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**Regulations Pertaining to the**  
**SPECIAL FUELS SUPPLIER TAX ACT**  
**SECTIONS 7-16A-1 THROUGH 7-16A-21 NMSA 1978**

**[3.16.100 - 118 and 3.12.99 NMAC]**

Revised September 2018

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**3.16 NMAC**  
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\* Two versions of this statute are incorporated into this document. This is a result of the adoption of two separate pieces of legislation (2006 Session) that affect the same statute.

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**Special Fuels Supplier Tax Act**  
**3.16 NMAC**

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**7-16A-1. SHORT TITLE--Chapter 7, Article 16A NMSA 1978 may be cited as the "Special Fuels Supplier Tax Act".**  
**(Laws 1993, Chapter 272, Section 3)**

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**3.16.100.8 - CITATIONS TO STATUTE**

Unless otherwise indicated in the text, all citations to statute in this chapter are to the New Mexico Statutes Annotated 1978.

[6/15/96; 3.16.100.8 NMAC - Rn, 3 NMAC 20.1.8 & A, 6/14/01]

**3.16.100.9 - PRIOR AGREEMENTS AND RULINGS**

Any rulings or other agreements between the department or one of its predecessor agencies and a taxpayer concerning the calculation of tax liability under the Special Fuels Tax Act applies only to liabilities under that Act. No such ruling or agreement applies to tax liabilities arising under the Special Fuels Supplier Tax Act.

[2/1/93, 12/31/96; 3.16.100.9 NMAC - Rn, 3 NMAC 20.1.9, 6/14/01]

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**7-16A-2. DEFINITIONS.--As used in the Special Fuels Supplier Tax Act:**

**A. "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets the American society for testing and materials specifications for biodiesel fuel, B100 or B99 blend stock for distillate fuels;**

**B. "blended biodiesel" means a diesel engine fuel that contains at least two percent biodiesel;**

**C. "bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose;**

**D. "bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles owned or operated by that user;**

**E. "dealer" means any person who sells and delivers special fuel to a user;**

**F. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;**

**G. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code issued by:**

**(1) the United States or any state, identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities;**

**(2) the state of New Mexico, identifying the vehicle as belonging to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or**

**(3) any state, identifying the motor vehicle as belonging to an Indian nation, tribe or pueblo or an agency or instrumentality thereof;**

**H. "gross vehicle weight" means the weight of a motor vehicle or combination motor vehicle without load, plus the weight of any load on the vehicle;**

**I. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;**

**J. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration pursuant to Section 66-3-1 NMSA 1978 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;**

**K. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any**



department, agency, instrumentality or political subdivision of any federal, state or other government;

L. "rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state;

M. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

N. "retailer" means a person who sells special fuel generally in quantities of less than two hundred fifty gallons and delivers the special fuel into the supply tanks of motor vehicles;

O. "sale" means any delivery, exchange, gift or other disposition;

P. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

Q. "special fuel" means any diesel-engine fuel, biodiesel, blended biodiesel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines;

R. "special fuel user" means any user who is a registrant, owner or operator of a motor vehicle using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds;

S. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country;

T. "supplier" means any person, but not including a rack operator or the United States or any of its agencies except to the extent now or hereafter permitted by the constitution of the United States and laws thereof, who receives special fuel;

U. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it;

V. "tax" means the special fuel excise tax imposed pursuant to the Special Fuels Supplier Tax Act, and, with respect to a special fuel user, "tax" includes any special fuel tax paid to another jurisdiction pursuant to a cooperative agreement to which the state is a party pursuant to Section 9-11-12 NMSA 1978;

W. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo, who uses special fuel to propel a motor vehicle on the highways; and

X. "wholesaler" means a person who is not a supplier and who sells special fuel in quantities of two hundred fifty gallons or more and does not

**deliver special fuel into the supply tanks of motor vehicles.**  
**(Laws 2013, Chapter 109, Section 1)**

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**3.16.101.8 - WHEN SPECIAL FUEL IS “RECEIVED” - FIRST INSTANCE**

A. Generally, special fuel is “received” in the first instance in the four circumstances specified in Subsection A of Section 3.16.101.8 NMAC. The rack operator or the importer is the person who has “received” the special fuel.

(1) Special fuel produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is “received” by that person when it is loaded at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or other types of transportation equipment.

(2) Special fuel produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is “received” by that person when it is placed into any tank or other container from which sales or deliveries not involving transportation are made.

(3) Except for special fuel imported by pipeline and stored at a pipeline terminal in New Mexico or imported in the supply tank of a motor vehicle, special fuel imported into this state is “received” at the time and place it is first imported into this state; the person who is the owner of the special fuel at the time of importation is the person who has received the special fuel.

(4) Special fuel is also “received” when it has been initially received by an Indian tribe within that tribe’s territory and subsequently is moved from that tribe’s territory to any other part of New Mexico, whether for sale or use, by any means other than in the fuel supply tank of a motor vehicle or by pipeline. The person who owns the fuel at the time it leaves the tribe’s territory must report and pay tax with respect to the special fuel received. If this person does not report and pay tax, every other person who subsequently owns the special fuel is liable for the tax until it is paid. For the purposes of Part 3.16.101 NMAC and for reporting purposes, a person who has received special fuel under Paragraph (4) of Subsection A of Section 3.16.101.8 NMAC is an “importer”.

B. In the special case in which any substance other than special fuel is blended to produce special fuel and the blending takes place at a place other than a refinery or pipeline terminal, the product becomes special fuel and is “received” at the time and place the blending is completed. The person who owns the blended product at the time of blending is the person who must report and pay tax with respect to the product received.

C. When a rack operator is the first person to “receive” special fuel, the incidence of the tax and the obligation to report and pay the special fuel excise tax can be shifted to registered suppliers. See Section 3.16.101.9 NMAC. When an importer, including a person receiving special fuel under Subsection B of Section 3.16.101.8 NMAC, is the first person to “receive” special fuel, the incidence of the tax and the obligation to report remain with the importer and may not be shifted to registered suppliers.

D. This version of Section 3.16.101.8 NMAC applies to special fuel received on or after June 1, 1997.

[12/31/96, 12/31/97; 3.16.101.8 NMAC - Rn, 3 NMAC 20.2.8 & A, 6/14/01]

### **3.16.101.9 - WHEN SPECIAL FUEL IS “RECEIVED” - SHIFT TO REGISTERED SUPPLIER**

A. The definition of “received” imposes the special fuel excise tax in the first instance on rack operators or importers. If, however, a rack operator delivers special fuel at the refinery or pipeline terminal to or for the account of a supplier registered under the Special Fuels Supplier Tax Act, the incidence of the tax shifts to the registered supplier. In this case the registered supplier has received the special fuel and is responsible for reporting and paying the special fuel excise tax with respect to the special fuel received. The supplier receiving the special fuel may not further shift the receipt of the special fuel and the obligation to report and pay special fuel excise tax to any other person, even if the special fuel is subsequently sold or otherwise transferred to another registered supplier. In all other cases, responsibility for reporting and paying special fuel excise tax remains with the rack operator.

(1) Example 1: At its refinery, Refinery R loads 8,000 gallons of special fuel into a tank truck owned by Supplier A. In this case A has received the special fuel at the refinery (the place of delivery) and is responsible for reporting and paying the special fuel excise tax.

(2) Example 2: Same facts as example 1, except that Supplier A then sells some of the special fuel to Supplier B and unloads it from the truck into a tank belonging to Supplier B. Supplier A has received the special fuel and remains liable for the special fuel excise tax. Supplier B has not received the special fuel.

(3) Example 3: At the pipeline terminal, special fuel is loaded into a tank truck owned by T, a trucking company. T is not a registered supplier but picks up the special fuel for the account of, and delivers it to, three registered suppliers. In this case, T has accepted delivery of the special fuel at the pipeline terminal as agent for the suppliers. The three suppliers have received special fuel and must report and pay special fuel excise tax in proportion to the special fuel each received.

B. Any person once registered as a supplier but who is no longer listed on the list of registered suppliers promulgated by the department is not a registered supplier.

C. When a rack operator or importer is responsible for reporting and paying special fuel excise tax, that entity must report in the same time and manner as a registered supplier unless the department directs otherwise.

D. This version of Section 3.16.101.9 NMAC applies to transactions occurring and special fuel received on or after June 1, 1997.

[12/31/96, 12/31/97, 1/29/99; 3.16.101.9 NMAC - Rn, 3 NMAC 20.2.9 & A, 6/14/01]

### **3.16.101.10 - EXCHANGES**

A. Exchanges of special fuel between one refiner or pipeline terminal operator and another are exempt deliveries of special fuel under Section 7-16A-2.1 NMSA 1978. When pipeline terminal operators or refiners exchange special fuel, the person to whom the special fuel is delivered takes the place of the person who delivered the special fuel.

B. Example: X is a pipeline terminal operator in New Mexico. Y is a refinery in another state. Z is a registered supplier in New Mexico who distributes Y's brands of special fuel. Because Y does not operate a pipeline terminal in New Mexico from which it can supply its own suppliers and retailers, Y arranges with X to exchange Y's special fuel stored at a pipeline terminal out of state with X's special fuel stored at a New Mexico pipeline terminal. Y then ships

or delivers Y's New Mexico special fuel to Z. In this example, Y will be treated as a pipeline terminal operator in New Mexico. Because Y ships or delivers special fuel to Z, a registered supplier, Z has received the special fuel and the obligation to report and pay the tax, just as if X had shipped or delivered the special fuel to Z.

[12/31/96, 1/29/99; 3.16.101.10 NMAC - Rn, 3 NMAC 20.2.10 & A, 6/14/01]

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**7-16A-2.1. WHEN SPECIAL FUEL RECEIVED OR USED--WHO IS REQUIRED TO PAY TAX.--**

**A. A rack operator receives special fuel at the time and place when the rack operator first loads the special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment or when the rack operator places the special fuel into any tank or other container in this state from which sales or deliveries not involving transportation are made. A rack operator who receives special fuel is required to pay the tax on the special fuel received, except as provided otherwise in Subsection B of this section. Special fuel is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.**

**B. When the rack operator first loads special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment for the account of another person who is registered with the department as a supplier and is taxable under the Special Fuels Supplier Tax Act, that person receives the special fuel and is required to pay the tax.**

**C. Special fuel imported into New Mexico by any means other than in the supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the special fuel at the time of importation receives the special fuel and is required to pay the tax.**

**D. If special fuel is received within the exterior boundaries of an Indian reservation or pueblo grant and the person required to pay the tax is immune from state taxation, the special fuel is also received when the special fuel is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle or by pipeline. Any person who owns special fuel after the special fuel is transported off the reservation or pueblo grant receives the special fuel and is the person required to pay the tax, unless the tax has been paid by a previous owner.**

**E. Except as provided in Subsection F of this section, special fuel is used in New Mexico when it is put into the supply tank of any motor vehicle registered, owned or operated by a special fuel user, consumed by a special fuel user in the propulsion of a motor vehicle on the highways of this state or any activity ancillary to that propulsion, or imported into the state in the fuel supply tank of any motor vehicle for the propulsion of the motor vehicle on New Mexico highways.**

**F. To the extent that a special fuel user whose use of New Mexico highways is limited to that for which the special fuel user holds a valid border crossing special fuel user permit, as provided for in Section 1 of this 2018 act, the special fuel user does not use special fuel in this state.**

**(Laws 2018, Chapter 77, Section 2)**

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**7-16A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS SPECIAL FUEL EXCISE TAX.--**

**A. For the privilege of receiving or using special fuel in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of special fuel received in New Mexico.**

**B. The tax imposed by Subsection A of this section shall be twenty-one cents (\$.21) per gallon of special fuel received or used in New Mexico.**

**C. The tax imposed by this section may be called the "special fuel excise tax".**

**(Laws 2003 – 1<sup>ST</sup> Special Session, Chapter 3, Section 9)**

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**3.16.102.7 - DEFINITIONS:** For the purposes of Part 3.16.102 NMAC

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; 3.16.102.7 NMAC - Rn, 3 NMAC 20.3.7 & A, 6/14/01]

**3.16.102.8 - "GALLON" DEFINED--REPORTING ELECTION**

A. For the purposes of Parts 100 through 199, Chapter 3.16 NMAC, "gallon" means, at the election of a supplier or dealer selling liquid special fuels, either a standard United States gallon liquid measure (approximately 3.785 liters) or that same quantity adjusted to a temperature of sixty degrees fahrenheit.

B. For the purposes of Parts 100 through 199, Chapter 3.16 NMAC for a supplier or dealer selling non-liquid special fuels, "gallon" is the equivalent of one-hundred and fourteen (114) cubic feet.

C. The election of the definition of "gallon" to be used for reporting purposes is made with the filing of the initial return required under Section 7-16A-9 NMSA 1978 and must be used for a minimum of one calendar year. The election may not be changed without the prior written consent of the secretary.

[2/1/93, 12/31/96; 3.16.102.8 NMAC - Rn, 3 NMAC 20.3.8 & A, 6/14/01]

### **3.16.102.9 - EXCLUSION WHEN RECEIPT OR USE IS SUBJECT TO GROSS RECEIPTS TAX**

A. Receipts from the sale of special fuel for non-highway use is subject to gross receipts tax and not the special fuel excise tax.

B. Special fuel is sold for non-highway use when it is delivered into bulk storage in accordance with Section 3.16.107.12 NMAC for use in stationary equipment, for residential or commercial heating or cooling purposes or for use in a vehicle that is not a motor vehicle.

C. For the purposes of Section 3.16.102.9 NMAC, "stationary equipment" includes, but is not limited to, reefer units, generators, pumps and like equipment which have a separate fuel supply tank to operate the stationary equipment.

D. For the purposes of Section 3.16.102.9 NMAC, "a vehicle that is not a motor vehicle" includes, but is not limited to, vehicle mounted workover rigs, drilling rigs and like equipment not required to be registered under the Motor Vehicle Code.

E. Vehicles that may be required to be registered under the Motor Vehicle Code, including but not limited to, backhoes, tractors and road graders, but that are being transported on a trailer from one off-highway use location to another off-highway use location are vehicles that are not motor vehicles if the vehicles are not operated on the highways of this state.

F. Any special fuel supplier or dealer delivering special fuel for non-highway use must provide the purchaser with either a separate invoice for each such delivery or an invoice that separately states the amount and type of each delivery.

[2/1/93, 12/31/96, 12/31/97; 3.16.102.9 NMAC - Rn, 3 NMAC 20.3.9 & A, 6/14/01]

### **3.16.102.10 - PREEMPTION OF TAX BY FEDERAL LAW**

A. Special fuel received by an Indian tribe on its own territory is not subject to the taxes imposed by the Special Fuels Supplier Tax Act if taxation of the special fuel received is prohibited by federal law.

B. If an Indian tribe is a supplier, it receives special fuel on its own territory when:

(1) the loading at the refinery or pipeline terminal of the special fuel sold to or on the account of the Indian tribe takes place on the tribe's territory; or

(2) the Indian tribe imports the special fuel on the tribe's territory.

C. If an Indian tribe is a supplier and it receives special fuel at any place in New Mexico other than on the tribe's territory, imposition of the tax is not barred by federal law and the Indian tribe must report and pay special fuel excise tax. Example: Z is a member of an Indian tribe T and is registered as a supplier. Z hires tank trucks to pick up loads of special fuel at a rack which is not on T's territory. Z receives the special fuel at that rack. Z owes special fuel excise tax on the special fuel received.

D. Like any other supplier, an Indian tribe that is a registered supplier cannot receive special fuel previously received by another supplier.

E. Special fuel received by an Indian tribe on its own reservation but subsequently transported into any other part of New Mexico, other than by pipeline or in the fuel supply tank of a motor vehicle, becomes subject to the special fuel excise tax as soon as it leaves the tribe's territory, even if still owned by the Indian tribe.

[12/31/96, 12/31/97, 1/29/99; 3.16.102.10 NMAC - Rn, 3 NMAC 20.3.10, 6/14/01]

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**7-16A-4. SPECIAL FUEL INVENTORY TAX: IMPOSITION OF TAX--  
DATE PAYMENT OF TAX DUE. --**

A. A "special fuel inventory tax" is imposed measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which an increase in the special fuel excise tax rate is effective. The taxable event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which an increase in the special fuel excise tax rate is effective. The rate of the special fuel inventory tax applicable to each gallon of special fuel held in inventory by a supplier or bulk storage user, as provided in Section 7-16A-5 of the Special Fuels Supplier Tax Act, shall be the difference between the special fuel excise tax rate imposed on the day prior to the day in which the special fuel excise tax rate is increased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate increase is effective, expressed in cents per gallon.

B. The special fuel inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**(Laws 1992, Chapter 51, Section 4)**

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**3.16.103.8 - DETERMINATION OF DUE DATE FOR SPECIAL FUEL INVENTORY TAX**

When an increase in special fuel excise tax is effective on the first day of any month, the special fuel inventory tax is due on the twenty-fifth day of that same month.

[2/1/93, 12/31/96; 3.16.103.8 NMAC - Rn, 3 NMAC 20.4.8, 6/14/01]



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**7-16A-5. SPECIAL FUEL INVENTORIES.--**

**A. On the day prior to the day in which the special fuel excise tax rate is increased or decreased, each supplier, dealer and bulk storage user shall take inventory of the gallons of special fuel on hand.**

**B. Suppliers and bulk storage users shall report total gallons of special fuel in inventory on the day prior to the day in which an increase in the special fuel excise tax rate is effective and pay any special fuel inventory tax due.**

**(Laws 2005, Chapter 109, Section 9)**

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**3.16.104.8 - INVENTORY REPORT**

On or before the due date for payment of the special fuel inventory tax, each special fuel supplier, dealer and bulk storage user shall report on forms provided by the department the number of gallons of special fuel which that supplier, dealer or bulk storage user has in inventory on the day prior to the day on which the change in rate is effective. Reports are required even if no inventory is on hand as of the determination date.

[2/1/93, 12/31/96; 3.16.104.8 NMAC - Rn, 3 NMAC 20.5.8, 6/14/01]

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**7-16A-5.1. MANIFEST OR BILL OF LADING REQUIRED WHEN TRANSPORTING SPECIAL FUELS.--Every person transporting special fuels from a refinery or other facility at which special fuel is produced, refined, manufactured, blended or compounded or from a pipeline terminal in this state, importing special fuels into this state or exporting special fuels from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the special fuel or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this section, any person transporting special fuels without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the special fuels so transported were legally acquired by a registered supplier who assumed liability for payment of the tax imposed by the Special Fuels Supplier Tax Act. (Laws 1997, Chapter 192, Section 14)**

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**7-16A-6. SPECIAL FUEL INVENTORY TAX REFUND.--A "special fuel inventory tax refund" is established measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which a decrease in the special fuel excise tax rate is effective. The refund event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which a decrease in the special fuel excise tax rate is effective. The refund is to be calculated by determining the difference between the special fuel excise tax rate imposed on the day prior to the day in which the special fuel excise tax rate is decreased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate decrease is effective, expressed in cents per gallon. The refund rate so determined is then multiplied by each gallon in inventory as determined under Section 7-16A-5 of the Special Fuels Supplier Tax Act. (Laws 1992, Chapter 51, Section 6)**

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**7-16A-8. SPECIAL BULK STORAGE USER PERMIT. --**

**A. The department may issue to a user a special bulk storage user permit that shall entitle that user to own, operate, utilize or maintain bulk storage for the sole purpose of placing special fuel from it into the supply tank of an allowable motor vehicle registered, owned or operated by that user. The fee for the special bulk storage user permit shall be ten dollars (\$10.00) per year. Permits shall be issued on a calendar year basis but may be issued for one, two or three years at a time.**

**B. To secure a special bulk storage user permit, an applicant shall:**

**(1) file with the department upon a form furnished by the department an application for a special bulk storage user permit;**

**(2) indicate on the application the number of years, to a maximum of three, for which the applicant requests the permit to be valid;**

**(3) accompany the application with payment of the special bulk storage user permit fee in the amount of ten dollars (\$10.00) per year requested; and**

**(4) accompany the application with a signed affidavit to the effect that the signer shall use the special fuel from the special bulk storage only for the purpose of placing it into the supply tanks of specified allowable motor vehicles registered, owned or operated by the signer.**

**C. It is a violation of the Special Fuels Supplier Tax Act for any special bulk storage user to:**

**(1) sell special fuel from the user's special bulk storage to any other person; or**

**(2) deliver special fuel from the user's special bulk storage into the supply tank of any motor vehicle except specified allowable motor vehicles registered, owned or operated by the special bulk storage user.**

**D. "Allowable motor vehicles", for the purposes of this section, includes but is not limited to motor vehicles used primarily for or suitable for use in construction or farming, such as road graders, backhoes, rubber-tired rollers, front loaders, rubber-tired draglines, farm tractors, self-propelled combines or self-propelled reapers.**

**E. The department may revoke, after due notice and hearing as provided in Section 7-1-24 NMSA 1978, the special bulk storage user permit of any user found to be in violation of any provision of the Special Fuels Supplier Tax Act.**

**F. Special fuel purchased for bulk storage under a special bulk storage user permit shall not be subject to the special fuel excise tax at the time of purchase, but special fuel excise tax shall be due on any special fuel removed from bulk storage if delivered into the supply tank of a motor vehicle that is operated on the highways of this state.**

**G. All special fuel acquired, purchased or received under a special bulk**

*storage user permit shall be acquired, purchased or received from a registered supplier. It is unlawful for any person to sell special fuel in bulk quantities to special bulk storage users unless that person is registered pursuant to the Special Fuels Supplier Tax Act.*

**(Laws 1997, Chapter 192, Section 7)**

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**3.16.107.7 - [RESERVED]**

[2/1/93, 12/31/96; 3.16.107.7 NMAC - Rn, 3 NMAC 20.8.7, 6/14/01; Repealed, 9/15/08]

**3.16.107.8 - [RESERVED]**

[2/1/93, 12/31/96; 3.16.107.8 NMAC - Rn, 3 NMAC 20.8.8 & A, 6/14/01; Repealed, 9/15/08]

**3.16.107.9 - [RESERVED]**

[2/1/93, 12/31/96; 3.16.107.9 NMAC - Rn, 3 NMAC 20.8.9 & A, 6/14/01; Repealed, 9/15/08]

**3.16.107.10 - [RESERVED]**

[2/1/93, 12/31/96; 3.16.107.10 NMAC - Rn, 3 NMAC 20.8.10 & A, 6/14/01; Repealed, 9/15/08]

**3.16.107.11 - [RESERVED]**

[2/1/93, 12/31/96; 3.16.107.11 NMAC - Rn, 3 NMAC 20.8.11 & A, 6/14/01; Repealed, 9/15/08]

**3.16.107.12 - [RESERVED]**

[2/1/93, 12/31/96; 3.16.107.12 NMAC - Rn, 3 NMAC 20.8.12 & A, 6/14/01; Repealed, 9/15/08]

**3.16.107.13 - [RESERVED]**

[2/1/93, 12/31/96; 3.16.107.13 NMAC - Rn, 3 NMAC 20.8.13 & A, 6/14/01; Repealed, 9/15/08]

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**7-16A-9. TAX RETURNS--PAYMENT OF TAX.--Rack operators and special fuel suppliers shall file tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which special fuel is received in New Mexico. Payment of the tax shall be made with or prior to filing of the return. The department may require that the tax returns be provided through electronic means as long as an exception is provided for rack operators with limited amounts of fuel sold and for suppliers with limited amounts of fuel received.**  
**(Laws 2005, Chapter 109, Section 10)**

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### **3.16.108.8 - SPECIAL FUEL SUPPLIER TAX RETURN**

The special fuel supplier tax return shall be submitted on forms provided or approved by the department and must be signed by the taxpayer or the taxpayer's authorized agent.  
[2/1/93, 12/31/96, 12/31/97; 3.16.108.8 NMAC - Rn, 3 NMAC 20.9.8, 6/14/01]

### **3.16.108.9 - DETERMINATION OF TIMELINESS**

Determination of timeliness for notices, returns, applications and payments of any tax or fee imposed under the Special Fuels Supplier Tax Act will be made in conformance with the requirements of Section 7-1-9 NMSA 1978 and the regulations thereunder.  
[2/1/93, 12/31/96; 3.16.108.9 NMAC - Rn, 3 NMAC 20.9.9 & A, 6/14/01]

### **3.16.108.10 - CHANGE OF ADDRESS**

Taxpayers must inform the department of any change of address. Any notice to a taxpayer is presumed to be effective and binding on that taxpayer when it is sent to the last address shown in the department's records.  
[2/1/93, 12/31/96; 3.16.108.10 NMAC - Rn, 3 NMAC 20.9.10, 6/14/01]

### **3.16.108.11 - RETURN MUST REPORT ON UNTAXED SALES**

Special fuel tax returns filed by suppliers, rack operators or importers must include reports of sales of special fuel on which the special fuel excise tax has not been paid. Such reports shall be made in the form prescribed by the secretary and shall include the number of gallons sold, the identity of the purchaser, including the taxpayer identification number, and the date of the sale. The retailer of such special fuel not taxed under the Special Fuels Supplier Tax Act will be responsible for the gross receipts tax on its receipts from the sale of the special fuel.  
[12/31/96, 12/31/97, 1/29/99; 3.16.108.11 NMAC - Rn, 3 NMAC 20.9.11, 6/14/01]

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**7-16A-9.1. RETURNS BY RETAILERS--REQUIREMENTS.--**Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is purchased in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel.  
(Laws 2005, Chapter 109, Section 12)

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**7-16A-9.2. RETURNS BY WHOLESALERS.--**Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold.  
(Laws 2005, Chapter 109, Section 13)

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**7-16A-9.3. RETURNS BY RACK OPERATORS--REQUIREMENTS.--**Rack operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is distributed in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel.  
(Laws 2005, Chapter 109, Section 14)

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**7-16A-9.4.-- REPORTING REQUIREMENTS--SPECIAL FUEL DEDUCTION--BIODIESEL.--**

**A. A taxpayer that deducts an amount of special fuel that is biodiesel from the total amount of special fuel received in New Mexico pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 shall report the deducted amount separately with the taxpayer's return in a manner prescribed by the department.**

**B. The department shall calculate the aggregate amount, in dollars, of the difference between the amount of special fuel excise tax that would have been collected in a fiscal year if not for the deduction allowed pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 and the amount of special fuel excise tax actually collected. The department shall compile an annual report that includes the aggregate amount, the number of taxpayers that deducted an amount of special fuel pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 and any other information necessary to evaluate the deduction. Beginning in 2017 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the costs and benefits of the deduction to the state.**

**(Laws 2013, Chapter 109, Section 3)**

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**7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL FUEL SUPPLIERS.--**In computing the tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

**A. special fuel received in New Mexico, but exported from this state by a rack operator, special fuel supplier or dealer, other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:**

**(1) the person exporting the special fuel is registered in or licensed by the destination state to pay that state's special fuel or equivalent fuel tax;**

**(2) proof is submitted that the destination state's special fuel or equivalent fuel tax has been paid or is not due with respect to the special fuel;**  
or

**(3) the destination state's special fuel or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;**

**B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof. Special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;**

**C. special fuel sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof. Special fuel sold to the state of New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;**

**D. special fuel sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof. Special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;**

**E. special fuel dyed in accordance with federal regulations;**

**F. special fuel that is number 2 diesel fuel sold for the generation of power to propel a vehicle authorized by contract with the public education department as a school bus; provided that the fuel has a distillation temperature of five hundred degrees Fahrenheit at a ten percent recovery point and six hundred forty degrees Fahrenheit at a ninety percent recovery point;**

**G. special fuel received in New Mexico on which New Mexico special fuel excise tax was paid by the out-of-state terminal at which the special fuel was loaded, provided that documentation that the special fuel was to be imported into New Mexico was provided to the terminal operator by the**

person receiving the fuel; and

H. special fuel received in New Mexico that:

(1) prior to July 1, 2014, consists of at least ninety-nine percent vegetable oil or animal fat; provided that the use is restricted to an auxiliary fuel system that is subject to a certificate of conformity pursuant to the federal Clean Air Act; or

(2) is biodiesel received or manufactured and delivered to a rack operator that is within the state for blending or resale.

(Laws 2013, Chapter 109, Section 2)

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### **3.16.109.8 - CALCULATION OF SPECIAL FUEL EXCISE TAX LIABILITY**

In computing the special fuel excise tax due, a special fuel excise tax taxpayer, in addition to the deductions provided in Section 7-16A-10 NMSA 1978, may deduct from the total amount of special fuel received in New Mexico during the tax period, the amount of special fuel sold or delivered when the receipt or use of the special fuel is subject to gross receipts tax under the provisions of 3.16.102.9 NMAC.

[2/1/93, 12/31/96, 12/31/97; 3.16.109.8 NMAC - Rn, 3 NMAC 20.10.8 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.8 NMAC - N, 9/15/08]

### **3.16.109.9 - PROOF SATISFACTORY TO THE DEPARTMENT**

A. For exports on or after June 1, 1997, proof satisfactory to the department of the export of special fuel consists of a manifest or bill of lading showing the amount of special fuel, the name and address of the person to whom the special fuel is sold and delivered and the destination outside New Mexico. The person exporting special fuel must also comply with the requirements of Subsection A of Section 7-16A-10 NMSA 1978.

B. Proof satisfactory to the department of sale to the United States or any agency or instrumentality thereof, a NATO force, the state of New Mexico (including its agencies, instrumentalities and political subdivisions), or an Indian nation, tribe or pueblo or any agency or instrumentality thereof shall be furnished to the department on request. Proof includes contracts covering the gallons purchased, the federal contract number, purchase orders and invoices showing that the purchaser was the United States, a NATO force, the state of New Mexico, or an Indian nation, tribe or pueblo or an agency or instrumentality thereof and copies of warrants issued in payment and other documentation determined by the secretary to constitute proof of payment.

C. Receipts from sales of special fuel placed in the supply tank of United States, state of New Mexico or Indian nation, tribe or pueblo government vehicles are deductible from the distributor's special fuel excise tax when paid for by a credit or procurement card issued to the United States government, the state of New Mexico or an Indian government.

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 special fuel was sold.

[2/1/93, 12/31/96, 12/31/97; 3.16.109.9 NMAC - Rn, 3 NMAC 20.10.9 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.9 NMAC - N, 9/15/08]

### **3.16.109.10 - DEDUCTION - SALES TO OTHER SUPPLIERS**

A. Special fuel received by one supplier and sold to another supplier may not be deducted from the amount of special fuel received in New Mexico, even though the second supplier is registered, because the second supplier did not “receive” special fuel within the meaning of the act.

B. Example: A, a registered special fuel supplier in New Mexico, received one thousand (1,000) gallons of special fuel in June, 20xx. B, also a registered special fuel supplier, needed one thousand (1,000) gallons of special fuel and arranged to purchase the one thousand (1,000) gallons from A immediately after A had received the fuel. A may not deduct the one thousand (1,000) gallons from the amount of special fuel A received in June 20xx. B is not liable for tax on this special fuel because B did not receive it.

[2/1/93, 12/31/96; 3.16.109.10 NMAC - Rn, 3 NMAC 20.10.10 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.10 NMAC - N, 9/15/08]

### **3.16.109.11 - INDIRECT SALES TO THE UNITED STATES, THE STATE OF NEW MEXICO, INDIAN NATIONS, TRIBES OR PUEBLOS OR FOR EXPORT**

A. The tax consequences of sales of special fuel to the United States, the state of New Mexico, or Indian nations, tribes or pueblos or for export 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 special fuel to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser or change the legal incidence of tax.

B. Example 1. X, a supplier, received one thousand (1000) gallons of special fuel in May 20xx, reported the special fuel excise tax and resold the special fuel to Y, a wholesaler. Y sold the special fuel to the United States. If Y furnishes proof satisfactory to the department to X, X may either deduct the one thousand (1000) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department of Y's sale to the government 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 special fuel was sold to the United States.

C. Example 2. X, a supplier, received and reported one thousand (1000) gallons of special fuel in May, 20xx, and sold the special fuel to Y, a retailer. Y sold twenty (20) gallons to a United States government vehicle using a government credit card. In May, 20xx, Y reports to X that this amount of special fuel has been sold to the United States government. If Y furnishes proof satisfactory to the department to X, X may deduct twenty (20) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department of Y's sale to the United States government is required to be retained by X and Y for at least three years from the end of the calendar year in which the special fuel was sold.

D. Example 3: X, a supplier, received and reported five thousand (5,000) gallons of special fuel in May 20xx and resold the special fuel to Y, another New Mexico supplier. Y delivers the five thousand (5,000) gallons of special fuel to a customer in another state. If Y

furnishes proof satisfactory to the department to X, X may deduct five thousand (5,000) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department 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.

[2/1/93, 12/31/96; 3.16.109.11 NMAC - Rn, 3 NMAC 20.10.11 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.11 NMAC - N, 9/15/08]

### **3.16.109.12 - DEDUCTION - SALES TO A NON-UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY**

A. For purposes of 3.16.109.12 NMAC:

(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, special fuel sold to a NATO force may be deducted from the total amount of special fuel received in New Mexico.

C. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, special fuel 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 special fuel excise tax.

D. 3.16.109.12 NMAC is retroactively applicable to sales on or after July 1, 1995.

[12/22/95, 12/31/96; 3.16.109.12 NMAC - Rn, 3 NMAC 20.10.12 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.12 NMAC - N, 9/15/08]

### **3.16.109.13 - SPECIAL FUEL USED IN SCHOOL BUSES**

Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses is subject to gross receipts tax and not the special fuel excise tax.

[3.16.109.13 NMAC - N, 10/15/02; Repealed, 10/31/07; 3.16.109.13 NMAC - N, 9/15/08]

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***\*\* Repealed May 1, 2013; Never Became Effective\*\****

***7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL FUEL SUPPLIERS.--In computing the tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:***

***A. special fuel received in New Mexico, but exported from this state by a rack operator, special fuel supplier or dealer, other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:***

***(1) the person exporting the special fuel is registered in or licensed by the destination state to pay that state's special fuel or equivalent fuel tax;***

***(2) proof is submitted that the destination state's special fuel or equivalent fuel tax has been paid or is not due with respect to the special fuel; or***

***(3) the destination state's special fuel or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;***

***B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof. Special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;***

***C. special fuel sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof. Special fuel sold to the state of New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;***

***D. special fuel sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof. Special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;***

***E. special fuel dyed in accordance with federal regulations;***

***F. special fuel that is number 2 diesel fuel sold for the generation of power to propel a vehicle authorized by contract with the public education department as a school bus; provided that the fuel has a distillation temperature of five hundred degrees Fahrenheit at a ten percent recovery point and six hundred forty degrees Fahrenheit at a ninety percent recovery point; and***

***G. special fuel received in New Mexico on which New Mexico special fuel excise tax was paid by the out-of-state terminal at which the special fuel was loaded, provided that documentation that the special fuel was to be***

*imported into New Mexico was provided to the terminal operator by the person receiving the fuel.*  
*(Laws 2009, Chapter 99, Section 3 – Never became effective)*

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**7-16A-11. TAX RETURNS--PAYMENT OF TAX--SPECIAL FUEL USERS  
--EXCEPTION.--**

A. Except as otherwise provided in this section, a special fuel user shall file a special fuel excise tax return in form and content as prescribed by the secretary to conform to the due date for the special fuel excise tax return required by an interstate agreement to which the state is a party.

B. A special fuel user may elect to file and pay the special fuel excise tax annually by conforming to the annual filing requirements of an international fuel tax agreement to which the state is a party.

C. A special fuel user shall file a return in accordance with the conditions and terms of the international fuel tax agreement to which the state is a party.

D. To the extent that a special fuel user whose use of New Mexico highways is limited to that for which the special fuel user holds a valid border crossing special fuel user permit, as provided for in Section 1 of this 2018 act, the special fuel user is exempt from the requirements of this section. (Laws 2018, Chapter 77, Section 3)

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**3.16.110.8 - COMPUTATION OF MILES-PER-GALLON FACTOR**

A. For purposes of calculating the gallons of special fuel used on the highways of this state, any computation of the average miles per gallon everywhere shall be carried out to two significant decimal places. Rounding rules for the third decimal place are:

- (1) round down if the digit is a zero, 1, 2, 3, or 4; and
- (2) round up if the digit is a 5, 6, 7, 8, or 9.

B. Example 1: Trucker's fleet logged 1,000,000 miles with 100,000 traveled in New Mexico. Trucker used 202,100 gallons of special fuel. Trucker has used 20,202 gallons in New Mexico, computed as follows:

$$\begin{array}{l} \text{divided by} \quad 1,000,000 \text{ miles everywhere} \\ \text{equals} \quad \quad \underline{202,100} \text{ gallons of special fuel everywhere} \\ \quad \quad \quad 4.948 = 4.95 \text{ average miles per gallon} \end{array}$$

$$\begin{array}{l} \text{divided by} \quad 100,000 \text{ New Mexico miles} \\ \text{equals} \quad \quad \underline{4.95} \text{ average miles per gallon} \\ \quad \quad \quad 20,202 \text{ New Mexico special fuel gallons} \end{array}$$

C. Example 2: Hauler's fleet traveled 2,000,000 miles, 500,000 of which were in New Mexico. Hauler used 413,050 gallons of special fuel during the reporting period. Hauler has used 103,306 gallons of special fuel in New Mexico, computed as follows:

$$\begin{array}{l} \text{divided by} \quad 2,000,000 \text{ miles everywhere} \\ \text{equals} \quad \quad \underline{413,050} \text{ gallons of special fuel everywhere} \\ \quad \quad \quad 4.842 = 4.84 \text{ average miles per gallon} \end{array}$$

$$\begin{array}{l} \text{divided by} \quad 500,000 \text{ New Mexico miles} \\ \quad \quad \quad \underline{4.84} \text{ average miles per gallon} \end{array}$$

equals 103,306 New Mexico special fuel gallons  
[2/1/93, 12/31/96; 3.16.110.8 NMAC - Rn, 3 NMAC 20.11.8, 6/14/01]

### **3.16.110.9 - REQUIRED RECORDS**

Special fuel users shall maintain the following records on a reporting period basis. All records shall be referenced by vehicle unit number.

A. Vehicle trip mileage records for each vehicle operated in New Mexico. The mileage records shall reflect the total miles traveled in every state and country and the total miles traveled in New Mexico.

B. Vehicle itineraries including each vehicle trip origin and destination point, and routes taken.

C. Total quantities of special fuel placed into the fuel supply tank(s) of each vehicle and the location and date of each acquisition of special fuel.

[2/1/93, 12/31/96; 3.16.110.9 NMAC - Rn, 3 NMAC 20.11.9, 6/14/01]

### **3.16.110.10 - ALTERNATIVE CALCULATION AVAILABLE FOR CERTAIN VEHICLES**

A. An alternative calculation to determine the special fuel excise tax due under Section 7-16A-11 NMSA 1978 is available under Section 3.16.110.12 NMAC for vehicles which:

(1) are registered with the state under the annual renewal program or the international registration program (IRP);

(2) are equipped with a power take-off (PTO) from the transmission or main engine to operate some form of auxiliary equipment or a non-automotive apparatus mounted on the vehicle, provided a common supply tank for special fuel is used to propel the vehicle along the highway and to operate the auxiliary equipment or non-automotive apparatus; and

(3) are equipped with an operating odometer, if the vehicle is a non-combination vehicle. If the vehicle is a combination, the tractor must have an operating odometer and the trailer or semitrailer must have an operating hub mileage gauge known as a "hubometer".

B. In addition, the owner or operator of the vehicle must:

(1) have applied for and been issued an annual special fuel permit and tax qualification card, valid for the vehicle; and

(2) be registered with the department under Section 7-1-12 NMSA 1978 as a CRS taxpayer for reporting and remitting compensating tax.

C. An annual election to use the alternative computation is made for each eligible vehicle by a declaration on form SF-11 specifying the type of vehicle, the principle use of the vehicle if not self-explanatory by type, the vehicle identification number of the power unit, type of auxiliary equipment or non-automotive apparatus, the use of odometer or hubometer or notification of the absence of either for agricultural or construction equipment and the name and address of the owner and operator. Use of the alternative calculation is mandatory for each specified vehicle for the entire calendar year, or portion thereof in the case of a newly registered vehicle.

[2/1/93, 12/31/96; 3.16.110.10 NMAC - Rn, 3 NMAC 20.11.10 & A, 6/14/01]



**3.16.110.11 - RECORDS REQUIRED FOR ALTERNATIVE CALCULATION METHOD**

A. The alternative calculation may be used only when the auxiliary equipment or non-automotive apparatus is in use in New Mexico. A contemporaneous daily trip report must be maintained for each vehicle using the alternative calculation method. At a minimum, date, beginning hub or odometer miles and time, ending hub or odometer miles and time and miles traveled must be entered on the daily trip report. The log must clearly identify the times the auxiliary equipment or non-automotive apparatus was in use.

B. In addition to the daily trip record, the driver, owner or operator of the vehicle must record all fuel purchases by date, price per gallon, gallons delivered into the main supply tank of the vehicle, and the total cost of the fuel. This recordation is required even if the fuel is withdrawn from bulk storage. In the case of bulk fuel withdrawal, any reasonable method of determining and allocating cost will be accepted by the department. This reasonable method must be documented in writing.

C. Failure to maintain and retain the required trip reports and fuel records will result in disallowance of the alternative computation method, and special fuel excise tax will be assessed on all fuel consumed in the state, whether for PTO use or propelling the vehicle.

[2/1/93, 12/31/96; 3.16.110.11 NMAC - Rn, 3 NMAC 20.11.11, 6/14/01]

**3.16.110.12 - APPLICATION OF ALTERNATIVE CALCULATION METHOD**

A. All special fuel used to propel the vehicle, or associated with such propulsion, must be reported as taxable. No exclusions, adjustments or allowances for idling time or use of special fuel for propulsion, or associated with propulsion, are permitted in using the alternative calculation method.

B. The following factors shall be used:

<u>is at least:</u>	<u>But is less than:</u>	<u>Then, the assumed mpg factor is:</u>
12,000 pounds	26,000 pounds	4.50 mpg
26,001 pounds	54,000 pounds	4.35 mpg
54,001 pounds	80,000 pounds	4.00 mpg
080,001 pounds or over		3.85 mpg

C. The specified assumed mpg factor may be subject to adjustment if the special fuel user can establish through clear and compelling evidence presented in the form of a ruling request addressed to the Department that a different mpg factor is appropriate. The specified assumed mpg factor must be used until a formal ruling is issued by the department to the special fuel user.

D. Determine the average cost of special fuel purchased during the period by dividing the total cost of the purchased fuel by the total gallons purchased. Divide the number of propelled miles by the mpg factor for the appropriate weight class to determine the number of gallons used for propulsion. Subtract the number of gallons used for propulsion from the number of total gallons to obtain the number of gallons used in the operation of auxiliary equipment or non-automotive apparatus (PTO gallons). Multiply PTO gallons by the average price of special fuel to determine the value of fuel used for non-propulsion purposes. This value multiplied by the

compensating tax rate provided in Section 7-9-7 NMSA 1978 will determine the amount of compensating tax due on special fuel for non-propulsion purposes.

E. If an election to use the alternative computation method was made for more than one vehicle, the calculation must be performed separately for each vehicle.

[2/1/93, 12/31/96; 3.16.110.12 NMAC - Rn, 3 NMAC 20.11.12 & A, 6/14/01]

**3.16.110.13 - NO OTHER EXCLUSIONS, ADJUSTMENTS OR ALLOWANCES PROVIDED**

A. No other exclusions, adjustments or allowances for special fuel used for non-propulsion purposes, other than the alternative computation method provided in Sections 3.16.110.10 through 3.16.110.12 NMAC, are allowable in determining special fuel excise tax liability under Section 7-16A-11 NMSA 1978.

B. Idling time associated with on-highway use of a motor vehicle is taxable at the special fuel excise tax rate provided in Section 7-16A-3 NMSA 1978. Evidence from “black box” records, or similar computerized monitoring equipment, is not accepted in determining fleet fuel consumption.

[2/1/93, 12/31/96; 3.16.110.13 NMAC - Rn, 3 NMAC 20.11.13 & A, 6/14/01]

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**7-16A-12. CREDIT--SPECIAL FUEL EXCISE TAX; SPECIAL FUEL USERS. --In computing any special fuel excise tax due, all special fuel excise tax paid on special fuel used during the reporting period may be credited against the calculated special fuel excise tax due for that reporting period, provided that satisfactory proof of the special fuel excise tax paid is furnished to the department.**  
**(Laws 1997, Chapter 192, Section 10)**

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**3.16.111.8 - DETERMINING SPECIAL FUEL EXCISE TAX PAID**

Any temporary special fuel user permit fee paid during the reporting period under the provisions of Section 7-16A-19 NMSA 1978 is not special fuel excise tax paid and any temporary special fuel user permit fee paid may not be used in determining the credit available under Section 7-16A-12 NMSA 1978.

[2/1/93, 12/31/96; 3.16.111.8 NMAC - Rn, 3 NMAC 20.12.8 & A, 6/14/01]

**3.16.111.9 - REFUND OF EXCESS CREDIT IN REPORTING PERIOD**

Any credit which exceeds the sum of the calculated special fuel excise tax due and the weight distance tax due for a reporting period may be refunded to the special fuel user if the special fuel user tax return required by Section 7-16A-11NMSA 1978 is accompanied by a claim for refund.

[2/1/93, 12/31/96; 3.16.111.9 NMAC - Rn, 3 NMAC 20.12.9 & A, 6/14/01]

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**7-16A-13. CLAIM FOR REFUND OR CREDIT OF SPECIAL FUEL EXCISE TAX PAID ON SPECIAL FUEL DESTROYED BY FIRE, ACCIDENT OR ACTS OF GOD BEFORE RETAIL SALE.** --Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit of any special fuel excise tax or special fuel inventory tax paid on special fuel destroyed by fire, accident or acts of God while in the possession of a supplier, bulk storage user or dealer.  
(Laws 1992, Chapter 51, Section 13)

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*\*\*Effective January 1, 2015\*\**

**7-16A-13. CLAIM FOR REFUND OR CREDIT OF SPECIAL FUEL EXCISE TAX PAID--ON SPECIAL FUEL DESTROYED BY FIRE, ACCIDENT OR ACTS OF GOD BEFORE RETAIL SALE--ON SPECIAL FUEL PREVIOUSLY RECEIVED FROM A SOURCE OTHER THAN A REFINER OR PIPELINE TERMINAL.--**

*A. Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit of any special fuel excise tax or special fuel inventory tax paid on special fuel destroyed by fire, accident or acts of God while in the possession of a supplier, bulk storage user or dealer.*

*B. Upon the submission of proof satisfactory to the department, a rack operator may submit, and the department may allow, a claim for refund of a New Mexico tax paid on special fuel previously received in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.*

*C. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.*

*D. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.*  
(Laws 2015 S.S., Chapter 2, Section 21)

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### **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]

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**7-16A-13.1. CLAIM FOR REFUND OF SPECIAL FUEL EXCISE TAX PAID ON SPECIAL FUEL.--**

**A. Upon the submission of proof satisfactory to the department, a user of special fuel may submit and the department may allow a claim for refund of tax paid on special fuel used to propel a vehicle authorized by contract with the public education department as a school bus, to propel a vehicle off-road, to operate auxiliary equipment by a power take-off from the main engine or transmission of a vehicle or to operate a non-automotive apparatus mounted on a vehicle when the special fuel used for such purposes and the special fuel used to propel the vehicle on the highways are drawn from a common supply tank. The vehicle must be registered with the department. The user must be registered with the department for purposes of reporting and paying gross receipts tax.**

**B. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.**

**C. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section. The department may prescribe the use of types of monitoring or measuring equipment.**

**D. This section applies to special fuel purchased on or after July 1, 2001, except for the refund for special fuel used to propel a school bus, which applies to special fuel purchased on or after July 1, 2005.**

**(Laws 2006, Chapter 74, Section 2)**

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**7-16A-13.1. CLAIM FOR REFUND OF SPECIAL FUEL EXCISE TAX PAID ON SPECIAL FUEL.--**

**A. Upon the submission of proof satisfactory to the department, a user of special fuel, other than a holder of a bulk storage user permit, may submit and the department may allow a claim for refund of tax paid on special fuel used to propel a vehicle authorized by contract with the public education department or with a public school district as a school bus, to propel a vehicle off-road, to operate auxiliary equipment by a power take-off from the main engine or transmission of a vehicle or to operate a nonautomotive apparatus mounted on a vehicle when the special fuel used for such purposes and the special fuel used to propel the vehicle on the highways are drawn from a common supply tank. The vehicle must be registered with the department. The user must be registered with the department for purposes of reporting and paying gross receipts tax.**

**B. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.**

**C. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section. The department may prescribe the use of types of monitoring or measuring equipment.**

**D. This section applies to special fuel purchased on or after July 1, 2001, except for the refund for special fuel used to propel a school bus, which applies to special fuel purchased on or after July 1, 2005.**

**(Laws 2006, Chapter 73, Section 1)**

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**7-16A-14. REGISTRATION NECESSARY TO ENGAGE IN BUSINESS AS SPECIAL FUEL SUPPLIER OR DEALER. --Each person engaged in the business of selling special fuel in New Mexico as a rack operator, special fuel supplier or dealer shall register as such under the provisions of Section 7-1-12 NMSA 1978.**

**(Laws 1997, Chapter 191, Section 11)**

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**3.16.113.8 - REGISTRATION**

A. Each person engaged in selling special fuel as a rack operator, importer, supplier or dealer shall register with the department by filing an application for registration for combined reporting of gross receipts, compensating and withholding tax.

B. The department will prepare and make available to rack operators, importers and suppliers a list of all persons currently registered as suppliers under the Special Fuels Supplier Tax Act. The department will answer all inquiries as to whether a person is included in this list. [2/1/93, 12/31/96, 12/31/97; 3.16.113.8 NMAC - Rn, 3 NMAC 20.14.8, 6/14/01]

**3.16.113.9 - DEPARTMENT MAY REMOVE NONCOMPLYING SUPPLIERS FROM LIST**

A. In accordance with Section 3.16.113.9 NMAC, the department may cancel the registration of a supplier as a supplier of special fuel and remove its name from the list of suppliers registered under the Special Fuels Supplier Tax Act if the supplier does not substantially comply with the requirements to file special fuel tax returns in the form and manner prescribed by the secretary.

B. The department shall notify the supplier of its intent to cancel the supplier's registration as a supplier of special fuel and to remove its name from the list. The notice shall provide for a hearing at least ten days after the date of the date notice is provided. At the hearing the supplier will be given an opportunity to demonstrate substantial compliance. If, in the judgment of the hearing officer, substantial compliance is not demonstrated, the hearing officer shall order the immediate cancellation of registration as a supplier and removal from the list of suppliers or to file petroleum products loading fee reports in the form and manner prescribed by the secretary with respect to special fuel loaded or imported by the supplier. [12/31/96; 3.16.113.9 NMAC - Rn, 3 NMAC 20.14.9 & A, 6/14/01]



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**7-16A-15. BOND REQUIRED OF SUPPLIER. --**

**A. Except as provided in Subsection H of this section, every supplier shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the state corporation commission to transact business in this state as a surety and upon which bond the supplier is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the supplier to the department of all taxes levied by the Special Fuels Supplier Tax Act, together with all applicable penalties and interest thereon.**

**B. In lieu of the bond, the supplier may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.**

**C. The total amount of the bond, cash or securities required of any supplier shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.**

**D. In fixing the total amount of the bond, cash or securities required of any supplier required to post bond, the department shall require an equivalent in total amount to at least two times the amount of the department's estimate of the supplier's monthly special fuel excise tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a supplier shall never be less than one thousand dollars (\$1,000).**

**E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the special fuel excise tax and any penalties and interest for which the supplier is or may at any time become liable, then the supplier shall forthwith, upon written demand of the department mailed to the last known address of the supplier as shown on the records of the department, file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the supplier of all taxes, penalties and interest due pursuant to the Special Fuels Supplier Tax Act.**

**F. Any surety on any bond furnished by any supplier as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, the request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department shall notify promptly the supplier who furnished the bond that the supplier shall, on or before the expiration of the ninety-day period, file with the department a new bond with a surety satisfactory to the department in the**

amount and form required in this section.

**G. The supplier required to file bond with or provide cash or securities to the department in accordance with this section and who is required by any other state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.**

**H. On July 1, 1994, every supplier who, for the twenty-four month period immediately preceding that date, has not been a delinquent taxpayer under the Special Fuels Supplier Tax Act or the Special Fuels Tax Act is exempt from the requirement pursuant to this section to file a bond. A supplier required to file a bond pursuant to the provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to either the Special Fuels Supplier Tax Act or the Special Fuels Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a supplier exempted pursuant to this subsection subsequently becomes a delinquent taxpayer pursuant to the Special Fuels Supplier Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the supplier in writing of the termination.**

**(Laws 1997, Chapter 192, Section 12)**

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### **3.16.114.8 - SECURITY**

A. The department may request security in addition to the bond required under Section 7-16A-15 NMSA 1978 as needed.

B. If any person fails to provide the security required by Section 3.16.114.8 NMAC within thirty (30) days, the department may demand, by certified mail or in person, that the security be provided. If the person does not comply within ten (10) days, the department may institute proceedings to enjoin that person from engaging in business in New Mexico in accordance with Section 7-1-53 NMSA 1978 of the Tax Administration Act.

[2/1/93, 12/31/96, 12/31/97; 3.16.114.8 NMAC - Rn, 3 NMAC 20.15.8 & A, 6/14/01]

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**7-16A-15.1. SPECIAL FUEL USERS--SURETY BOND REQUIRED--EXCEPTIONS.--**

**A. Except as required in Subsection H of this section, every special fuel user with a commercial domicile not located in an International Fuel Tax Agreement jurisdiction shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the public regulation commission to transact business in New Mexico as a surety and upon which bond the special fuel user is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the special fuel user to the department of all taxes levied by the Special Fuels Supplier Tax Act, together with all applicable penalties and interest on the taxes.**

**B. In lieu of the bond, the special fuel user may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.**

**C. The total amount of the bond, cash or securities required of a special fuel user shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.**

**D. In fixing the total amount of the bond, cash or securities required of a special fuel user required to post a bond, the department shall require an amount equivalent to the total estimated tax due for two quarters; provided, however, that the total amount of bond, cash or securities required of a special fuel user shall never be less than five hundred dollars (\$500).**

**E. In the event the department determines that the amount of the existing bond, cash or securities is insufficient to ensure payment to New Mexico of the amount of the special fuel excise tax and penalties and interest for which a special fuel user is or may at any time become liable, the special fuel user, upon written demand from the department mailed to the last known address of the special fuel user as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the special fuel user of all taxes, penalties and interest due pursuant to the Special Fuels Supplier Tax Act.**

**F. A surety on a bond furnished by a special fuel user as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that the request shall not operate to release or discharge the surety from liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of the request to cancel the bond due to filing of a new bond, the department shall promptly notify**

the special fuel user who furnished the bond that the special fuel user, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. A special fuel user who is required to file a bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provision of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. A special fuel user who is required to file a bond pursuant to the provisions of this section and who for the eight consecutive quarters preceding the date of request has not been delinquent filing reports or paying special fuel excise taxes pursuant to the Special Fuels Supplier Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first quarter following the end of the eight-quarter period. If a special fuel user exempted pursuant to this subsection subsequently becomes delinquent, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the special fuel user in writing of the termination.

(Laws 2007, Chapter 110, Section 4)

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**7-16A-16. DELIVERY AND USE OF SPECIAL FUEL PROHIBITED IN CERTAIN CASES. --It is a violation of the Special Fuels Supplier Tax Act to do any of the following acts:**

**A. operate any motor vehicle upon the highways of this state with a connection between a cargo or other tank or container, not considered in the Special Fuels supplier Tax Act as being the motor vehicle's fuel supply tank, and a carburetor or other fuel supply device; fuel supply tanks, including auxiliary fuel supply tanks, shall be separate and apart from cargo tanks or other containers, with no connection by pipe, tube, valve or otherwise;**

**B. sell or deliver to any person or motor vehicle special fuel from any special fuel supply tank or auxiliary special fuel supply tank; or**

**C. deliver special fuel from a cargo tank into the special fuel supply tank of a motor vehicle; provided, however, delivery of liquefied petroleum gases may be made into the special fuel supply tank of a motor vehicle carrying a valid permit under the Special Fuels Supplier Tax Act by a registered and licensed liquefied petroleum gas dealer who is also a special fuel dealer when made by that dealer from the cargo tank of a vehicle operated by that dealer, which tank is specially designed to make this type of special fuel delivery.**

**(Laws 1992, Chapter 51, Section 16)**

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**3.16.115.8 - OFF-LOADING NOT A VIOLATION IN CERTAIN CASES**

Any authorized enforcement employee of the motor transportation division or any authorized law enforcement officer may require that special fuel be off-loaded or otherwise removed from the supply tank of a motor vehicle to eliminate an unsafe or hazardous operating condition.

[2/1/93, 12/31/96; 3.16.115.8 NMAC - Rn, 3 NMAC 20.16.8, 6/14/01]

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**7-16A-19. SPECIAL FUEL USER PERMITS--VIOLATION.--**

**A. A special fuel user whose vehicle is not registered with the department shall acquire from the department, before operating the vehicle on New Mexico highways:**

**(1) a temporary special fuel user permit valid for one calendar day only or for one entry into and one exit out of New Mexico; or**

**(2) a border crossing special fuel user permit, as provided for in Section 1 of this 2018 act.**

**B. A special fuel user applying for a temporary special fuel user permit shall apply for the permit on a form approved by the department.**

**C. The fee for a temporary special fuel user permit is five dollars (\$5.00) for each motor vehicle.**

**D. It is a violation of the Special Fuels Supplier Tax Act for a person to act as a temporary special fuel user without possessing a valid temporary special fuel user permit issued by the department.**

**E. It is a violation of the Special Fuels Supplier Tax Act for a person holding a valid border crossing special fuel user permit to travel in the motor carrier vehicle for which the permit was issued on New Mexico highways outside the area in which the permit authorizes travel, unless the person may otherwise under law engage in that travel. In addition to any other penalty that may apply, a person who violates this provision is subject to a fine of three hundred dollars (\$300).**

**(Laws 2018, Chapter 77, Section 4)**

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**3.16.118.8 - TEMPORARY SPECIAL FUEL USER PERMIT FEE NOT REFUNDABLE**

The temporary special fuel user permit fee is not refundable and may not be claimed as an amount of special fuel tax paid in determining any special fuel excise tax due under Section 7-16A-19 NMSA 1978. This regulation is applicable to special fuel tax returns filed for periods ending on or after December 31, 1996.

[2/1/93, 5/31/97; 3.16.118.8 NMAC - Rn, 3 NMAC 20.19.8 & A, 6/14/01]

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**7-16A-19.1.-- BORDER CROSSING SPECIAL FUEL USER PERMIT.--**

**A. A special fuel user who operates a commercial motor carrier vehicle registered or titled in Mexico, who is engaged primarily in movement across the New Mexico-Mexico border and into or from an international border commercial zone and whose exclusive use of New Mexico highways is limited to an area within ten miles of the New Mexico-Mexico border may apply for, on a form approved by the department, a quarterly, semi-annual or annual border crossing special fuel user permit. The department shall issue the permit if it approves the application and upon payment of the fee for the permit.**

**B. The department shall establish by rule the amount, which shall not exceed the following, of fees for border crossing special fuel user permits:**

**(1) for a quarterly permit, one hundred twenty-five dollars (\$125);**

**(2) for a semi-annual permit, two hundred dollars (\$200); and**

**(3) for an annual permit, three hundred fifty dollars (\$350).**

**C. The department may revoke, after notice and a hearing, the border crossing special fuel user permit of a special fuel user found to have violated the Special Fuels Supplier Tax Act.**

**D. As used in this section, "international border commercial zone" means that part of a commercial zone established by a law of the United States that extends into New Mexico.**

**(Laws 2018, Chapter 77, Section 1)**

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3.12.99.7 DEFINITIONS: As used in this rule:

A. "Department" has the same meaning as defined in Subsection F of 7-16A-2 NMSA 1978.

B. "International border commercial zone" has the same meaning as defined in Subsection D of 7-16A-19.1 NMSA 1978.

C. "Person" has the same meaning as defined in Subsection K of 7-16A-2 NMSA 1978.

D. "Special fuel user" has the same meaning as defined in Subsection R of 7-16A-2 NMSA 1978.

[3.12.99.7 NMAC - N/E, 9/25/2018]

3.12.99.8 TEMPORARY SPECIAL FUEL USER PERMIT:

A. On a form provided by the department, a special fuel user whose vehicle is not registered with the department shall acquire from the department, before operating the vehicle on New Mexico highways, a temporary special fuel user permit valid for one calendar day only or for one entry into and one exit out of New Mexico.

B. A special fuel user whose vehicle is not registered with the department, that applies for a temporary special fuel user permit valid for one calendar day only, for one entry into and one exit out of New Mexico, shall pay five dollars (\$5.00) for each motor vehicle.

C. A special fuel user operating under a temporary special fuel user permit shall pay a special fuel user tax of five cents (\$.05) per mile for each mile traveled in New Mexico.

[3.12.99.8 NMAC - N/E, 9/25/2018]

**3.12.99.9 BORDER CROSSING SPECIAL FUEL USER PERMIT:**

A. A special fuel user who operates a commercial motor carrier vehicle registered or titled in Mexico, who is engaged primarily in movement across the New Mexico-Mexico border and into or from an international border commercial zone and whose exclusive use of New Mexico highways is limited to an area within ten miles of the New Mexico-Mexico border, may apply for, on a form approved by the department, a quarterly, semi-annual or annual border crossing special fuel user permit.

B. The department shall issue the permit if it approves the application and upon payment of the fee for the border crossing special fuel user permit.

C. The fee for the border crossing special fuel user permit shall be:

- (1) for a quarterly permit, one hundred twenty-five dollars (\$125);
- (2) for a semi-annual permit, two hundred dollars (\$200); and
- (3) for an annual permit, three hundred fifty dollars (\$350).

D. A special fuel user holding a valid border crossing special fuel user permit and operating within the specified 10 miles of the New Mexico - Mexico border, as provided above, shall be exempt from the five dollar (\$5.00) temporary special fuel user permit specified in Paragraph (1) of Subsection A and Subsection C of 7-16A-19 NMSA 1978 and exempt from the five cent (\$0.05) per mile special fuel user tax pursuant to Subsections E and F of 7-16A-2.1 NMSA 1978.

E. A special fuel user holding a valid border crossing special fuel user permit and operating outside the specified 10 miles of the New Mexico-Mexico border, shall acquire a temporary special fuel user permit for a fee of five dollars (\$5.00) and shall pay the special fuel user tax of five cent (\$0.05) per mile for each mile traveled in New Mexico.

[3.12.99.9 NMAC - N/E, 9/25/2018]

**3.12.99.10 VIOLATION OF THE SPECIAL FUELS SUPPLIER TAX ACT:**



A. It is a violation of the special fuels supplier tax act for a person to act as a temporary special fuel user without possessing a valid temporary special fuel user permit issued by the department.

B. It is a violation of the special fuels supplier tax act for a person holding a valid border crossing special fuel user permit to travel in the motor carrier vehicle for which the permit was issued on New Mexico highways, outside of the area in which the permit authorizes travel, unless the person may otherwise under law engage in that travel.

C. In addition to any other penalty that may apply, a person who violates the terms of use of a border crossing special fuel user permit, is subject to a fine of three hundred dollars (\$300).

[3.12.99.10 NMAC - N/E, 9/25/2018]

#### 3.12.99.11 REVOCATION OF SPECIAL FUEL USER PERMITS:

A. After notice and a hearing, the department may revoke the border crossing special fuel user permit of a special fuel user found to have violated the special fuels supplier tax act.

B. The hearing shall be conducted pursuant to the tax administration act.

[3.12.99.11 NMAC - N/E, 9/25/2018]

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**7-16A-20. ADMINISTRATION AND ENFORCEMENT OF ACT.** --The department shall interpret the provisions of the Special Fuels Supplier Tax Act. The department shall administer and enforce the collection of the special fuel excise tax, the special fuel inventory taxes and the tax on liquefied petroleum gas, and the Tax Administration Act applies to the administration and enforcement of those taxes.  
(Laws 1992, Chapter 51, Section 20)

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**7-16A-20.1. SPECIAL FUELS--AUTHORITY OF SECRETARY TO TERMINATE INTERSTATE AGREEMENTS.**--The secretary may terminate:

A. a cooperative agreement involving the taxation of special fuels into which the secretary enters with another state, the District of Columbia, the commonwealth of Puerto Rico or any territory or possession of the United States; or

B. a multistate agreement involving the taxation of special fuels into which the secretary enters.

(Laws 2005, Chapter 109, Section 15)

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**7-16A-21. TEMPORARY PROVISION--CONTINUITY OF ACTIONS.**--

A. All taxes due but not paid on liquefied petroleum gas or natural gas or on motor vehicles propelled by such a fuel under the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act remain due until paid or until a final determination is made that the taxes are not due.

B. Any protests, claims for refund, court proceedings or other actions ongoing with respect to liquefied petroleum gas or natural gas or to motor vehicles propelled by such a fuel pursuant to the provisions of the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act shall be finally determined with respect to the applicable provisions of the Special Fuels Supplier Tax Act.

(Laws 1995, Chapter 16, Section 15)

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