

TITLE 3: TAXATION
CHAPTER 18: OIL AND GAS TAXES (SEVERANCE TAX)
PART 5: METHOD OF DETERMINING VALUE

3.18.5.1 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; 3.18.5.1 NMAC - Rn, 3 NMAC 18.5.1, 12/29/00]

3.18.5.2 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; 3.18.5.2 NMAC - Rn, 3 NMAC 18.5.2, 12/29/00]

3.18.5.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96] ; 3.18.5.3 NMAC - Rn, 3 NMAC 18.5.3, 12/29/00

3.18.5.4 DURATION: Permanent.
[11/15/96; 3.18.5.4 NMAC - Rn, 3 NMAC 18.5.4, 12/29/00]

3.18.5.5 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; 3.18.5.5 NMAC - Rn & A, 3 NMAC 18.5.5, 12/29/00]

3.18.5.6 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; 3.18.5.6 NMAC - Rn, 3 NMAC 18.5.6, 12/29/00]

3.18.5.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.18.5.7 NMAC - Rn, 3 NMAC 18.5.7, 12/29/00]

3.18.5.8 REASONABLE EXPENSE OF TRUCKING:

A. When the person trucking product is not affiliated with the interest owner or operator, the reasonable expense of trucking means the cost paid in an arm's-length transaction by the interest owner or operator for trucking services performed from a point within the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, to the first point of market. This version of Subsection 3.18.5.8A NMAC is applicable to trucking performed on or after July 15, 1998.

B. When trucking is performed by the interest owner or operator or by a person affiliated with the interest owner or operator or when trucking is performed by a non-affiliated person in a non-arm's-length transaction, the reasonable expense of trucking from a point within the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, to the first place of market shall be determined in accordance with the first applicable benchmark. This version of Subsection 3.18.5.8B NMAC is applicable to trucking performed on or after July 15, 1998.

C. Benchmark 1: If trucking charges are subject to regulatory approval, the reasonable expense of trucking shall not exceed any applicable tariff set or approved by the federal energy regulatory commission or any other federal or state agency having jurisdiction.

D. Benchmark 2: If the amount of product trucked under arm's-length contracts during the reporting period is at least fifty percent of the total amount trucked during that reporting period by the person performing the trucking, the reasonable expense of trucking shall be not more than the highest charge nor less than the lowest charge made to non-affiliated persons by the person performing the trucking.

E. Benchmark 3: If the reasonable expense of trucking is not determined under the preceding benchmarks, then it shall not exceed the sum of actual allowable trucking costs. Allowable trucking costs are:

(1) operating expenses, which include operations supervision, operations labor, fuel, utilities, materials and supplies, property taxes, rent and any other directly attributable operating expense of the trucking

operation;

(2) maintenance expenses, which include maintenance of the truck fleet and associated equipment, maintenance labor and any other directly attributable maintenance expense;

(3) overhead expenses, which include administrative and other overhead expenses directly attributable to the operation or maintenance of the trucking operation but excluding federal and state taxes (other than property taxes), payments for product, royalties and any expense which may be included in a processing or transportation adjustment; and

(4) either depreciation expense, which includes depreciation on the truck fleet and associated equipment determined on the straight-line method based on the class life of the truck fleet and equipment and appropriate salvage values; a successor in business or purchaser of assets shall base depreciation expense for the purposes of Section 3.18.5.8 NMAC upon the depreciation schedules of the previous owner; or

(5) in lieu of item 4), a reasonable rate of return on depreciable capital assets used in the trucking operation.

F. The reasonable expense of trucking is a deduction either from actual price received when actual price is established at the production unit under an arm's-length contract among non-affiliated persons or from the reasonable value established by the department in all other situations, but not both.

G. This version of Section 3.18.5.8 NMAC is retroactively applicable to production on or after September 1, 1991.

[5/24/91, 11/15/96, 10/31/98; 3.18.5.8 NMAC - Rn & A, 3 NMAC 18.5.8, 12/29/00]

3.18.5.9 DEDUCTIONS AND ADJUSTMENTS WHEN ACTUAL PRICE DETERMINED AT THE PRODUCTION UNIT: When actual price is established in an arm's-length transaction among non-affiliated persons at the production unit, the only deductions allowed are those recognized by Sections 7-29-4.1, 7-30-5, 7-31-5 and 7-32-5 NMSA 1978. The transportation adjustment provided in Section 3.18.6.9 NMAC and the processing adjustment provided in Section 3.18.6.10 NMAC do not apply. Section 3.18.5.9 NMAC applies to transactions occurring on or after July 15, 1998.

[5/31/99; 3.18.5.9 NMAC - Rn & A, 3 NMAC 18.5.9, 12/29/00]

HISTORY OF 3.18.5 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 18.5, Oil and Gas Taxes (Severance Tax) - Method of Determining Value, filed 11/4/96.

3.18.5 NMAC, Oil and Gas Taxes (Severance Tax) - Method of Determining Value, filed 12/13/00.