

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 101: SPECIAL FUELS TAX - "RECEIVED"

3.16.101.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[12/31/96; 3.16.101.1 NMAC - Rn, 3 NMAC 20.2.1, 6/14/01]

3.16.101.2 SCOPE: This part applies to every person receiving or using special fuel in New Mexico.
[12/31/96; 3.16.101.2 NMAC - Rn, 3 NMAC 20.2.2, 6/14/01]

3.16.101.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[12/31/96; 3.16.101.3 NMAC - Rn, 3 NMAC 20.2.3, 6/14/01]

3.16.101.4 DURATION: Permanent.
[12/31/96; 3.16.101.4 NMAC - Rn, 3 NMAC 20.2.4, 6/14/01]

3.16.101.5 EFFECTIVE DATE: 12/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[12/31/96; 3.16.101.5 NMAC - Rn, 3 NMAC 20.2.5 & A, 6/14/01]

3.16.101.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Special Fuels Supplier Tax Act.
[12/31/96; 3.16.101.6 NMAC - Rn, 3 NMAC 20.2.6, 6/14/01]

3.16.101.7 DEFINITIONS: [Reserved.]
[12/31/96; 3.16.101.7 NMAC - Rn, 3 NMAC 20.2.7, 6/14/01]

3.16.101.8 WHEN SPECIAL FUEL IS "RECEIVED" - FIRST INSTANCE:

A. Generally, special fuel is "received" in the first instance in the four circumstances specified in Subsection A of Section 3.16.101.8 NMAC. The rack operator or the importer is the person who has "received" the special fuel.

(1) Special fuel produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is "received" by that person when it is loaded at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or other types of transportation equipment.

(2) Special fuel produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is "received" by that person when it is placed into any tank or other container from which sales or deliveries not involving transportation are made.

(3) Except for special fuel imported by pipeline and stored at a pipeline terminal in New Mexico or imported in the supply tank of a motor vehicle, special fuel imported into this state is "received" at the time and place it is first imported into this state; the person who is the owner of the special fuel at the time of importation is the person who has received the special fuel.

(4) Special fuel is also "received" when it has been initially received by an Indian tribe within that tribe's territory and subsequently is moved from that tribe's territory to any other part of New Mexico, whether for sale or use, by any means other than in the fuel supply tank of a motor vehicle or by pipeline. The person who owns the fuel at the time it leaves the tribe's territory must report and pay tax with respect to the special fuel received. If this person does not report and pay tax, every other person who subsequently owns the special fuel is liable for the tax until it is paid. For the purposes of Part 3.16.101 NMAC and for reporting purposes, a person who has received special fuel under Paragraph (4) of Subsection A of Section 3.16.101.8 NMAC is an "importer".

B. In the special case in which any substance other than special fuel is blended to produce special fuel and the blending takes place at a place other than a refinery or pipeline terminal, the product becomes special fuel and is "received" at the time and place the blending is completed. The person who owns the blended product at the time of blending is the person who must report and pay tax with respect to the product received.

C. When a rack operator is the first person to "receive" special fuel, the incidence of the tax and the obligation to report and pay the special fuel excise tax can be shifted to registered suppliers. See Section 3.16.101.9

NMAC. When an importer, including a person receiving special fuel under Subsection B of Section 3.16.101.8 NMAC, is the first person to “receive” special fuel, the incidence of the tax and the obligation to report remain with the importer and may not be shifted to registered suppliers.

D. This version of Section 3.16.101.8 NMAC applies to special fuel received on or after June 1, 1997. [12/31/96, 12/31/97; 3.16.101.8 NMAC - Rn, 3 NMAC 20.2.8 & A, 6/14/01]

3.16.101.9 WHEN SPECIAL FUEL IS “RECEIVED” - SHIFT TO REGISTERED SUPPLIER:

A. The definition of “received” imposes the special fuel excise tax in the first instance on rack operators or importers. If, however, a rack operator delivers special fuel at the refinery or pipeline terminal to or for the account of a supplier registered under the Special Fuels Supplier Tax Act, the incidence of the tax shifts to the registered supplier. In this case the registered supplier has received the special fuel and is responsible for reporting and paying the special fuel excise tax with respect to the special fuel received. The supplier receiving the special fuel may not further shift the receipt of the special fuel and the obligation to report and pay special fuel excise tax to any other person, even if the special fuel is subsequently sold or otherwise transferred to another registered supplier. In all other cases, responsibility for reporting and paying special fuel excise tax remains with the rack operator.

(1) Example 1: At its refinery, Refinery R loads 8,000 gallons of special fuel into a tank truck owned by Supplier A. In this case A has received the special fuel at the refinery (the place of delivery) and is responsible for reporting and paying the special fuel excise tax.

(2) Example 2: Same facts as example 1, except that Supplier A then sells some of the special fuel to Supplier B and unloads it from the truck into a tank belonging to Supplier B. Supplier A has received the special fuel and remains liable for the special fuel excise tax. Supplier B has not received the special fuel.

(3) Example 3: At the pipeline terminal, special fuel is loaded into a tank truck owned by T, a trucking company. T is not a registered supplier but picks up the special fuel for the account of, and delivers it to, three registered suppliers. In this case, T has accepted delivery of the special fuel at the pipeline terminal as agent for the suppliers. The three suppliers have received special fuel and must report and pay special fuel excise tax in proportion to the special fuel each received.

B. Any person once registered as a supplier but who is no longer listed on the list of registered suppliers promulgated by the department is not a registered supplier.

C. When a rack operator or importer is responsible for reporting and paying special fuel excise tax, that entity must report in the same time and manner as a registered supplier unless the department directs otherwise.

D. This version of Section 3.16.101.9 NMAC applies to transactions occurring and special fuel received on or after June 1, 1997.

[12/31/96, 12/31/97, 1/29/99; 3.16.101.9 NMAC - Rn, 3 NMAC 20.2.9 & A, 6/14/01]

3.16.101.10 EXCHANGES:

A. Exchanges of special fuel between one refiner or pipeline terminal operator and another are exempt deliveries of special fuel under Section 7-16A-2.1 NMSA 1978. When pipeline terminal operators or refiners exchange special fuel, the person to whom the special fuel is delivered takes the place of the person who delivered the special fuel.

B. Example: X is a pipeline terminal operator in New Mexico. Y is a refinery in another state. Z is a registered supplier in New Mexico who distributes Y's brands of special fuel. Because Y does not operate a pipeline terminal in New Mexico from which it can supply its own suppliers and retailers, Y arranges with X to exchange Y's special fuel stored at a pipeline terminal out of state with X's special fuel stored at a New Mexico pipeline terminal. Y then ships or delivers Y's New Mexico special fuel to Z. In this example, Y will be treated as a pipeline terminal operator in New Mexico. Because Y ships or delivers special fuel to Z, a registered supplier, Z has received the special fuel and the obligation to report and pay the tax, just as if X had shipped or delivered the special fuel to Z.

[12/31/96, 1/29/99; 3.16.101.10 NMAC - Rn, 3 NMAC 20.2.10 & A, 6/14/01]

HISTORY OF 3.16.101 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: TRD Rule SFS-93, Regulations Pertaining to the Special Fuels Supplier Tax Act, Sections 7-16A-1 to 7-16A-20 NMSA 1978, filed 2/1/93.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 20.2, Special and Alternative Fuels Tax - "Received", filed 12/17/96

3.16.101 NMAC, Special Fuels Tax - "Received", filed 6/1/01.