

**TREASURY - GENERAL
DIVISION OF REVENUE**

Commercial Recording

Proposed Readoption with Amendments: N.J.A.C. 17:35

Authorized By: David Rousseau, State Treasurer

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2008-231.

Submit comments by September 5, 2008 to:

Andrew Pantelides

Assistant Director, New Jersey Division of Revenue

PO Box 308

225 West State Street 3rd Floor

Trenton, NJ 08646

Attn: Commercial Recording Rule Proposal

FAX: 609-984-6832

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), and N.J.S.A. 52:14B-5.1c, N.J.A.C. 17:35 will expire on February 9, 2009. These rules encompass policies and procedures for the State of New Jersey's expedited commercial recording services, as well as for the State's preclearance and facsimile services for various business entity filings. They also set forth name availability criteria for business entities and detailed procedures for the State's trade/service mark program.

The Division of Revenue has reviewed these rules and has determined them to be necessary, reasonable, adequate, efficient, and responsive for the purpose for which they were originally, and are now, promulgated.

The rules proposed for readoption include several amendments, which are summarized below.

N.J.A.C. 17:35-1.1(c) lists an updated website address for the Division of Revenue's Filing Office.

To add flexibility and clarity to the telecopy (facsimile) filing program, N.J.A.C. 17:35-5.1(a) and (b) include amendments that: enable the Division of Revenue to designate which filing documents may be submitted via facsimile; and require the Division to list the designated documents on its website along with information on alternative electronic document filing methods such as Internet-based filing that may be used in place of facsimile transmission.

A summary of each subchapter proposed for reoption follows.

Subchapter 1 details the basic elements of the State's expedited commercial recording service. This includes a listing of services offerings, definitions, fees, processing timeframe exceptions and payment methods.

Subchapter 2 sets forth the State's document preclearance process, including the types of documents that may be precleared, submission procedures, fees, and payment methods.

Subchapter 3 describes the criteria that the State uses for business entity name availability. This encompasses an operational definition of business name distinguishability.

Subchapter 4 contains policies and procedures for the State's trade/service mark program, covering definitions, filing processes (new, renewed, and amended filings), application review/rejection criteria and associated appeals process, mark classification and fees.

Subchapter 5 details the facsimile filing service, with a description of the scope of service, definitions, processing timeframe exceptions, fees and payment methods.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Commercial recording services encompass the State of New Jersey's corporate, Uniform Commercial Code, trade/service mark, notary public and other related business filing and certification service programs. Collectively, these service programs establish the foundation for vital business and legal transactions, such as business formation, loan processing, marketing (via the use of business names and marks), signature authentication, and international document exchange. Clearly, commercial recording services have a very beneficial social impact. It follows then that rules proposed for reoption with amendments will also have a positive social impact, because they contribute to the successful administration of these beneficial services.

To a large degree, the success of the State's commercial recording operation hinges on the timeliness of its service transactions and its consistent application of clearly delineated filing and information access rules. The rules proposed for readoption with amendments directly support these two vital elements by ensuring that clear, consistent policies and procedures are in place for its core accelerated processing service programs – that is, the expedited and facsimile filing programs. For over two decades, the legal and business communities have depended upon the expedited and facsimile services for prompt processing of a wide variety of business-related filings and information access transactions.

The rules proposed for readoption with amendments will also ensure the clear, consistent specification of the State's business name availability criteria and document preclearance procedures. Name availability criteria are vital elements in determining whether a proposed business name is available for use in this State, and therefore play a key role in the business formation process. Document preclearance gives businesses and their representatives assurance of the acceptability of a filing, in advance of its formal submission to the Division of Revenue. Such assurance is often vital for the smooth processing of complex and time sensitive transactions, such as mergers.

Finally, the rules proposed for readoption with amendments will ensure the continuance of required policies and procedures for the State's trade/service mark program, covering all basic program elements. This includes initial registration, renewal/maintenance, cancellation/expiration, and records retrieval. These policies and procedures provide the bases for registering trade/service marks, which businesses use to identify goods and services they market and sell.

Economic Impact

In connection with the positive social impacts noted above, commercial recording services also have a significant, positive impact on the economy. Commercial recording services enable business entities to legally establish and conduct their operations in this State. They also provide information on the status of business entities, business name usage, the procedural validity of commercial transactions, and the existence of secured loans. This public information in turn helps to establish bases for capital transactions, authentication of signatures on real estate and commercial transactions, legal service of process, business/tax registration, and generally, for the efficient flow of commerce in this State. The rules proposed for readoption with amendments will have a positive economic impact because they contribute to the successful administration of these beneficial services.

The economic impact of the rules proposed for readoption is direct and client-focused. Clients will pay fees for specific filing and information retrieval services. In return, they will receive the economic benefits derived from timely completion of business transactions such as loan processing and the execution of contracts and mergers. Other than the aforementioned fees, the rules will not impose any further direct costs on clients. Clients will continue to bear indirect costs associated with document preparation -- for

example, legal advice, typing/printing, etc. The rules proposed for re-adoption with amendments do not include any increase to existing fees.

Federal Standards Statement

A Federal standards statement is not required because the rules proposed for re-adoption 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.

Jobs Impact

The rules proposed for re-adoption with amendments will not result in the creation or loss of jobs.

Agricultural Industry Impact

The rules proposed for re-adoption with amendments will not have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for re-adoption with amendments are designed to ensure that clear and consistent policies and procedures are in place for key commercial recording services and program elements. Anyone submitting requests for expedited, trade/service mark, document pre-clearance or facsimile filing services, including small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., must comply with the policies/procedures set forth in the rules. Fees and administrative costs that will be incurred are discussed in the Economic Impact above. Professional services are not required for compliance with these rules. The Division considers the requirements set forth in the rules to be the minimum necessary for the maintenance of comprehensive, workable and accessible services in the areas covered. For that reason, and because the requirements imposed are not administratively burdensome, the Division has not provided any exceptions or lesser requirements for small businesses.

Smart Growth Impact

The rules proposed for re-adoption with amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:35.

Full text of the proposed amendments follows
(additions indicated in bold face **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. EXPEDITED SERVICES

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

- (a)-(b) (No change)
- (c) The Department of the Treasury may add to or modify its expedited services program in order to take advantage of technological advances or to respond to new/evolving filing and information access needs of the business community and general public. All expedited program changes must be published on the Filing Office website at www.nj.gov/treasury/revenue.

SUBCHAPTER 5. FACSIMILE FILING SERVICE

17:35-5.1 Filing Service

- (a) The Filing Office shall offer a telecopy filing service (hereafter termed facsimile filing service) for [the following:
 - 1. All business formation documents filed with the Filing Office; and
 - 2. All amendatory filings for existing businesses on file with the Filing Office except reinstatements and Annual Reports] **any business entity or related document type submitted to the Filing Office, which can be processed through facsimile transmission.**
- (b) The Filing office [may] **shall** designate [additional] **all** document types that are included in the facsimile filing service[.] **and publish a list of these document types on its website site at www.nj.gov/treasury/revenue. The listing shall be updated periodically and include information on any alternative electronic filing methods, such as Internet filing, which may be used in place of facsimile filing.**
- (c) No change.