

**TITLE 3: TAXATION**  
**CHAPTER 18: OIL AND GAS TAXES (SEVERANCE TAX)**  
**PART 1: GENERAL PROVISIONS**

**3.18.1.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630  
[11/15/96; 3.18.1.1 NMAC - Rn, 3 NMAC 18.1.1, 12/29/00]

**3.18.1.2 SCOPE:** This part applies to all persons severing or engaging in the business of severing oil, natural gas, liquid hydrocarbons other than oil and carbon dioxide, to all persons having an interest in the products severed, to all persons operating oil, natural gas or carbon dioxide leases and to all persons affiliated with such persons.  
[11/15/96; 3.18.1.2 NMAC - Rn, 3 NMAC 18.1.2, 12/29/00]

**3.18.1.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[11/15/96; 3.18.1.3 NMAC - Rn, 3 NMAC 18.1.3, 12/29/00]

**3.18.1.4 DURATION:** Permanent.  
[11/15/96; 3.18.1.4 NMAC - Rn, 3 NMAC 18.1.4, 12/29/00]

**3.18.1.5 EFFECTIVE DATE:** 11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[11/15/96; 3.18.1.5 NMAC - Rn & A, 3 NMAC 18.1.5, 12/29/00]

**3.18.1.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act.  
[11/15/96; 3.18.1.6 NMAC - Rn, 3 NMAC 18.1.6, 12/29/00]

**3.18.1.7 DEFINITIONS:**

A. **ACTUAL PRICE:** "Actual price" means the money or other consideration received or accrued for the product undiminished by adjustments except as provided in Sections 3.18.6.8 through 3.18.6.10 NMAC. Actual price includes all receipts, whether the receipt is characterized as a payment for the product, a reimbursement for tax or other expense, a price adjustment pursuant to Sections 7-29-4.2, 7-30-6, 7-31-6, and 7-32-6 NMSA 1978, or a payment or reimbursement for services such as sweetening, dehydration, measurement, compression or gathering. Receipts from take-or-pay contracts or negotiated contract settlements become part of the actual price to the extent that such receipts are consideration received for product severed and sold. "Actual price" also includes insurance proceeds received for stolen product.

B. **"ARM'S-LENGTH" - AFFILIATED PERSONS:**

(1) "Arm's-length" means a transaction, contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that transaction, contract or agreement.

(2) Two persons are affiliated if one of the persons either directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the other person. Based on the ownership of the voting securities of a person or based on other forms of ownership:

- (a) ownership in excess of fifty percent constitutes control;
- (b) ownership of 10 through 50 percent creates a presumption of control; and
- (c) ownership of less than ten percent creates a presumption of noncontrol which the

department may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

(3) Two natural persons are affiliated if related by blood to the third degree or by marriage. Transactions between relatives are not transactions under arm's-length contracts.

(4) To be considered arm's-length for any production month, a contract must meet the requirements of Subsection 3.18.1.7B NMAC for that production month as well as when the contract was executed. Two persons are affiliated for any production month if they are affiliated for any part of that month.

C. [Reserved.]

D. **GATHERING:** “Gathering” is the movement of product from the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, to a central accumulation point or processing or treatment point. This version of Subsection 3.18.1.7D NMAC is applicable to gathering occurring on or after July 15, 1998.

E. **PRODUCTION UNIT:**

(1) For purposes of determining value with respect to production on or after July 15, 1998, a production unit is the wellhead and the equipment associated with the wellhead. Equipment associated with the wellhead consists of all pipe and equipment supporting separation, dehydration, compression, sweetening, product storage, metering and other activities prior to and including the first place of physical measurement.

(a) For oil and condensate, the first place of physical measurement is either the outlet of the initial storage facility or the outlet of the lease automatic custody transfer unit.

(b) For natural gas and carbon dioxide, the first place of physical measurement is the outlet of the custody transfer meter, the allocation meter or the sales meter, whichever occurs first.

(2) For reporting purposes, the department may designate any of the following as a production unit:

(a) property subject to an oil and gas lease on which one or more wells are located;

(b) an area subject to an order for unitization or communitization;

(c) an area subject to a producer's division order;

(d) any producing well;

(e) any other place from which products are severed; or

(f) a proration unit approved by the oil conservation division of the energy, minerals and natural resources department.

F. **REASONABLE RATE OF RETURN:** A “reasonable rate of return” is a rate of return which does not exceed the industrial rate associated with Standard and Poor's BBB monthly average rate, as published in the *Standard and Poor's Bond Guide*, for January of the preceding calendar year.

G. **TRUCKING:** “trucking” means the transportation by truck of product; transportation by any other means, such as pipeline or railroad, is not trucking.

[5/24/91, 11/15/96, 10/31/98, 5/31/99; 3.18.1.7 NMAC - Rn & A, 3 NMAC 18.1.7, 12/29/00]

**HISTORY OF 3.18.1 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: TRD Rule OG-91, Regulations Pertaining to the Oil and Gas Tax Acts, filed 5/24/91.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 18.1, Oil and Gas Taxes (Severance Tax) - General Provisions, filed 11/4/96.

3.18.1 NMAC, Oil and Gas Taxes (Severance Tax) - General Provisions, filed 12/13/00.