

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 112: SPECIAL FUELS TAX - DESTRUCTION

3.16.112.1 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; 3.16.112.1 NMAC - Rn, 3 NMAC 20.13.1, 6/14/01]

3.16.112.2 SCOPE: This part applies to every person receiving or using special fuel in New Mexico.
[12/31/96; 3.16.112.2 NMAC - Rn, 3 NMAC 20.13.2, 6/14/01]

3.16.112.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[12/31/96; 3.16.112.3 NMAC - Rn, 3 NMAC 20.13.3, 6/14/01]

3.16.112.4 DURATION: Permanent.
[12/31/96; 3.16.112.4 NMAC - Rn, 3 NMAC 20.13.4, 6/14/01]

3.16.112.5 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; 3.16.112.5 NMAC - Rn, 3 NMAC 20.13.5 & A, 6/14/01]

3.16.112.6 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; 3.16.112.6 NMAC - Rn, 3 NMAC 20.13.6, 6/14/01]

3.16.112.7 DEFINITIONS

A. Accident:

(1) An "accident" includes any event happening by chance, unexpectedly taking place or occurring not according to the usual course of events. An event may sometimes be termed accidental even though it results from ordinary negligence.

(2) Example 1: X is a special fuel supplier. X's driver while delivering to a service station negligently dumps diesel fuel into the gasoline storage tank (tank G) and gasoline into the diesel fuel storage tank (tank D). Each tank is nearly full. In order to return the station to operation, X pumps both tanks dry and dumps the resulting mixture into another tank (tank M) which contains a small amount of diesel fuel. In this situation, the diesel fuel dumped into tank G and the diesel fuel in tank D into which gasoline was dumped is "destroyed", because each tank became a mixture that was rendered unusable as a special fuel. All this special fuel was "destroyed" by "accident" within the meaning of Subsection A of Section 3.16.112.7 NMAC, and X may obtain a refund for special fuel excise tax paid on the special fuel dumped into tank G and the special fuel in tank D on submission of satisfactory proof. The special fuel in tank M was also "destroyed" within the meaning of Subsection B of Section 3.16.112.7 NMAC. However, the special fuel in tank M was not "destroyed" by "accident" because X knew there was some special fuel in the tank and knew it would be "destroyed" when the diesel fuel and gasoline mixture was dumped into it. X will not be granted a refund for special fuel excise tax paid on the special fuel in tank M.

(3) Example 2: Y is a special fuel supplier. An underground pipe develops a leak because of corrosion and some special fuel is "destroyed". The department will not grant a refund since corrosion is not an "accident" within the meaning of Section 7-16A-13 NMSA 1978.

B. "Destroyed" includes being rendered unusable as fuel due to adulteration.
[2/1/93, 12/31/96; 3.16.112.7 NMAC - Rn, 3 NMAC 20.13.7 & A, 6/14/01]

3.16.112.8 PROOF SATISFACTORY TO THE DEPARTMENT: Proof satisfactory to the department of the destruction of special fuel shall state the amount of special fuel in the person's possession immediately prior to the destruction and the amount remaining immediately after the destruction. The proof shall state the circumstances of the destruction and shall be attested to by the claimant. The proof shall be on forms provided by the department and shall accompany the person's application for refund or credit.
[2/1/93, 12/31/96; 3.16.112.8 NMAC - Rn, 3 NMAC 20.13.8, 6/14/01]

3.16.112.9 STATUTE OF LIMITATIONS: No refund may be made under Section 7-16A-13 NMSA 1978 unless the person claiming the refund notifies the department of the destruction of the special fuel within thirty (30) days of the actual destruction, and the claim for refund is made within six (6) months of the date of destruction. [2/1/93, 12/31/96; 3.16.112.9 NMAC - Rn, 3 NMAC 20.13.9 & A, 6/14/01]

HISTORY OF 3.16.112 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 20.13, Special and Alternative Fuels Tax - Destruction, filed 12/17/96

3.16.112 NMAC, Special Fuels Tax - Destruction, filed 6/1/01.