

**TITLE 3: TAXATION**  
**CHAPTER 16: MOTOR VEHICLE FUEL TAXES**  
**PART 110: SPECIAL FUELS TAX - COMPUTATION**

**3.16.110.1 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; 3.16.110.1 NMAC - Rn, 3 NMAC 20.11.1, 6/14/01]

**3.16.110.2 SCOPE:** This part applies to every person receiving or using special fuel in New Mexico.  
[12/31/96; 3.16.110.2 NMAC - Rn, 3 NMAC 20.11.2, 6/14/01]

**3.16.110.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[12/31/96; 3.16.110.3 NMAC - Rn, 3 NMAC 20.11.3, 6/14/01]

**3.16.110.4 DURATION:** Permanent.  
[12/31/96; 3.16.110.4 NMAC - Rn, 3 NMAC 20.11.4, 6/14/01]

**3.16.110.5 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; 3.16.110.5 NMAC - Rn, 3 NMAC 20.11.5 & A, 6/14/01]

**3.16.110.6 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; 3.16.110.6 NMAC - Rn, 3 NMAC 20.11.6, 6/14/01]

**3.16.110.7 DEFINITIONS:** [Reserved.]  
[12/31/96; 3.16.110.7 NMAC - Rn, 3 NMAC 20.11.7, 6/14/01]

**3.16.110.8 COMPUTATION OF MILES-PER-GALLON FACTOR:**

A. For purposes of calculating the gallons of special fuel used on the highways of this state, any computation of the average miles per gallon everywhere shall be carried out to two significant decimal places. Rounding rules for the third decimal place are:

- (1) round down if the digit is a zero, 1, 2, 3, or 4; and
- (2) round up if the digit is a 5, 6, 7, 8, or 9.

B. Example 1: Trucker's fleet logged 1,000,000 miles with 100,000 traveled in New Mexico. Trucker used 202,100 gallons of special fuel. Trucker has used 20,202 gallons in New Mexico, computed as follows:

$$\begin{array}{l} \text{divided by} \quad 1,000,000 \text{ miles everywhere} \\ \text{equals} \quad \frac{202,100 \text{ gallons of special fuel everywhere}}{4.948} = 4.95 \text{ average miles per gallon} \end{array}$$

$$\begin{array}{l} \text{divided by} \quad 100,000 \text{ New Mexico miles} \\ \text{equals} \quad \frac{4.95 \text{ average miles per gallon}}{20,202 \text{ New Mexico special fuel gallons}} \end{array}$$

C. Example 2: Hauler's fleet traveled 2,000,000 miles, 500,000 of which were in New Mexico. Hauler used 413,050 gallons of special fuel during the reporting period. Hauler has used 103,306 gallons of special fuel in New Mexico, computed as follows:

$$\begin{array}{l} \text{divided by} \quad 2,000,000 \text{ miles everywhere} \\ \text{equals} \quad \frac{413,050 \text{ gallons of special fuel everywhere}}{4.842} = 4.84 \text{ average miles per gallon} \end{array}$$

$$\begin{array}{l} \text{divided by} \quad 500,000 \text{ New Mexico miles} \\ \text{equals} \quad \frac{4.84 \text{ average miles per gallon}}{103,306 \text{ New Mexico special fuel gallons}} \end{array}$$

[2/1/93, 12/31/96; 3.16.110.8 NMAC - Rn, 3 NMAC 20.11.8, 6/14/01]

**3.16.110.9 REQUIRED RECORDS:** Special fuel users shall maintain the following records on a reporting period basis. All records shall be referenced by vehicle unit number.

- A. Vehicle trip mileage records for each vehicle operated in New Mexico. The mileage records shall reflect the total miles traveled in every state and country and the total miles traveled in New Mexico.
- B. Vehicle itineraries including each vehicle trip origin and destination point, and routes taken.
- C. Total quantities of special fuel placed into the fuel supply tank(s) of each vehicle and the location and date of each acquisition of special fuel.

[2/1/93, 12/31/96; 3.16.110.9 NMAC - Rn, 3 NMAC 20.11.9, 6/14/01]

**3.16.110.10 ALTERNATIVE CALCULATION AVAILABLE FOR CERTAIN VEHICLES:**

A. An alternative calculation to determine the special fuel excise tax due under Section 7-16A-11 NMSA 1978 is available under Section 3.16.110.12 NMAC for vehicles which:

- (1) are registered with the state under the annual renewal program or the international registration program (IRP);
- (2) are equipped with a power take-off (PTO) from the transmission or main engine to operate some form of auxiliary equipment or a non-automotive apparatus mounted on the vehicle, provided a common supply tank for special fuel is used to propel the vehicle along the highway and to operate the auxiliary equipment or non-automotive apparatus; and
- (3) are equipped with an operating odometer, if the vehicle is a non-combination vehicle; if the vehicle is a combination, the tractor must have an operating odometer and the trailer or semitrailer must have an operating hub mileage gauge known as a "hubometer".

B. In addition, the owner or operator of the vehicle must:

- (1) have applied for and been issued an annual special fuel permit and tax qualification card, valid for the vehicle; and
- (2) be registered with the department under Section 7-1-12 NMSA 1978 as a CRS taxpayer for reporting and remitting compensating tax.

C. An annual election to use the alternative computation is made for each eligible vehicle by a declaration on form SF-11 specifying the type of vehicle, the principle use of the vehicle if not self-explanatory by type, the vehicle identification number of the power unit, type of auxiliary equipment or non-automotive apparatus, the use of odometer or hubometer or notification of the absence of either for agricultural or construction equipment and the name and address of the owner and operator. Use of the alternative calculation is mandatory for each specified vehicle for the entire calendar year, or portion thereof in the case of a newly registered vehicle.

[2/1/93, 12/31/96; 3.16.110.10 NMAC - Rn, 3 NMAC 20.11.10 & A, 6/14/01]

**3.16.110.11 RECORDS REQUIRED FOR ALTERNATIVE CALCULATION METHOD:**

A. The alternative calculation may be used only when the auxiliary equipment or non-automotive apparatus is in use in New Mexico. A contemporaneous daily trip report must be maintained for each vehicle using the alternative calculation method. At a minimum, date, beginning hub or odometer miles and time, ending hub or odometer miles and time and miles traveled must be entered on the daily trip report. The log must clearly identify the times the auxiliary equipment or non-automotive apparatus was in use.

B. In addition to the daily trip record, the driver, owner or operator of the vehicle must record all fuel purchases by date, price per gallon, gallons delivered into the main supply tank of the vehicle, and the total cost of the fuel. This recordation is required even if the fuel is withdrawn from bulk storage. In the case of bulk fuel withdrawal, any reasonable method of determining and allocating cost will be accepted by the department. This reasonable method must be documented in writing.

C. Failure to maintain and retain the required trip reports and fuel records will result in disallowance of the alternative computation method, and special fuel excise tax will be assessed on all fuel consumed in the state, whether for PTO use or propelling the vehicle.

[2/1/93, 12/31/96; 3.16.110.11 NMAC - Rn, 3 NMAC 20.11.11, 6/14/01]

**3.16.110.12 APPLICATION OF ALTERNATIVE CALCULATION METHOD:**

A. All special fuel used to propel the vehicle, or associated with such propulsion, must be reported as taxable. No exclusions, adjustments or allowances for idling time or use of special fuel for propulsion, or associated with propulsion, are permitted in using the alternative calculation method.

B. The following factors shall be used:

<u>If gross declared vehicle weight is at least:</u>	<u>But is less than:</u>	<u>Then, the assumed mpg factor is:</u>
12,000 pounds	26,000 pounds	4.50 mpg
26,001 pounds	54,000 pounds	4.35 mpg
54,001 pounds	80,000 pounds	4.00 mpg
80,001 pounds or over		3.85 mpg

C. The specified assumed mpg factor may be subject to adjustment if the special fuel user can establish through clear and compelling evidence presented in the form of a ruling request addressed to the department that a different mpg factor is appropriate. The specified assumed mpg factor must be used until a formal ruling is issued by the department to the special fuel user.

D. Determine the average cost of special fuel purchased during the period by dividing the total cost of the purchased fuel by the total gallons purchased. Divide the number of propelled miles by the mpg factor for the appropriate weight class to determine the number of gallons used for propulsion. Subtract the number of gallons used for propulsion from the number of total gallons to obtain the number of gallons used in the operation of auxiliary equipment or non-automotive apparatus (PTO gallons). Multiply PTO gallons by the average price of special fuel to determine the value of fuel used for non-propulsion purposes. This value multiplied by the compensating tax rate provided in Section 7-9-7 NMSA 1978 will determine the amount of compensating tax due on special fuel for non-propulsion purposes.

E. If an election to use the alternative computation method was made for more than one vehicle, the calculation must be performed separately for each vehicle.

[2/1/93, 12/31/96; 3.16.110.12 NMAC - Rn, 3 NMAC 20.11.12 & A, 6/14/01]

**3.16.110.13 NO OTHER EXCLUSIONS, ADJUSTMENTS OR ALLOWANCES PROVIDED:**

A. No other exclusions, adjustments or allowances for special fuel used for non-propulsion purposes, other than the alternative computation method provided in Sections 3.16.110.10 through 3.16.110.12 NMAC, are allowable in determining special fuel excise tax liability under Section 7-16A-11 NMSA 1978.

B. Idling time associated with on-highway use of a motor vehicle is taxable at the special fuel excise tax rate provided in Section 7-16A-3 NMSA 1978. Evidence from “black box” records, or similar computerized monitoring equipment, is not accepted in determining fleet fuel consumption.

[2/1/93, 12/31/96; 3.16.110.13 NMAC - Rn, 3 NMAC 20.11.13 & A, 6/14/01]

**HISTORY OF 3.16.110 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 20.11, Special and Alternative Fuels Tax - Computation, filed 12/17/96

3.16.110 NMAC, Special Fuels Tax - Computation, filed 6/1/01.