

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 203: PETROLEUM PRODUCTS LOADING FEE - EXEMPTIONS

3.16.203.1 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; 3.16.203.1 NMAC - Rn, 3 NMAC 17.4.1, 6/14/01]

3.16.203.2 SCOPE: This part applies to all distributors of petroleum products.
[12/31/96; 3.16.203.2 NMAC - Rn, 3 NMAC 17.4.2, 6/14/01]

3.16.203.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[12/31/96; 3.16.203.3 NMAC - Rn, 3 NMAC 17.4.3, 6/14/01]

3.16.203.4 DURATION: Permanent.
[12/31/96; 3.16.203.4 NMAC - Rn, 3 NMAC 17.4.4, 6/14/01]

3.16.203.5 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; 3.16.203.5 NMAC - Rn, 3 NMAC 17.4.5 & A, 6/14/01]

3.16.203.6 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; 3.16.203.6 NMAC - Rn, 3 NMAC 17.4.6, 6/14/01]

3.16.203.7 DEFINITIONS: [Reserved.]
[12/31/96; 3.16.203.7 NMAC - Rn, 3 NMAC 17.4.7, 6/14/01]

3.16.203.8 SATISFACTORY PROOF:

- A. Satisfactory proof of the export of petroleum product consists of the proof required under Section 3.16.4.8 NMAC with respect to gasoline and under Section 3.16.109.9 NMAC with respect to special fuels.
- B. Proof of sale to the United States or any agency or instrumentality thereof or a NATO force shall be furnished to the department upon request. Proof of sale shall consist of, for sales of gasoline, the documentation required under Section 3.16.4.8 NMAC and, for special fuel, the documentation required under Section 3.16.109.9 NMAC.
- C. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the petroleum product was exported from New Mexico for resale and consumption outside of New Mexico or was sold to the United States.
[11/7/90, 12/31/96, 4/15/98; 3.16.203.8 NMAC - Rn, 3 NMAC 17.4.8 & A, 6/14/01]

3.16.203.9 SALES TO OTHER DISTRIBUTORS ARE NOT DEDUCTIBLE: Petroleum product loaded or imported by a distributor and sold to another distributor may not be deducted from the amount of petroleum product loaded in New Mexico, even though the other distributor is bonded and registered, because the purchasing distributor did not "load" petroleum product within the meaning of the act.
[11/7/90, 12/31/96, 4/15/98; 3.16.203.9 NMAC - Rn, 3 NMAC 17.4.9, 6/14/01]

3.16.203.10 INDIRECT SALES TO THE UNITED STATES OR A NATO FORCE FOR EXPORT:

- A. The petroleum products loading fee consequences of sales of petroleum product to the United States or a NATO force by a wholesaler, dealer or retailer or for export for resale and consumption outside of New Mexico are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the petroleum products to the seller. The fact that the price may include an amount corresponding to the petroleum products loading fee does not make that amount a fee on the purchaser.

B. Examples:

(1) X, a distributor, paid the petroleum product loading fee with respect to one hundred (100) gallons of petroleum product loaded or imported in May and resold the petroleum product to Y, a wholesaler or dealer. Y then sold the petroleum product in that same May to the United States or a NATO force. If Y furnishes satisfactory proof to X, X may either deduct the one hundred (100) gallons from the amount of petroleum product subject to the petroleum product loading fee for that month of May, or may elect to take the deduction in any subsequent month in which X is subject to the fee for 100 or more gallons of petroleum product. Satisfactory proof of Y's sale to the United States or NATO force is required to be retained by both X and Y for at least three years from the end of the calendar year in which the petroleum product was sold.

(2) X, a distributor, paid the petroleum product loading fee with respect to one hundred (100) gallons of petroleum product loaded or imported in May, and resold the petroleum product to Y, a wholesaler or dealer, who resold it to Z, a retailer. Z sold ten (10) gallons to the United States when a United States government vehicle filled up at Z's station in that same May. Z reports to Y that this amount of petroleum product had been sold to the United States. If Y furnishes satisfactory proof to X, X may deduct ten (10) gallons from the amount of petroleum product subject to the fee in that May, or any subsequent month in which X is subject to the fee for 100 or more gallons of petroleum product. Satisfactory proof of Z's sale to the United States is required to be retained by X and Y for at least three years from the end of the calendar year in which the petroleum product was sold.

(3) X, a distributor, paid the petroleum product loading fee with respect to one hundred (100) gallons of petroleum product loaded or imported in May, and resold the petroleum product to Y, a wholesaler or dealer. Y delivers in that same May the one hundred (100) gallons of petroleum product to a customer in Texas. If Y furnishes satisfactory proof to X, X may deduct one hundred (100) gallons from the amount of petroleum product subject to the fee in that May, or any subsequent month in which X is subject to the fee for 100 or more gallons of petroleum product. Satisfactory proof of Y's export is required to be retained by both X and Y for at least three years from the end of the calendar year in which the sale was made.

[11/7/90, 12/31/96, 4/15/98; 3.16.203.10 NMAC - Rn, 3 NMAC 17.4.10 & A, 6/14/01]

3.16.203.11 DEDUCTION - SALES TO A NON-UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY:

A. For purposes of this section:

(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the North Atlantic Treaty;

(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the North Atlantic Treaty; and

(3) "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. Pursuant to Article XI, Section 11 of the North Atlantic Treaty, petroleum products sold to a NATO force may be deducted from the total amount of petroleum products loaded in New Mexico.

C. [Reserved.]

D. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the petroleum products were sold.

E. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, petroleum products sold to a member of a NATO force for the private use of that member and not for the use of the NATO force are not deductible and are subject to the petroleum products loading fee.

F. Section 3.16.203.11 NMAC is applicable to sales made to a NATO force on or after July 1, 1995. [12/31/96; 4/15/98; 3.16.203.11 NMAC - Rn, 3 NMAC 17.4.11 & A, 6/14/01]

HISTORY OF 3.16.203 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 17.4, Petroleum Products Loading Fees - Exemptions, filed 12/17/96.
3.16.203 NMAC, Petroleum Products Loading Fee - Exemptions, filed 6/1/01.