimile Filing Service

Proposed: December 7, 2015, at 47 N.J.R. 2915(a).

Adopted: April 18, 2016, by Ford M. Scudder, Acting State Treasurer.

Filed: July 13, 2016, as R.2016 d.096, **without change**.

Authority: N.J.S.A. 14A:1-1 et seq., 14A:1-10, 42:2C-1 et seq., 52:16A-11, 56:1-1.1 et seq., and 56:3-1 et seq.

Effective Date: August 15, 2016.

Expiration Date: August 15, 2023.

As the notice of adoption of the rules proposed for re-adoption with amendments was filed after June 1, 2016, the expiration date of the chapter, the chapter expired. Pursuant to N.J.A.C. 1:30-6.4(j), the expired rules are adopted herein as new rules.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the expired rules adopted herein as new rules with amendments relate strictly to the State of New Jersey's commercial recording services. The rules are, therefore, independent from any Federal systems or requirements.

Full text of the expired rules adopted herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:35.

Full text of the adopted amendments follows:

CHAPTER 35
DIVISION OF REVENUE AND ENTERPRISE SERVICES

SUBCHAPTER 1. EXPEDITED SERVICES

17:35-1.1 Services that will be provided on an expedited basis

(a) The Department of the Treasury's Filing Office shall provide expedited over the counter services for the following requests:

1. Any information contained in the annual report of a business on file with the Filing Office;
- 2.-4. (No change.)
5. The availability of a corporate name, limited liability company name, or a limited partnership name;
6. Filing of any document the Filing Office is empowered by law or regulation to file;
7. The name and address of the registered agent of a business on file with the Filing Office;
8. The filing date of a business on file with the Filing Office;
9. The name and address of a business on file with the Filing Office;
- 10.-15. (No change.)

(b)-(c) (No change.)

17:35-1.2 Definitions

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

...

"Expedited service" means accelerated processing of work requests received by the Filing Office on a business day in one of four timeframes selected by a submitter: same day of submission for limited liability company-related work requests only; 8.5 business hour service; one-business-hour service; or two-business-hour service.

"Filing Office" means the Department of the Treasury, Division of Revenue and Enterprise Services.

"One business-hour service" means as soon as possible, but no later than one business-hour following receipt of the over the counter work request no later than 3:00 P.M. by the Filing Office on a business day.

"Over the counter services" means:

1. (No change.)
2. Subject to the approval of the Filing Office, documents transmitted electronically to the Filing Office;
3. (No change.)

"Same day service" means completion of a limited liability company-related work request no later than the close of business on the day on which the work request is delivered, provided such request is delivered no later than 12:30 P.M.

"8.5 business hours service" means completion of a work request no later than 8.5 business hours following receipt of the over the counter request by the Filing Office on a business day.

"Two-business-hour service" means as soon as possible, but no later than two business-hours following receipt of the over the counter work request no later than 2:00 P.M. by the Filing Office on a business day.

...

17:35-1.3 Exceptions

(a) Expedited services shall be rendered as soon as possible, but may extend beyond the expedited timeframes if the computer system utilized by the Filing Office is down, or if the Filing Office experiences other difficulties beyond its control, making expedited response impossible. In such cases, upon resuming normal operations, the Filing Office will process expedited requests on a first-in first-out basis, in the following priority order: one business-hour; two business-hour; same day; and 8.5 business hours. Expedited requests will be given priority over mail-in requests.

(b) Any over the counter service may be rejected by the Filing Office unless the submission has a

covering communication specified by the Filing Office. The Filing Office may design the covering communication and may from time to time redesign it.

17:35-1.4 Fees for expedited service

(a) Fees for 8.5 business hours service shall be as follows:

1.-8. (No change.)

9. For each Apostille/Notary Certification--\$ 25.00 plus \$ 15.00.

(b) (No change.)

(c) Expedited service shall include:

1. Status reports which include:

i. Availability of a corporate, limited liability company, limited liability partnership, or limited partnership name;

ii. Whether a filed business' certificate has been voided or revoked;

iii. The filing date of a business on file with the Filing Office;

iv. The name and address of the registered agent of a business on file with the Filing Office which has filed a fictitious name certificate;

v. The number of a business on file with the Filing Office;

vi. (No change.)

2. (No change.)

(d) One-business-hour service shall be available for any work request for which there is an 8.5 business hour option as listed in this chapter and the fee for one-business-hour service shall be \$ 1,000 per transaction, which shall be in addition to any statutory fee associated with the transaction. All work requests for one-business-hour service shall be submitted to the Filing Office by 3:00 P.M. on a business day.

(e) Two-business-hour service shall be available for any work request for which there is an 8.5 business hour option as listed herein and the fee for one-business-hour service shall be \$ 500.00 per transaction, which shall be in addition to any statutory fee associated with the transaction. All work requests for two-business-hour service shall be submitted to the Filing Office by 2:00 P.M. on a business day.

(f) Same day service shall be available for any limited liability company-related work request. The fee shall be \$ 50.00 per transaction, which shall be in addition to any statutory fee associated with the transaction. All work requests for same day service shall be submitted to the Filing Office by 12:30 P.M.

17:35-1.5 Method of payment of fees for expedited service

(a) All fees for expedited service performed by the Filing Office may be paid via a pre-paid deposit account, cash (over the counter transactions only), or charged against a major credit card held by the service user. A check, presented in paper or electronic form, made payable to the Treasurer, State of New Jersey, or other electronic method approved by the Filing Office, is also an acceptable payment method.

1. When a credit card or electronic payment method acceptable to the Filing Office is utilized as a method of payment, the user may be charged a separate fee to cover reasonable service fees that are incurred in processing the credit card or electronic payment.

2. (No change.)

SUBCHAPTER 2. PRECLEARANCE OF DOCUMENTS

17:35-2.1 Documents which may be submitted for preclearance

Any document which may be filed with the Treasurer, via the Filing Office pursuant to N.J.S.A. 14A:1-1 et seq. may be submitted for preclearance. These documents include, but are not limited to: Certificates of Incorporation; Amendments; Abandonments; Mergers; Restated Certificates; Terminations; Dissolutions; Revocation of Dissolutions; Corrections; Foreign Qualifications; Foreign Withdrawals; Foreign Amendments; Change of Agents and/or Office; Reservations; Registrations; or Alternate Name Registrations. There is no requirement, however, that a document be precleared prior to submission for filing.

17:35-2.2 Preclearance submission procedure

(a) The Filing Office will preclear any document which:

1. Is hand delivered with a covering communication clearly indicating that the document is submitted for preclearance by messenger or overnight mail service to the preclearance basket at the Filing Office; or

2. Is electronically transmitted to the Filing Office with a covering communication clearly indicating that the document is submitted for preclearance.

(b) The covering communication must include a telephone number of the individual who is to

receive the Filing Office's opinion on the document. The Filing Office will telephone its approval or required revisions to the document. To assure the document will be prescreened prior to filing, the document must be received by Filing Office at least 17] business hours prior to the date that the document will be submitted for filing. Business hours are defined as those hours that the Filing Office's expedited service counter is open. Normal business hours are from 8:30 A.M. to 5:00 P.M., Monday through Friday, except State holidays.

17:35-2.4 Method of payment of fees for preclearance service

(a) All fees for preclearance service performed by the Filing Office may be paid via a pre-paid deposit account, provided the delivery process allows for the use of such accounts, or charged against a major credit card held by the service user. A check, presented in paper or electronic form, made payable to the Treasurer, State of New Jersey, or other electronic method approved by the Filing Office, is also an acceptable payment method.

1. When a credit card or electronic payment method acceptable to the Filing Office is utilized as a method of payment, the user may be charged a separate fee to cover reasonable service fees that are incurred in processing the credit card or electronic payment.

2. (No change.)

SUBCHAPTER 3. NAME AVAILABILITY

17:35-3.1 Distinguishable defined

(a) For name availability purposes, a business entity name, meaning a corporate, limited liability company, limited liability partnership, or limited partnership name, can be distinguished from other business entity names recorded with the Filing Office if it is sufficiently different from those other business entity names. All changes except for the following should be sufficient to distinguish one business entity name from another upon the records of the Filing Office:

1. (No change.)

2. The changing of a word in a business entity name into its plural or singular form;

3. The addition of a different business entity designator;

4. (No change.)

5. The addition of spaces in a business entity name; and/or

6. The misspelling in the word of a business entity name.

SUBCHAPTER 4. TRADE/SERVICE MARKS

17:35-4.1 Definitions

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

...

"Filing Office" means the Department of the Treasury, Division of Revenue and Enterprise Services.

...

17:35-4.2 Mark registration

(a) A person or business may register trade or service marks by:

1. Submitting a type-written or machine-printed application, or an electronic application in a form acceptable to the Filing Office, along with a \$ 50.00 paper or, where applicable, electronic check made payable to the Treasurer, State of New Jersey, with mailings directed to the Trade/Service Mark Section, Division of Revenue and Enterprise Services, (PO Box 453, Trenton, NJ 08646-0453). The application must include the following information:

i.-x. (No change.)

2. (No change.)

(b) (No change.)

17:35-4.3 Mark life-cycle management

(a) An owner of a registered mark may renew, assign, amend, or cancel the mark. Procedures for these life cycle management actions are as follows:

1. An owner may renew a mark by:

i. Submitting a type-written or machine-printed application, or electronic application in a form acceptable to the Filing Office, along with a \$ 50.00 paper or, where applicable, electronic check made payable to the Treasurer, State of New Jersey, with mailings directed to the Trade/Service Mark Section, Division of Revenue and Enterprise Services (PO Box 453, Trenton, NJ 08646-0453). The application may be submitted any time within six months prior to the expiration of the registration period. The application shall include the following information:

(1)-(8) (No change.)

ii.-v. (No change.)

2. An owner may assign ownership of a mark to another person or business entity by:

i. Submitting a type-written or machine-printed application, or electronic application in a form acceptable to the Filing Office, along with a \$ 50.00 paper or, where applicable, electronic check made payable to the Treasurer, State of New Jersey, with mailings directed to the Trade/Service Mark Section, Division of Revenue and Enterprise Services (PO Box 453, Trenton, NJ 08646-0453). As noted, assignments may also be filed as part of the new (original) mark registration process or as part of the renewal process (see N.J.A.C. 17:35-4.2 and 4.3(a)). The application shall include the following information:

(1)-(6) (No change.)

ii. (No change.)

3. An owner may amend a registered mark to reflect updated information pertaining to: the owner's name (that is, to reflect owner's new name, not an assignment); owner's address; and mark classification (add or delete). All three amendment types may be incorporated in a single amendment application. An amendment shall not include alterations to the mark name or drawings/facsimiles associated with the original application. A new registration application shall be submitted if changes to any of these elements occur. The owner may obtain an amendment by:

i. Submitting a type-written or machine-printed application, or electronic application in a form acceptable to the Filing Office, along with a \$ 50.00 paper or, where applicable, electronic check made payable to the Treasurer, State of New Jersey, with mailings directed to the Trade/Service Mark Section, Division of Revenue and Enterprise Services, (PO Box 453, Trenton, NJ 08646-0453). The application shall include the following information:

(1)-(7) (No change.)

ii. (No change.)

4. An owner may cancel a registered mark by:

i. Submitting a type-written or machine-printed application, or electronic application in a form acceptable to the Filing Office, along with a \$ 50.00 paper or, where applicable, electronic check made payable to the Treasurer, State of New Jersey, with mailings directed to the Trade/Service Mark Section, Division of Revenue and Enterprise Services (PO Box 453, Trenton, NJ 08646-0453). The application shall include the following information:

(1)-(6) (No change.)

17:35-4.6 Fees

Fees for the various trademark/service mark filing and information retrieval services are as follows:

| Service | Fee Amount |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| ... | |
| One-business-hour service, meaning as soon as possible, but no later than one business-hour following receipt of an over the counter request by the Filing Office no later than 3:00 P.M. on a business day | \$ 1,000, charged in addition to the basic filing fees |
| Two-business-hour service, meaning as soon as possible, but no later than two business-hours following receipt of an over the counter request by the Filing Office no later than 2:00 P.M. on a business day | \$ 500.00, charged in addition to the basic filing fees |
| Same day service meaning no later than the close of business on the day on which the work request is delivered to the Filing Office, provided such request is delivered no later than 12:30 P.M. on a business day | \$ 50.00, charged in addition to the basic filing fee |
| 8.5 business hours service means completion of a work request no later than 8.5 business hours following receipt of the over the counter request by the Filing Office on a business day | \$ 15.00, charged in addition to the basic filing fees |

SUBCHAPTER 5. FACSIMILE FILING SERVICE

17:35-5.1 Filing service

(a) The Filing Office shall offer a facsimile filing service for any business entity or related document type submitted to the Filing Office, which the Filing Office determines is suitable for facsimile filing. This service may include the transmission of filed documents and related data to persons requesting such content. The Filing Office shall publish which filings and related data are suitable for facsimile filing, along with the approved facsimile filing methods, on its web site at www.nj.gov/treasury/revenue.

(b) (No change.)

(c) Documents delivered via the facsimile filing service may be processed as non-expedited work with no specific turnaround service level, or be processed on one of the following accelerated service levels: same work day received; within 8.5 business hours of receipt; one business-hour of receipt; or two business-hours of receipt. The service level shall be indicated on a covering communication approved by the Filing Office by persons who deliver the documents via the facsimile filing service.

17:35-5.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

"Delivered" means submitted to the Filing Office via a facsimile transmission in accordance with a format and processing method approved by the Filing Office.

"Filing Office" means the Department of the Treasury, Division of Revenue and Enterprise Services.

"Processed" means that a facsimile document submitted via a facsimile transmission in accordance with a format and processing method approved by the Filing Office that is reviewed by the Filing Office and accepted or rejected with the appropriate acknowledgment being sent back to the submitter, including, as applicable, a rejection notice or stamped copy of an approved filing.

17:35-5.3 Exceptions

Services pursuant to this subchapter shall be rendered as soon as possible. However, turnaround times may extend beyond requested accelerated service levels if the computer systems, or communications devices/systems utilized by the Filing Office malfunction, or if the Filing Office experiences other difficulties beyond its control, making a timely response impossible. In such cases, upon resuming normal operations, the Filing Office will process facsimile filing service requests on a first-in first-out basis, in the following priority order: one business-hour; two business-hour; same day; and 8.5 business hours. These requests will be given priority over mail-in requests.

17:35-5.4 Fees

The fees for facsimile filing services shall be: \$ 15.00 for each 8.5 business hours request; \$ 50.00 for each same day service request; \$ 1,000 for each one-business-hour service request; and \$ 500.00 for each two-business-hour service request. The filing fee shall be in addition to the basic statutory filing fee usually charged for filing a document.

17:35-5.5 Methods of payment for facsimile filing service

(a) All fees assessed pursuant to this subchapter may be paid via a pre-paid deposit account,

provided the delivery process allows for the use of such accounts, or charged against a major credit card held by the service user. An electronic method approved by the Filing Office is also an acceptable payment method.

1. When a credit card or electronic payment method acceptable to the Filing Office is utilized as a method of payment, the user may be charged a separate fee to cover reasonable service fees that are incurred in processing the credit card or electronic payment.
2. (No change.)