

Full text of the rules proposed for reoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:41B.

TREASURY — GENERAL

(a)

DIVISION OF REVENUE

BUREAU OF BUSINESS SUPPORT SERVICES

Expedited Services; Preclearance of Documents; Trade/Service Marks; Facsimile Filing Service Proposed Amendments: N.J.A.C. 17:35-1, 2.4, 4.6, 5.1, 5.2, 5.3 and 5.4

Authorized By: Andrew P. Sidamon-Eristoff, State Treasurer.
Authority: N.J.S.A. 14A:1-10, 52:16A-38, 52:16A-40 and 56:3-13.21.

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

Proposal Number: PRN 2010-156.

Written comments on the notice of proposal must be postmarked on or before October 1, 2010 and mailed or faxed to:

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The agency proposal follows:

Summary

P.L. 2009, c. 177 amended N.J.S.A. 52:16A-38, 40 and 41, adding provisions that require the Department of the Treasury to provide one-hour and two-hour service options for expedited over the counter service requests. The law also requires the Treasurer to establish a one-hour and two-hour service options fee schedule by rule. The proposed amendments enact the provisions of P.L. 2009, c. 177.

The over the counter expedited service program provides for accelerated processing of work requests, such as filings and records requests, received by the Filing Office, the Department of the Treasury's Bureau of Business Support Services. Businesses and individuals who require accelerated turnaround of work requests may select the expedited option and, for a fee, receive the enhanced turnaround of their requests. This has proven to be a popular program over the years. The Filing Office receives nearly 200,000 over the counter requests each year.

The addition of one- and two-hour options will enhance the program, making it more flexible. More importantly, it will allow the legal and business communities to obtain vital documents and information not yet available online well within the same day of a request. This will provide for greater predictability with regard to scheduling and consummation of complex transactions, such as mergers, consolidations and financing arrangements. This, in turn, will facilitate commercial activity in New Jersey.

In developing the proposed amendments, the Division of Revenue solicited the advice and views of the legal community, through the Law Revision Commission, to ensure that the enhanced expedited program is workable, and not overly-proscriptive. In this connection, it is important to note that through the Law Revision Commission, the legal community was the main proponent for changing the expedited program, with the explicit intent of improving service levels for New Jersey's commercial and legal sectors.

As highlighted in the comments on the enabling law (P.L. 2009, c. 177), the one- and two-hour service options were based on the expedited corporate filing options available in the State of Delaware. Accordingly, to ensure the proposed program enhancements are aligned with best

practices, the Division of Revenue conducted research and modeled the proposed program enhancements and fees on Delaware's program and similar programs offered by other states. To further ensure that the proposals are reasonable and workable, the Division of Revenue discussed the program enhancements with several service companies that act as intermediaries between the commercial sector and Filing Office.

With regard to the cost/benefit dimensions of the proposed fees, as is typical with expedited programs nationally, the fees differentiate expedited service from other service options and provide the economic justification for pushing certain classes of work to the front of the processing queue. The primary benefit for the recipient of expedited services is the ability to be assured of speedy turnaround, especially in cases where time is of the essence for business and/or legal actions, such as mergers and consolidations. Here, the model state, Delaware, charges \$1,000 per transaction for one hour service and \$500.00 per transaction for two hour service. The proposed fees for New Jersey's program track these rates.

It should be emphasized that the proposed amendments are designed to provide performance-based outcomes for the commercial sector – that is, accelerated turnaround of work requests within specific timeframes. Further, by specifying the expedited timeframes and associated fees, the proposed amendments promote transparency and predictability for businesses and individuals that interact with the Filing Office. The proposed amendments are service- and customer-centered, and treat those who choose the expedited options consistently. When needed, to meet deadlines and other commercial demands, the commercial sector will have access to service options that dramatically reduce processing times.

Subchapter 1. Expedited Services

The proposed amendments set forth definitions for the new expedited service options, associated fees and processing timeframe exceptions. More specifically, at N.J.A.C. 17:35-1.2, the definition of "expedited service" was replaced with a new definition, setting forth the three types of expedited service now available, as discussed above. The Division also added the following new terms to coincide with the summary discussion above: "one-business-hour service," "two-business-hour service" and "work request." The definition of "business day" was removed from the term "same day" and added as its own definition. N.J.A.C. 17:35-1.3 lists exceptions to the expedited rules where the filing office may not be able to provide the service in the time frame requested and also explains the order of recovery in the event of a work disruption as set forth in these rules. Under these guidelines, refunds of expedited fees will not be honored for service disruptions. N.J.A.C. 17:35-1.4 sets forth the fees that will be charged by the Filing Office for the optional service levels. These optional levels are in addition to the statutory fees and provide a requestor more flexibility in meeting their objectives. Technical amendments are proposed to clarify certain terms used in the subchapter.

Subchapter 2. Preclearance of Documents

A technical amendment is proposed to clarify the designation of the payee (Treasurer, State of New Jersey) for the remittance of fees.

Subchapter 4. Trade/Service Marks

It was necessary to propose amendments to N.J.A.C. 17:35-4.6 to harmonize Trade/Service Mark expedited service fees with the proposed new expedited service options. Accordingly, the proposed amendments to this section reflect the definitions for the new expedited service options and associated fees, as discussed above.

Subchapter 5. Facsimile Filing Service

Because the definitions under N.J.A.C. 17:35-1.2 designate "telefax" as an over the counter service, it was necessary to propose amendments to N.J.A.C. 17:35-5.1 and 5.2 to harmonize the facsimile filing service rules with the proposed new expedited service options. Accordingly, the proposed amendment to N.J.A.C. 17:35-5.1(c) reflects the definitions for the new expedited service options, associated fees and processing timeframe exceptions, as discussed under Subchapter 1 above. N.J.A.C. 17:35-5.2 is amendment to clarify that the definitions in this section only apply to Subchapter 5 and to delete the definition of "same work day" as this term applies to the entire chapter and is already covered under N.J.A.C. 17:35-1.2, as amended.

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

The services provided by the Business Support Services Bureau (Filing Office) involve 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. Hence, these services have a very beneficial social impact. It follows then that the 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 Filing Office's operation hinges on the timeliness of its service transactions and its consistent application of clearly delineated filing and information access rules. The proposed 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 expedited and facsimile services for prompt processing of a wide variety of business-related filings and information access transactions.

Economic Impact

In connection with the positive social impacts noted above, the services rendered by the Filing Office also have a significant, positive impact on the economy. By filing formation documents with the Filing Office, business entities, such as corporations and limited liability companies legally establish and conduct their operations in this State. The Filing Office also provides 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 proposed amendments will have a positive economic impact because they contribute to the successful administration of these beneficial services and provide additional voluntary service levels.

With regard to individual businesses, the proposed amendments have direct and client-focused impacts. That is, customers will pay fees for specific accelerated 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 within specified times.

Other than the fees, as discussed in the Summary above, the rules will not impose any further direct costs on businesses or individual customers. Businesses will continue to bear indirect costs associated with document preparation — for example, legal advice, typing and printing.

Federal Standards Statement

A Federal standards statement is not required because the proposed amendments relate strictly to the operations of the State of New Jersey's Filing Office and State-level programs only. The rules are therefore independent from any Federal systems or requirements.

Jobs Impact

The proposed amendments will not result in the creation or loss of jobs.

Agriculture Industry Impact

The proposed amendments will not have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments are designed to ensure that clear and consistent policies and procedures are in place for key business and legal service transactions on an expedited basis. Anyone submitting requests for expedited service, 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 Summary and 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 proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rule only adds additional optional service levels to the UCC Filing and Search program.

Smart Growth Development Impact

The proposed amendments, which add additional service levels for the Business Support Services Bureau, will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. EXPEDITED SERVICES

17:35-1.1 Services [which] that 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] and accessible through the Filing Office website at www.nj.gov/treasury/revenue.

17:35-1.2 Definitions

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

“Business day” means the time period running from 8:30 A.M. to 5:00 P.M., Monday through Friday, except State holidays.

“Expedited service” means [priority same day service effected in a fast and efficient manner.] accelerated processing of work requests received by the Filing Office on a business day in one of three timeframes selected by a submitter: same day 8.5 business hour service; one-business-hour service; or two-business-hour service.

“One-business-hour service” means as soon as possible, but no later than one business-hour following receipt of the over the counter request by the Filing Office on a business day.

“Over the counter services” means:

1. Documents delivered to the Filing Office's expedited services counter by hand or by express [mail (Federal Express, etc.)] delivery;

2.-3. (No change.)

“Same [Day] day service” means as soon as possible, [by] but no later than 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.] 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 request by the Filing Office on a business day.

“Work request” means a written request, with the required fees, for filing a document or for copies of records or information on file with the Filing Office.

17:35-1.3 Exceptions

(a) Expedited services shall be rendered as soon as possible, but may extend beyond [8.5 business hours] the expedited timeframes below, if the computer system utilized by the Filing Office is down, or if the Filing Office experiences other difficulties beyond its control, making [an 8.5 business hour] expedited response impossible. In such cases, upon resuming normal operations, the Filing Office will process [8.5 business hour] expedited requests on a first-in first-out basis, [with] in the following priority order: one business-hour; two business-hour; and same day. 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 cover sheet [issued] specified by the Filing Office. The Filing Office may design the cover sheet and may from time to time redesign the cover sheet.

17:35-1.4 Fees for expedited service

(a) Fees for over the counter [corporation] same day business entity service shall be as follows:

1.-8. (No change.)

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

(d) One-business-hour service shall be available for any work request for which there is a same day 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.

(e) Two-business-hour service shall be available for any work request for which there is a same day 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.

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 or charged against a major credit card held by the service user. A check payable to the Treasurer, State of New Jersey is also an acceptable payment [for hand deliveries] method.

1.-2. (No change.)

SUBCHAPTER 2. PRECLEARANCE OF DOCUMENTS

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 or charged against a major credit card held by the service user. A check payable to the [Filing Office] Treasurer, State of New Jersey is also acceptable payment for hand deliveries.

1.-2. (No change.)

SUBCHAPTER 4. TRADE/SERVICE MARKS

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>
[Expedited Filing Service (8.5 business hour processing for work delivered over-the-counter to the Trade/Service Mark Section, 225 West State Street, 3rd Floor, Trenton, NJ 08608 – charged in addition To basic filing fees)	\$15.00/transaction (per filing application)
Same Day Filing Service (Same day processing for work delivered over-the-counter to the Trade/Service Mark Section, 225 West State Street, 3rd Floor, Trenton, NJ 08608, by 12:00	\$100.00/transaction (per filing transaction)

P.M. of any work day – charged in Addition to basic filing fees)]

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 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 on a business day

\$500.00, charged in addition to the basic filing fees

Same day service meaning as soon as possible, but no later than 8.5 business hours following receipt of an over the counter request by the Filing Office on a business day

\$15.00, charged in addition to the basic filing fee

SUBCHAPTER 5. FACSIMILE FILING SERVICE

17:35-5.1 Filing service

(a) (No change.)

(b) The Filing Office shall designate all document types for inclusion in the facsimile filing service and publish a list of these document types [on its] that must be accessible through the Filing Office website 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) Documents delivered via the facsimile filing service shall be processed the same work day received or within 8.5 business hours of receipt, one business-hour of receipt, or two business-hours of receipt, based on the service level chosen by persons who deliver the documents via facsimile transmission.

17:35-5.2 Definitions

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

...
 [“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.]

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] requested service level timeframe, if the computer systems, facsimile devices[,] and/or communications systems utilized by the Filing Office malfunction, or if the Filing Office experiences other difficulties beyond its control, making a [same work day or 8.5 business hour] timely response impossible. In such cases, upon resuming normal operations, the Filing Office will first process [same work day] facsimile filing service requests [and then 8.5 business hour requests,] on a first-in first-out basis, [with] in the following priority order: one business-hour; two business-hour; and same day. These requests will be given priority over mail-in requests.

17:35-5.4 Fees

The fees for [same work day services rendered pursuant to this subchapter] facsimile filing services 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] be: \$15.00 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

PROPOSALS

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.]
