

amount of funds available is published annually in March in the New Jersey Register.

The Division of Highway Traffic Safety has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978). Therefore, pursuant to N.J.S.A. 39:4-36.2, and in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

TRANSPORTATION

(a)

MOTOR VEHICLE COMMISSION

Executive and Administrative Service (International Fuel Tax Agreement Implementation) Tax Reports; Penalties; Interest

Adopted Amendment: N.J.A.C. 13:18-3.7

Proposed: August 4, 2014, at 46 N.J.R. 1734(a).

Adopted: February 10, 2015, by the Motor Vehicle Commission, Raymond P. Martinez, Chairman and Chief Administrator.

Filed: March 9, 2015, as R.2015 d.049, **without change**.

Authority: N.J.S.A. 39:1-1 et seq., and 54:39A-24 and P.L. 2003, c. 13.

Effective Date: April 6, 2015.

Expiration Date: March 9, 2018.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the rules that are the subject of this adoption are dictated by State statutes and are not subject to Federal requirements or standards.

Full text of the adoption follows:

SUBCHAPTER 3. INTERNATIONAL FUEL TAX AGREEMENT IMPLEMENTATION

13:18-3.7 Tax reports; penalties; interest

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

(c) For a fleet based in the United States, interest shall be set at the rate established in the IFTA Articles of Agreement, Section R1230.100, which is incorporated herein by reference, as amended and supplemented, and can be found at <http://www.iftach.org/>, calculated from the date the tax was due until the tax is paid. The interest shall be computed on the tax due each member jurisdiction. For a fleet based in a Canadian jurisdiction, interest shall accrue at a rate equal to the Canadian Federal Treasury Bill rate, plus two percent, and adjusted every calendar year quarter, calculated from the date tax was due until the tax is paid. All interest collected shall be remitted to the appropriate jurisdictions.

(d) (No change.)

(b)

MOTOR VEHICLE COMMISSION

Advertising on Commission Equipment, Facilities, and Property

Adopted New Rules: N.J.A.C. 13:18-10

Proposed: August 4, 2014, at 46 N.J.R. 1735(a).

Adopted: February 10, 2015, by the Motor Vehicle Commission, Raymond P. Martinez, Chairman and Chief Administrator.

Filed: March 10, 2015, as R.2015 d.054, **without change**.

Authority: N.J.S.A. 39:2A-13.a(6), 39:2A-33.c, and 39:2A-33.e.

Effective Date: April 6, 2015.

Expiration Date: March 9, 2018.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

No comparable Federal law or regulation exists; therefore a Federal standards analysis is not required for the adopted new rules.

Full text of the adopted new rules follows:

SUBCHAPTER 10. ADVERTISING ON COMMISSION EQUIPMENT, FACILITIES, AND PROPERTY

13:18-10.1 General provisions

(a) The rules contained in this subchapter implement the provisions of N.J.S.A. 39:2A-33.c and establish the requirements and procedures for the approval of appropriate and suitable advertising in the interior or on the exterior of any equipment or facility owned or leased by the New Jersey Motor Vehicle Commission (Commission), in any mailing the Commission conducts, and/or in any publication it produces.

(b) The criteria in this subchapter shall apply to all contracts for the installation, display, and maintenance of advertising in the interior or on the exterior of any equipment or facility owned or leased by the Commission, in any mailing the Commission conducts, and/or in any publication it produces.

(c) The display of advertising in the interior or on the exterior of any equipment or facility owned or leased by the Commission, in any mailing the Commission conducts, and/or in any publication it produces does not constitute an endorsement by the Commission of any of the products, services, or messages so advertised, unless authorized in writing by the Commission and so stated within the advertisement.

(d) All advertisements shall require the prior written approval of the Chief Administrator of the Motor Vehicle Commission.

(e) The advertiser shall be considered an independent contractor and shall not be deemed to be an agent, servant, employee, or representative of the Commission.

(f) All contracts entered into by the Commission for the purpose of placing advertising in the interior or on the exterior of any Commission equipment, facility, mailing, or publication shall be subject to the competitive bidding requirements of N.J.S.A. 52:34-6 et seq.

(g) In the event the advertiser fails to provide service in accordance with the contract for advertisement(s), the advertiser shall be considered in breach of contract and the advertisement(s) shall be immediately canceled.

(h) The Commission shall designate, in its absolute discretion and at any time, the locations in the interior and/or on the exterior of Commission equipment, facilities, mailings, and/or publications where advertisements may be inserted or displayed.

(i) The Commission may reject, pursuant to N.J.A.C. 13:18-10.2 below, at any time, any advertising copy, whether or not the Commission has previously acknowledged and/or advertised the exact or similar copy.

(j) No advertising space may be used or resold by the advertiser for the promotion, either directly or indirectly, of any business, organization, or enterprise other than the one defined in the advertiser's contract for advertisement.

(k) The advertiser shall protect, defend, and hold harmless the Commission, its agents, and employees, from any suits or actions of every nature and description brought against it by reason of the advertisement.

13:18-10.2 Advertising appropriateness and suitability criteria

(a) The Motor Vehicle Commission (Commission) shall not accept any advertisement(s) to be displayed or maintained in the interior or on the exterior of any equipment or facility owned or leased by the Commission, in any mailing the Commission conducts, and/or in any publication it produces, if the advertisement or information contained in the advertisement:

1. Is false, misleading, deceptive, disrespectful, fraudulent, or libelous;
2. Contains material or language that is profane, or vulgar;
3. Contains obscene material as defined by N.J.S.A. 2C:34-3;

4. Promotes unlawful or illegal goods, services, or activities;
 5. Promotes gambling, the sale or use of tobacco or tobacco-related products, or the sale or use of alcoholic beverages;
 6. Promotes the sale or use of products designed for use in connection with sexual activity;
 7. Depicts or glamorizes violent or antisocial behavior or sexual conduct;
 8. Displays weapons;
 9. Declares or implies an endorsement by the Commission without prior written authorization by the Commission;
 10. Is political, religious, or controversial in nature; or
 11. Is not in the best business-interest of the Commission or is not in the best interest of the public.
- (b) The Commission shall not allow any of its equipment, facilities, mailings, or publishing to become a public forum for dissemination, debate, or discussion.

13:18-10.3 Advertising Standards Committee; final determination

(a) The Chief Administrator of the Motor Vehicle Commission shall establish a three-member Advertising Standards Committee (Committee), whose determinations shall inform the Motor Vehicle Commission's final agency determination.

(b) The Committee shall review each advertisement submitted for installation or display to determine whether the advertisement falls within, or may fall within, one or more of the categories set forth in N.J.A.C. 13:18-10.2. The Committee shall promptly provide the Chief Administrator with a report of its determination setting forth the reason(s) for the determination.

(c) The Chief Administrator shall consider the Committee's report, in addition to any other factors deemed relevant by the Chief Administrator, prior to making a determination as to whether the submitted advertising falls within one or more of the categories set forth in N.J.A.C. 13:18-10.2. The determination of the Chief Administrator regarding the appropriateness and suitability of any proposed advertising shall be final.

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax

Medical

Adopted New Rules: N.J.A.C. 18:24-37

Proposed: September 15, 2014, at 46 N.J.R. 1968(a).

Adopted: March 9, 2015, by Michael Bryan, Director, Division of Taxation.

Filed: March 9, 2015, as R.2015 d.053, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 54:32B-24 and 54:50-1.

Effective Date: April 6, 2015.

Expiration Date: October 28, 2015.

Summary of Public Comments and Agency Responses:

The Division received written comments during the official comment period, which ended November 15, 2014, from Carol Napierski, Executive Director of the Jersey Association of Medical Equipment Services.

COMMENT: Ms. Napierski commended the Division for proposing the rules, and suggested that the Division should refine the proposed definition for "sold pursuant to a doctor's prescription." The proposed definition for "sold pursuant to a doctor's prescription," is that "a prescription is required to purchase the product." She suggested excluding the need for a prescription for purchases of mobility enhancing equipment such as wheelchairs because, unlike sales of prescription drugs, such equipment is not required to be sold pursuant to a prescription.

RESPONSE: The Division thanks Ms. Napierski for her comment. The Division agrees that mobility enhancing equipment is not required to be sold by prescription. A prescription would only be required for insurance. However, the sales tax exemption under N.J.S.A. 54:32B-8.1(a)(9) only applies to mobility enhancing equipment sold by prescription. The Division has determined that it is not necessary to define the phrase "sold pursuant to a doctor's prescription" and has deleted the definition from the new Subchapter 37, as the meaning of the phrase is self-evident and requires no further definition.

COMMENT: Ms. Napierski states that the definition of durable medical equipment found in N.J.S.A. 54:32B-8.1(b) and N.J.A.C. 18:24-37.1(b) is inconsistent with the definition used for purposes of Medicare, Medicaid, and commercial insurance.

RESPONSE: As a member state, New Jersey is required to adopt all product definitions in order to be in compliance with the Streamlined Sales and Use Tax Agreement (SSUTA). The definition of durable medical equipment found in the Sales and Use Tax Act and in the proposed rules is a product definition derived directly from the SSUTA. Therefore, the Division is bound by this definition.

Federal Standards Statement

The rulemaking authority is based on N.J.S.A. 54:32B-24 of the New Jersey Sales and Use Tax Act. There are no Federal regulatory requirements or standards that affect this rulemaking. Therefore, a Federal standards analysis is not required.

Full text of the adopted new rules follows (deletion from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 37. MEDICAL

18:24-37.1 Scope of subchapter

This subchapter provides guidance as to the scope of N.J.S.A. 54:32B-8.1 of the Sales and Use Tax Act, which provides an exemption for drugs and certain medical equipment for human use.

18:24-37.2 Definitions

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

"Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages that is:

1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement to any of these publications;
 2. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
 3. Intended to affect the structure or any function of the body.
- "Durable medical equipment" means equipment, including repair and replacement parts, but not including mobility enhancing equipment, that:
1. Can withstand repeated use;
 2. Is primarily and customarily used to serve a medical purpose;
 3. Is generally not useful to a person in the absence of illness or injury; and
 4. Is not worn in or on the body.

"Grooming and hygiene product" means a soap or cleaning solution, shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion or screen, regardless of whether the item meets the definition of "over-the-counter drug."

"Home use" means that the equipment is sold to an individual for use where the individual resides. This may include residential facilities, such as a nursing home, assisted care center, or school dormitory.

"Medical purpose" means that the equipment is used for the diagnosis, treatment, or cure of disease, illness, or injury.

"Mobility enhancing equipment" means equipment, including repair and replacement parts, other than durable medical equipment, that:

1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
2. Is not generally used by persons with normal mobility; and
3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.