

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 202: PETROLEUM PRODUCTS LOADING FEE - IMPOSITION AND RATES OF FEES

3.16.202.1 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; 3.16.202.1 NMAC - Rn, 3 NMAC 17.3.1, 6/14/01]

3.16.202.2 SCOPE: This part applies to all distributors of petroleum products.
[12/31/96; 3.16.202.2 NMAC - Rn, 3 NMAC 17.3.2, 6/14/01]

3.16.202.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[12/31/96; 3.16.202.3 NMAC - Rn, 3 NMAC 17.3.3, 6/14/01]

3.16.202.4 DURATION: Permanent.
[12/31/96; 3.16.202.4 NMAC - Rn, 3 NMAC 17.3.4, 6/14/01]

3.16.202.5 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; 3.16.202.5 NMAC - Rn, 3 NMAC 17.3.5 & A, 6/14/01]

3.16.202.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Petroleum Products Loading Fee Act.
[12/31/96; 3.16.202.6 NMAC - Rn, 3 NMAC 17.3.6, 6/14/01]

3.16.202.7 DEFINITIONS: For the purposes of this part:

- A. "Indian tribe" means:
- (1) an Indian nation, tribe or pueblo, including:
 - (a) any political subdivision, agency or department of that Indian nation, tribe or pueblo;
 - (b) any incorporated or unincorporated enterprise of the Indian nation, tribe or pueblo or its political subdivisions, agencies or departments; and
 - (c) any corporation required to be considered an Indian and therefore a member of the Indian nation, tribe or pueblo under Eastern Navajo Industries, Inc. v. Bureau of Revenue, 552 P.2d 805 (N.M. Ct. App. 1976); and
 - (2) a member of the Indian nation, tribe or pueblo.
- B. "tribe's territory" means that part of Indian country in New Mexico reserved formally or informally for that Indian nation, tribe or pueblo, including its dependent Indian communities, and, with respect to a member of that tribe, any land in New Mexico allotted, reserved or held in trust by the United States for that member.
[12/31/96; 3.16.202.7 NMAC - Rn, 3 NMAC 17.3.7 & A, 6/14/01]

3.16.202.8 INCIDENCE OF FEE:

- A. The duty to report and pay the petroleum products loading fee is imposed on these persons at these times:
- (1) the distributor when it loads the petroleum products from a rack at a refinery or pipeline terminal in this state into a cargo tank; or
 - (2) the person, whether a distributor or not, who imports petroleum products into New Mexico for sale or consumption in this state at the time of importation.
- B. The duty to report and pay the fee is not transferred when the petroleum products are sold or otherwise transferred to another person.
- C. Example: X is a refiner and a registered distributor. X loads petroleum products into tank trucks at its own refinery and delivers the products to Y. Y is an Indian tribe; Y is also a registered distributor. X must report and pay the petroleum products loading fee with respect to these products. X loaded the products. X may not

transfer the obligation to report and pay to anyone else.
[12/31/96; 3.16.202.8 NMAC - Rn, 3 NMAC 17.3.8, 6/14/01]

3.16.202.9 PREEMPTION OF TAX BY FEDERAL LAW:

A. When imposition of the fee is prohibited by federal law, no petroleum products loading fee applies when a distributor who is an Indian tribe loads petroleum products on its own tribe's territory.

B. When imposition of the fee is prohibited by federal law, no petroleum products loading fee applies when a distributor who is an Indian tribe imports petroleum products directly onto the tribe's territory without crossing any land within New Mexico that is not the tribe's territory.

C. If an Indian tribe is a distributor and it either loads petroleum products at any place in New Mexico other than on the tribe's territory or imports petroleum products into any part of New Mexico other than directly onto the tribe's territory, imposition of the petroleum products loading fee is not barred by federal law and that distributor must report and pay the fee.

D. Like any other distributor, an Indian tribe that is a registered distributor is not liable for reporting and payment of the petroleum products loading fee with respect to the loading or importation of petroleum products by another distributor. This shall not be construed to prohibit the distributor who reports and pays the petroleum products loading fee from adjusting the price of the petroleum products it sells to other distributors or customers to cover the cost of the fee paid.

[12/31/96; 3.16.202.9 NMAC - Rn, 3 NMAC 17.3.9, 6/14/01]

HISTORY OF 3.16.202 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: TRD Rule PPL-90, TRD Rule PPL, Regulations Pertaining to the Petroleum Products Loading Fee Act, Section 7-13A-1 to 7-13A-6 NMSA 1978, filed 11/7/90.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 17.3, Petroleum Products Loading Fees - Imposition and Rates of Fees, filed 12/17/96.

3.16.202 NMAC, Petroleum Products Loading Fee - Imposition and Rates of Fees, filed 6/1/01.