

**TO:** The State House Press

**FROM:** James J. Fruscione  
Assistant Director, New Jersey Division of Revenue

**DATE:** June 2, 2003

**SUBJECT:** Proposed Rule Readoption/Recodification

PROPOSED RULE READOPTION/RECODIFICATION  
FOR COMMERCIAL RECORDING SERVICES

Please be advised that the New Jersey Department of the Treasury will propose the readoption and recodification of N.J.A.C. 15:2 as N.J.A.C. 17:35. This chapter encompasses rules that support key commercial filing and information access service programs, including New Jersey's expedited commercial recording, document preclearance, and facsimile filing services, along with the State's trade/service mark program. The chapter also sets forth criteria for determining the availability of business entity names for use in the commercial sector.

The rules involved directly support the timely and consistent delivery of commercial filing and information access services, which are vital elements of the State's commercial recording program.

To reflect prior organizational changes associated with the commercial recording program, the rules have been recodified from Title 15:2 to 17:35. Amendments that designate the current filing officer and filing office -- State Treasurer and Division of Revenue, Business Support Services Bureau are included as well. Also, to bring the rules up to date, the proposed readoption includes various administrative amendments, which are described in detail in the proposal.

The proposed new rules will be published in the June 2, 2003 edition of the New Jersey Register. The comment period will run from June 2, 2003 through August 1, 2003.

Comments may be sent to:  
James J. Fruscione  
Assistant Director, New Jersey Division of Revenue  
PO Box 308  
225 West State Street  
Trenton, New Jersey 08625  
ATTN: COMMERCIAL RECORDING RULE PROPOSAL

Requests for copies of the rule proposal may be sent to Mr. Fruscione at the address above. Interested parties may also download the rule proposal from the Department of Treasury's web site -- [www.state.nj.us/treasury](http://www.state.nj.us/treasury). Copies from both sources will be available as of June 2, 2003.

TREASURY - GENERAL  
DIVISION OF REVENUE

Commercial Recording

Expedited, Document Preclearance and Facsimile Filing Services, Trade/Service Mark Program; and Name Availability Criteria

Proposed Readoption and Recodification with Amendments: N.J.A.C. 15:2 as 17:35

Authorized By: John E. McCormac, CPA, 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 2003-206

Submit comments by August 1, 2003 to:

James J. Fruscione

Assistant Director, New Jersey Division of Revenue

PO Box 308

225 West State Street

Trenton, New Jersey 08625-0308

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. 15:2 will expire on December 12, 2003. 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 proposed readoption includes several amendments, which are summarized below.

To reflect the organizational changes associated with Executive Reorganization Plan 004-1998, the rules have been recodified from N.J.A.C 15:2 to 17:35. In this

connection, amendments that designate the current filing officer and filing office - State Treasurer and Division of Revenue, Business Support Services Bureau are included.

N.J.A.C. 17:35-1.4 has been amended to reflect a previously enacted change to the underlying statutory fee for expedited service. Specifically, P.L. 2002, c.34 (N.J.S.A. 52:16A-40) changed the fee from \$10.00 to \$15.00. The proposed amendments simply update the New Jersey Administrative Code to reflect the changed fee, which has been in full effect since the enactment of P.L. 2002, c.34 in July 2002.

N.J.A.C. 17:35-1.3 (a), 5.1 (c) and 5.3 include amendments that further define exceptions to the expedited and facsimile filing time frames. The amendments explicitly recognize that the Filing Office may experience difficulties beyond its control, which may disrupt the flow of services -- for example, an emergency facility shut-down that would make it impossible to access or use the Filing Office's information processing facilities. They also specify that upon restoration of normal operations, expedited service requests will be given priority over regular mail requests. These amendments harmonize the expedited service and facsimile filing rules with related, recently enacted rules at N.J.A.C. 17:33-3.1.

There is an amendment at N.J.A.C. 17:35-1.5 (a) that specifies that checks constitute an acceptable payment method for over-counter (hand-delivered) expedited transactions. This amendment codifies a long-standing operational practice.

To add flexibility to the expedited service program, N.J.A.C. 17:35-1.1 (c) includes an amendment that will enable the Division of Revenue to periodically modify its expedited service program to respond to new/changing customer needs and technological advances that support accelerated turnaround of work requests.

Finally, an amendment at N.J.A.C. 17:35-5.4 is proposed that allows customers to choose expedited service for requests submitted via facsimile. This codifies a long-standing operational practice.

A summary of each proposed subchapter 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 outlines 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 readoption 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 nearly two decades, the legal and business communities have depended upon the expedited service for prompt processing of a wide variety of business-related filings and information access transactions. Similarly, facsimile filing has become a vital component in the delivery of timely and efficient business entity filing services.

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 proposed amendments reflect a previously enacted change to the underlying statutory fee for expedited service. Specifically, P.L. 2002, c.34 (N.J.S.A. 52:16A-40) changed the fee from \$10.00 to \$15.00. The proposed amendments simply revise the New Jersey Administrative Code to reflect the changed fee, which has been in full effect since the enactment of the previously cited law in July 2002. All other fees in this chapter remain unchanged.

## **Federal Standards Statement**

A Federal standards statement is not required because the rules proposed for readoption 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 reoption with amendments will not result in the creation or loss of jobs.

## **Agricultural Industry Impact**

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

## **Regulatory Flexibility Analysis**

The rules proposed for reoption 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 preclearance 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 reoption 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 proposed reoption may be found in the New Jersey Administrative Code at N.J.A.C. 15:2. Full text of the proposed amendments follows (additions indicated in bold face **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 1. EXPEDITED SERVICES

[15:2-1.1] **17:35-1.1** Services which will be provided on an expedited basis

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

- 1.-2. (No change.)
3. A certified or uncertified copy of document, except trade name filing, filed with the [Department of State] **Filing Office**;

4. A certificate as to the existence or nonexistence of any document, except trade name filings on record with the [Division of Commercial Recording] **Filing Office**;

5-9 (No change.)

10. A U.C.C. 1 filing pursuant to N.J.S.A. 12A:9-[401] **516 et seq.**;

11. A U.C.C. 3 filing pursuant to N.J.S.A. 12A:9-[401 et seq.] **516 et seq.**;

12. A U.C.C. 3 filing pursuant to N.J.S.A. 12A:9-[401 et seq.] **516 et seq.** provided that the U.C.C. 11 search shall not exceed 20 filings. Searches over 20 filings can be expedited but may not be completed within the same day;

13.-14. (No change.)

15. Certification of an official signature of a document, when the official's signature is on file with the [Department of State] **Filing Office**. This includes the issuances of apostilles.

(b) The [Division of Commercial Recording] **Filing Office** shall provide expedited telephone service for the following requests:

1.-6. (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 web site at [www.state.nj.us/treasury/revenue](http://www.state.nj.us/treasury/revenue).**

[15:2-1.2] **17:35-1.2** Definitions

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

**“Filing Office” means the Department of the Treasury, Division of Revenue, Bureau of Business Support Services.**

"Over the counter services" means:

1. Documents delivered to the [Commercial Recording Division; Expedited Services] **Filing Office's expedited services** counter by hand or by express mail (Federal Express, etc.);
2. Subject to the approval of the [Secretary of State] **Filing Office**, documents telefaxed or transmitted electronically to the [Commercial Recording Division] **Filing Office**;
3. Information requests made at the [Commercial Recording Division Expedited Services] **Filing Office's expedited service** counter or any other location designated by the [Secretary of State] **Filing Office**;

"Same Day" means as soon as possible by no later than [8 1/2] **8.5** business hours from the time the request is received. The business day runs from 8:30 A.M. to 5:00 P.M. on all weekdays other than State holidays.

[15:2-1.3] **17:35-1.3** Exceptions [: computer breakdown]

(a) Expedited service shall be rendered as soon as possible, but may extend beyond 8.5 business hours if the computer system utilized by the [Commercial Recording Division] **Filing Office** is down, **or if the Filing Office experiences other difficulties beyond its control**, making an 8.5 business hour response impossible. **In such cases, upon resuming normal operations, the Filing Office will process 8.5 business hour requests on a first-in first-out basis, with priority over mail-in requests.**

(b) Any over the counter service may be rejected by the [Secretary of State] **Filing Office** unless the submission has a cover sheet issued by the [Secretary of State] **Filing Office**. The [Secretary of State] **Filing Office** may design the cover sheet and [the Secretary] may from time to time redesign the cover sheet.

[15:2-1.4] **17:35-1.4** Fees for expedited service

(a) Fees for over the counter corporation service shall be as follows:

1. Filing of document
  - i. Without certified copy; statutory fee plus [\$10.00] **\$15.00** ;
  - ii. With copy to be certified: statutory filing fee, certification fee of \$25.00 plus [\$10.00] **\$15.00**.
2. Request for copy of annual report requested at the same time:
  - i. One report-\$2.00 plus \$10.00] **\$15.00**;

- ii. Two reports-\$4.00 plus [\$10.00] **\$15.00**;
- iii. Three reports--\$6.00 plus [\$10.00] **\$15.00**;
- iv. Four reports-\$8.00 plus [\$15.00] **\$20.00**;
- v. Five reports-\$10.00plus [\$15.00] **\$20.00**;
- vi. Six reports-\$12.00 plus [\$15.00] **\$20.00**;
- vii. Seven reports-\$14.00 plus [\$20.00] **\$25.00**;
- viii. Eight reports- \$16.00 plus [\$20.00] **\$25.00**;
- ix. Nine reports- \$18.00 plus [\$20.00] **\$25.00**;
- x. Ten reports-\$20.00 plus [\$25.00] **\$30.00**.

3. Certificate of standing:

- i. Short form standing certificate which includes registered agent and registered office: \$25,00 plus [\$10.00] **\$15.00**.
- ii. Long form standing certificate which includes registered agent and registered office, incorporators, officers, directors, and number of authorized shares: \$25.00 plus [\$10.00] **\$15.00**.

4. Status report(s) which includes name availability, the name and address of the registered agent, corporation or limited partnership name, whether corporation charter is still valid, and whether the corporation or limited partnership has filed a fictitious/alternate name. Fees for report(s) requested, at the same time are as follows:

- i. One report-\$5.00 plus [\$10.00] **\$15.00**;
- ii. Two reports-\$10.00 plus [\$10.00] **\$15.00**;
- iii. Three reports-\$15.00 plus [\$10.00] **\$15.00**;
- iv. Four reports-\$20.00 plus [\$15.00] **\$20.00**;
- v. Five reports-\$25.00plus [\$15.00] **\$20.00**;
- vi. Six reports-\$30.00 plus [\$15.00] **\$20.00**;
- vii. Seven reports-\$35.00 plus [\$20.00] **\$25.00**;
- viii. Eight reports- \$40.00 plus [\$20.00] **\$25.00**;
- ix. Nine reports- \$45.00 plus [\$20.00] **\$25.00**;
- x. Ten reports-\$50.00 plus [\$25.00] **\$30.00**.

5. Certificate of name availability one to three names: \$25.00 plus [\$10.00] **\$15.00**.

6. (No change.)

7. For each request for an uncertified copy of a document filed with this office, other than the annual report, the fee is [\$10.00] **\$15.00** plus \$1.00 per page photocopied.

8. (No change.)

(b) Fees for over the counter U.C.C. service shall be as follows:

1. Filing[s] of a U.C.C. 1, a U.C.C. 1 with assignment, U.C.C. 3 or a separate assignment: \$25.00 plus [\$10.00] **\$15.00**;
2. Search request: \$25.00 plus [\$10.00] **\$15.00**;
3. Search request and photocopies: \$25.00 plus [\$10.00] **\$15.00**, plus \$1.00 per page photocopied;
4. Request for copy(ies): [\$10.00] **\$15.00** plus \$1.00 per page photocopied;
5. Filing U.C.C. 1 and search request to reflect filing: \$50.00 plus [\$10.00] **\$15.00**.

(c) Expedited telephone service shall be provided for:

1. (No change.)
2. The fees for status report(s) requested at the same time are as follows:
  - i. One report-\$5.00 plus [\$10.00] **\$15.00**;
  - ii. Two reports-\$10.00 plus [\$10.00] **\$15.00**;
  - iii. Three reports-\$15.00 plus [\$10.00] **\$15.00**;
  - iv. Four reports-\$20.00 plus [\$15.00] **\$20.00**;
  - v. Five reports-\$25.00 plus [\$15.00] **\$20.00**;
  - vi. Six reports-\$30.00 plus [\$15.00] **\$20.00**;
  - vii. Seven reports-\$35.00 plus [\$20.00] **\$25.00**;
  - viii. Eight reports- \$40.00 plus [\$20.00] **\$25.00**;
  - ix. Nine reports- \$45.00 plus [\$20.00] **\$25.00**;
  - x. Ten reports-\$50.00 plus [\$25.00] **\$30.00**.

[15:2-1.5] **17:35-1.5** Method of payment of fees for expedited service

(a) All fees for expedited service performed by the [Department of State] **Filing Office** may be paid via a pre-paid deposit account or charged against a major credit card held by the service user. **A check payable to the Treasurer, State of New Jersey is also acceptable payment for hand deliveries.**

1. When a credit card is utilized as a method of payment, the user may be charged a separate fee to cover reasonable bank fees that are incurred by the [Department] **Filing Office** in processing the credit card.
2. Major approved credit cards shall be defined for the purposes of this section as those credit cards accepted by the [Secretary of State] **Filing Office**.

## SUBCHAPTER 2. PRECLEARANCE OF DOCUMENTS

[15:2-2.1] **17:35-2.1** Documents which may be submitted for preclearance

Any document which may be filed with the [Secretary of State] **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; 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.

[15:2-2.2] **17:35-2.2** Preclearance submission procedure

(a) The [Department of State] **Filing Office** will preclear any document which:

1. Is hand delivered with a cover sheet clearly indicating that the document is submitted for preclearance by messenger or overnight mail service to the preclearance basket at the [Division of Commercial Recording] **Filing Office**; or
2. Is faxed to the [Division of Commercial Recording] **Filing Office** with a cover sheet clearly indicating that the document is submitted for preclearance.

(b) The cover sheet must include a telephone number of the individual who is to receive the [Department's] **Filing Office's** opinion on the document. The [Department] **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 [Division of Commercial] **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 [Division's Expedited Service Counter] **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.

[15:2-2.3] **17:35-2.3** Preclearance fees

Any person who submits any document for preclearance shall pay to the [Department of State] **Filing Office** a flat fee of \$100.00. In addition, if preclearance review consumes more than one hour of [Department] **Filing Office** personnel time, an additional fee of \$50.00 per each additional hour or part thereof will be charged.

[15:2-2.4] **17:35-2.4** Method of payment of fees for preclearance service

(a) All fees for preclearance service performed by the [Department of State] **Filing Office** may be paid via a pre-paid deposit account or charged against a major credit card held by the service user. A check payable to the [Department of State] **Filing Office** is also acceptable payment for hand deliveries.

1. When a credit card is utilized as a method of payment, the user may be charged a separate fee to cover reasonable bank fees that are incurred by the [Department] **Filing Office** in processing the credit charge.
2. Major credit cards shall be defined for the purposes of this section as those credit cards accepted by the [Secretary of State] **Filing Office**.

### SUBCHAPTER 3. NAME AVAILABILITY

[15:2-3.1] **17:35-3.1** Distinguishable defined

(a) A corporation name can be distinguished can be distinguished from other names recorded with the [Secretary of State] **Filing Office** if it is sufficiently different from those other names. All changes except for the following should be sufficient to distinguish one corporate name from another upon the records of the [Secretary of State] **Filing Office**:

1.-6 (No change.)

### SUBCHAPTER 4. TRADE/SERVICE MARKS

[15:2-4.1] **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, Bureau of Business Support Services.**

["Secretary or Secretary of State means the Secretary of State of New Jersey or the designee of the Secretary charged with the administration of this subchapter.]

**"Treasurer" means the Treasurer, State of New Jersey or the designee of the Treasurer charged with the administration of this subchapter.**

[15:2-4.2] **17:35-4.2** Mark registration

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

1. Submitting a type-written or machine-printed application, along with a \$50.00 check made payable to the [Secretary of State] **Treasurer, State of New Jersey**, to the Trade/Service Mark Section, [Division of Commercial Recording, (PO Box 308)] **Division of Revenue, (PO Box 453, Trenton, NJ 08625-0453)**. The application must include the following information:

i.-v. (No change.)

- vi. The goods or services involved and the classification within which the goods or services fall (see N.J.A.C. [15:2-4.5] **17:35-4.5** for information on classification);
- vii. (No change.);
- viii. A statement of ownership and use conforming to N.J.S.A. 56:3-3.3 (d) such as: "the applicant attests that he or she is the owner of the mark, that the mark is in use, and that, to his or her knowledge no other person has registered the mark, either with the U.S. Patent and Trademark Office or with the [Secretary of State] **State Treasurer**, or has the right to use the mark or a mark in such near resemblance as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive;"
- ix.-x (No change.)

2. (No change.)

(b) Upon acceptance of the mark, the [Secretary of State] **Filing Office** will send a certificate of registration to the applicant. The certificate will list the name of the mark, an identification number, ownership information, and registration period (term) of the mark. The registration period is five years. Registrations may be renewed for subsequent five year periods. Registrations also may be canceled, assigned or amended.

1. (No change.)

[15:2-4.3] **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 typewritten or machine-printed application, along with a \$50.00 check made payable to the [Secretary of State] **Treasurer, State of New Jersey**, to the Trade/Service Mark Section, [Division of Commercial Recording (PO Box 308)] **Division of Revenue (PO Box 453, Trenton, NJ 08625-0453)**. The application may be submitted anytime within six months prior to the expiration of the registration period. The application shall include the following information:

(1) (No change.);

- (2) The trademark/service mark identification number as assigned by the [Secretary of State] **Filing Office** listed on the Certificate of Registration;
  - (3) The classification within which the goods or services fall (see N.J.A.C. [15:2-4.5] **17:35-4.5** for information on classification);
  - (4) The name and business address of the owner (owner name on application must match owner name shown on the [Secretary of State's] **Filing Office's** records; owner address on application may be different; the [Secretary] **Filing Office** will enter the new address as part of the renewal transaction);
  - (5) - (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, along with a \$50.00 check made payable to the [Secretary of State] **Treasurer, State of New Jersey** to the Trade/Service Mark Section, [Division of Commercial Recording (PO Box 308)] **Division of Revenue, (PO Box 453, Trenton, NJ 08625-0453)**. 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. [15:2-4.2 and 4.3(a)] **17:35-4.2 and 4.3 (a)** ). The application shall include the following information:
      - (1) (No change.)
      - (2) The trademark/service mark identification number as assigned by the [Secretary of State] **Filing Office** and listed on the certificate of registration;
      - (3) The name and business address of the owner (owner name/address shown on the [Secretary of State's] **Filing Office's** records);
      - (4) - (6) (No change.)
    - ii. An assignment application shall not be used to change and/or add mark classifications. The amendment process shall be used for this purpose (see N.J.A.C. [15:2-4.3(b)] **17:35-4.3(b)** ). Further, an assignment application shall not include alterations to the mark name or drawings facsimiles associated with the original registration. A new registration application shall be submitted if changes to any of these elements occur.

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 typewritten or machine-printed application, along with a \$50.00 check made payable to the [Secretary of State] **Treasurer, State of New Jersey**, to the Trade/Service Mark Section, [Division of Commercial Recording (PO Box 308, Trenton, NJ 08625)] **Division of Revenue (PO Box 453, Trenton, NJ 08625-0453)**. The application shall include the following information:
    - (1) (No change.)
    - (2) The trademark/service mark identification number as assigned by the [Secretary of State] **Treasurer** and listed on the certificate of registration;
    - (3) The name and business address of the owner (owner name/address on application must match owner name/address shown on the [Secretary of State's] **Filing Office's** records);
    - (4) - (7)
  - ii. (No change.)
4. An owner may cancel a registered mark by:
  - i. Submitting a type-written or machine-printed Submitting a typewritten or machine-printed application, along with a \$50.00 check made payable to the [Secretary of State] **Treasurer, State of New Jersey**, to the Trade/Service Mark Section, [Division of Commercial Recording (PO Box 308, Trenton, NJ 08625)] **Division of Revenue (PO Box 453, Trenton, NJ 08625-0453)**. The application shall include the following information:
    - (1) (No change.)
    - (2) The trademark/service mark identification number as assigned by the [Secretary of State] **Filing Office** and listed on the certificate of registration;

(3) The name and business address of the owner (owner name/address on application must match owner name/address shown on the [Secretary of State's] **Filing Office's** records);

(4) - (6) (No change.)

[15:2-4.4] **17:35-4.4** Mark review/rejection criteria and applicant appeals

(a) This section is intended to clarify basic review/rejection criteria and the circumstances that may trigger appeals by persons seeking to file documents with the [Secretary of State] **Treasurer, State of New Jersey**. Nothing stated here is intended to restrict repeal rights or the broader powers of review and administrative action delegated to the [Secretary of State] **Treasurer** under N.J.S.A. 56:3-13.1 et seq.

(b) The [Secretary of State] **Treasurer** shall review all filing applications for the inclusion of the mandatory information elements and fees listed in the applicable sections of this subchapter, that is:

1. Original registration application-see N.J.A.C. [15:2-4.2] **17:35-4.2**;
2. Renewal application-see N.J.A.C. [15:2-4.3 (a)] **17:35-4.3(a)**;
3. Assignment application-see N.J.A.C. [15:2-4.3 (b)] **17:35-4.3(b)**;
4. Renewal application-see N.J.A.C. [15:2-4.3 (a)] **17:35-4.3(a)**;
5. Assignment application-see N.J.A.C. [15:2-4.3 (b)] **17:35-4.3(b)**;
6. Amendment application-see N.J.A.C. [15:2-4.3 (c)] **17:35-4.3(c)**;
7. Cancellation application-see N.J.A.C. [15:2-4.3 (d)] **17:35-4.3(d)**; and
8. Fees-see N.J.A.C. [15:2-4.6] **17:35-46**.

(c) (No change.)

(d) For original and renewal applications, the [Secretary of State] **Treasurer** will review the State's Trade Name and Trade Mark/Service Mark data bases to identify possible conflicts (that is, cases in which the proposed mark is duplicative of an active trade name, trademark, or service mark). Any application containing a mark that is duplicative of an active trade name, trademark, or service mark shall be rejected and returned to the applicant along with a listing of the duplicative name(s).

(e) Applicants may resubmit an application rejected for a name conflict. The resubmission shall be accompanied with written arguments and evidence that the names listed in the rejection notice are either abandoned or dissolved, or are not likely to cause confusion, mistakes or deception, under the meanings supplied in N.J.S.A.56:3. The [Secretary of State] **Treasurer** may:

- 1.- 2. (No change.)

(f) If the [Secretary of State] **Treasurer** denies a request for reconsideration of a decision refusing registration or renewal of registration of a trademark, denies a request for

cancellation of a trademark, or denies a petition for voidance of a trademark, the petitioner may appeal that determination. Such appeal shall be pursuant to the procedures set forth in N.J.S.A 56:3-1a(4), (5) and (6).

[15:2-4.5] **17:35-4.5** Classification

N.J.S.A 56:3-12 mandates that the [Secretary of State] **Treasurer** adopt a classification scheme that conforms with that adopted by the United States Patent and trademark Office (USPTO) pursuant to 15 U.S.C. §1112. Accordingly, the USPTO classification scheme is incorporated by reference into these rules. Upon the adoption of these rules, all original and renewed trade/services mark applications filed with the [Secretary of State] **Filing Office** must employ the classification listed in 15 U.S.C. §1112. The previously existing scheme used for marks registered prior to the passage of P.L. 1995, c.171 will remain in effect for those marks until they expire or are cancelled or renewed.

[15:2-4.6] **17:35-4.6** Fees

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

<u>Service</u>	<u>Fee Amount</u>
All Filing Applications (Original Registration, Renewal, Assignment, Amendment or Cancellation Applications)	\$50.00/each
For Each Additional Mark Classification Listed on an Application (Original, Registration, Renewal and Amendment Applications Only)	\$50.00/each
Photocopies of Filed Documents	\$1.00/page
Expedited Filing Service (8.5 business hour processing for work delivered over-the-counter to the Trade/Service Mark Section, [820 Bear Tavern Road] <b><u>225 West State Street, 3<sup>rd</sup> Floor, Trenton, NJ 08608</u></b> -charged in addition to basic filing fees)	[\$10.00] <b><u>\$15.00</u></b> / transaction (per filing application)
Same Day Filing Service (Same day processing for work delivered over-the-counter to the Trade/Service Mark Section, [820 Bear Tavern Road] <b><u>225 West State Street, 3<sup>rd</sup> Floor, Trenton, NJ 08608</u></b> , by 12:00 P.M. of any work day-charged in addition to basic fees)	\$100.00/transaction (per filing transaction)

## SUBCHAPTER 5. FACSIMILE FILING SERVICE

### [15:2-5.1] **17:35-5.1** Filing service

(a) The [Department of State, Division of Commercial Recording] **Filing Office** shall offer a telecopy filing service (hereafter termed facsimile filing service) for the following:

1. All business formation documents filed with the [Division of Commercial Recording] **Filing Office**; and
2. All amendatory filings for existing businesses on file with the [Division of Commercial Recording] **Filing Office**, except reinstatements and Annual Reports.

(b) The [Secretary of State] **Filing Office** may designate additional document types for inclusion in the facsimile filing service.

(c) Documents delivered via the facsimile filing service shall be processed the same **work** day received **or within 8.5 business hours of receipt, based on the service level chosen by persons who deliver the documents via facsimile transmission.**

### [15:2-5.2] **17:35-5.2** Definitions

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

"Delivered" means submitted to the [Division of Commercial Recording] **Filing Office** via direct facsimile transmission, or to any other location designated by the [Secretary of State] **Filing Office**.

**"Filing Office" means the Department of the Treasury, Division of Revenue, Bureau of Business Support Services.**

"Processed" means that a facsimile document submitted via the facsimile filing service is reviewed by the [Division of Commercial Recording] **Filing Office** and accepted or rejected with the appropriate acknowledge being sent back to the submitter, that is, rejection notice or stamped copy of approved facsimile document filing.

"Same **work** day" means processed as soon as possible but no later than the same business day on which a filing request is received, provided the request is delivered by 12:30 P.M. on a State business day. The business day runs from 8:30 A.M. to 5:00 P.M. on all weekdays other than State holidays.

7[15:2-5.3] **17:35-5.3** Exceptions

Services pursuant to this subchapter shall be rendered as soon as possible, but may extend beyond the same **work** day or **8.5 business hours** if the computer systems, facsimile devices, and/or communications systems utilized by the [Division of Commercial Recording] **Filing Office** malfunction, or if the [Division] **Filing Office** experiences other difficulties beyond its control, making a same **work** day or **8.5 business hour** response impossible. **In such cases, upon resuming normal operations, the Filing Office will first process same work day requests and then 8.5 business hour requests, on a first-in first-out basis, with priority over regular mail-in requests.**

[15:2-5.4] **17:35-5.4** [Fee] **Fees**

The fee for **same work day** services rendered pursuant to this subchapter shall consist of a base fee of \$50.00 per document plus \$1.00 per page for any acknowledgment copy of a filed document that is transmitted back to the submitter via facsimile. The filing fee shall be in addition to the basic statutory filing fee usually charged for filing a document. **The fee for 8.5 business hour services rendered pursuant to this subchapter shall consist of a base fee of \$15.00 per document plus \$1.00 per page for any acknowledgment copy of a filed document that is transmitted back to the submitter via facsimile. The filing fee shall be in addition to the basic statutory filing fee usually charged for filing a document.**

[15:2-5.5] **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 or charged against a major credit card held by the user of the facsimile filing service.

1. When a credit card is utilized as a method of payment, the user shall be charged a separate fee to cover reasonable bank fees incurred by the [Division of Commercial Recording] **Filing Office** in processing the credit charge. If no bank fees are incurred in processing the charges, no separate fee shall be charged.
2. Major approved credit cards for purposes of this subchapter shall be designated by the [Division of Commercial Recording] **Filing Office**.