

FUEL EXCISE TAX REGULATIONS

Table of Contents

Section		Page
9.1001	TITLE.....	2
9.1002	PURPOSE.....	2
9.1003	RATE OF TAX.....	2
9.1004	DEFINITIONS.....	2
9.1005	LICENSING.....	2
9.1006	MANIFESTS.....	3
9.1007	BILLS OF LADING.....	4
9.1008	FORMS.....	4
9.1009	APPLICABILITY OF TAX.....	5
9.1010	THIRD PARTY EXCHANGES OR CONSIGNMENT SALES.....	5
9.1011	ARIZONA INTERGOVERNMENTAL AGREEMENT.....	5
9.1012	RESERVED.....	7
9.1013	RESERVED.....	7
9.1014	BONDS.....	7
9.1015	DISTRIBUTORS' REQUIREMENTS.....	7
9.1016	CARRIERS' REQUIREMENTS.....	7
9.1017	REFINERS' REQUIREMENTS.....	8
9.1018	RETAILERS' REQUIREMENTS.....	8
9.1019	INVENTORIES.....	8
9.1020	DISCOUNTS.....	8
9.1021	REFUNDS.....	9
9.1022	VIOLATIONS AND PENALTIES.....	10
9.1023	STANDARD PENALTY AMOUNT.....	10
9.1024	REQUEST FOR PRELIMINARY REVIEW.....	11
9.1025	PRELIMINARY REVIEW.....	11

9.1001. **TITLE**

This Chapter is called the Fuel Excise Tax Regulations.

9.1002. **PURPOSE**

The purpose of this chapter is to facilitate the comprehensive and equitable administration and enforcement of the Navajo Nation Fuel Excise Tax with the efficient and timely collection of fuel excise tax revenue.

9.1003. **RATE OF TAX**

A. The tax rate for gasoline shall be eighteen cents per gallon (.18 x number of gallons or fraction thereof).

B. As of July 1, 2010, the tax rate for special fuel shall be twenty-five cents per gallon (.25 x number of gallons or fraction thereof).

9.1004. **DEFINITIONS**

A. All definitions contained in the Uniform Tax Administration Statute, the Tax Administration Regulations, and the Fuel Excise Tax Statute shall apply to these Regulations.

B. "Gasoline" means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles except for special fuel.

C. "Special fuel" means any diesel-engine fuel or kerosene used for the propulsion of a motor vehicle and includes the gasoline/diesel combination commonly referred to as "transmix" but does not include gasoline.

D. In addition, for purposes of the Intergovernmental Agreement between the Office of the Navajo Tax Commission (ONTC) and the Arizona Department of Transportation (ADOT) entitled "Establishing Cooperative Fuel Tax Administration" (approved by the Navajo Tax Commission by Resolution No. TAX-99-145, and approved by the Intergovernmental Relations Committee of the Navajo Nation Council by Resolution No. IGRAP-49-99, hereinafter referred to as "IGA-AZ") and any amendments thereto, the following definitions shall apply:

1. "Fuel" includes liquid use fuel as defined in §3.1.4 of the IGA, and motor vehicle fuel as defined in §3.1.7 of the IGA-AZ.

2 "Retail Facility" as defined in §902(B)(28) of the Fuel Excise Tax shall be deemed a "Vending Location" as defined in §3.1.16 of the IGA-AZ.

3. Any "Authorized Distributor" as defined in §902(B)(3) of the Fuel Excise Tax shall be deemed an "Authorized Importer" as defined in §3.1.1 of the IGA-AZ.

9.1005. **LICENSING**

A. Separate licenses required. Any person intending to engage in the distribution, carrying, refining, or retailing of any amount of fuel within the Navajo Nation shall submit a completed Application for License designating the type of license for which such person is applying. A separate application must be submitted, and a separate license secured, for each activity in which such person will engage, except as indicated in paragraph 9.1005(B) below. A license must be secured regardless whether such person is liable for the Fuel Excise Tax.

Example 1: Yazzie's Fuel Distribution Company seeks to distribute fuel within the Navajo Nation, and will also be using its own company fuel tanker trucks to transport the fuel. Yazzie's Company must submit two separate applications, one for a Fuel Distributor's License and one for a Fuel Carrier's License. Both licenses must be maintained as current and valid in order for Yazzie's Company to avoid a violation.

Example 2: Notah's Fuel Retailer's Corporation is a single business entity, which owns and operates several retail facilities within the

Navajo Nation. Notah's Corporation must apply for and secure a separate Fuel Retailer's License for each and every retail facility at which fuel is being retailed. A license must be maintained as current and valid for each facility in order for Notah's Corporation to avoid a violation.

Example 3: Joe's Fuel Distribution Service is a corporation engaged in distribution of fuel within the Navajo Nation and is liable for payment of the Fuel Excise Tax although the corporation distributes fuel exclusively for use in government vehicles. Joe's Service must still apply for and secure a Fuel Distributor's License, and it must also apply for and secure a Fuel Carrier's License if Joe's will also be transporting fuel within the Navajo Nation.

- B. Exception for fuel carriers. In the case of carriers transporting fuel via cargo tank, any person(s) who transports fuel by two or more fuel transportation vehicles may apply for and secure just one Fuel Carrier's License. The license application and license must list all drivers and vehicles authorized to use the Fuel Carrier's License. The fuel carrier is responsible for adding or deleting any drivers or vehicles during the term of the license.

Example 1: Begay's Fuel Carrying Company seeks to transport fuel within the Navajo Nation, and will be using several fuel tanker trucks to transport the fuel. Begay's Company need only obtain one Fuel Carrier's License, but must list all drivers and vehicles to which the single license pertains.

- C. Compliance with Navajo Business and Procurement Act. Before any license is issued to an applicant or renewed, the ONTC shall make a determination that such applicant is not ineligible under the provisions of 12 NNC §1505(C) of the Navajo Business and Procurement Act. If such applicant is determined to be ineligible, the license application shall be denied.
- D. Notification of denial. When the ONTC denies an application, the applicant shall be notified in writing that the application has been denied.
- E. License must be carried. Any license, or true and exact copy thereof, must be kept in all fuel transportation vehicles at all times.
- F. License fee.
 - 1. The license fee for fuel retailers shall be \$100 per calendar year or portion thereof.
 - 2. The license fee for fuel carriers shall be \$150 per calendar year or portion thereof.
 - 3. The license fee for fuel distributors shall be \$200 per calendar year or portion thereof.
 - 4. No license shall be issued or renewed until the fee is received by the ONTC. All licenses expire at midnight on December 31st.

9.1006. **MANIFESTS**

- A. Compliance with licensing and importation/distribution requirements. Each and every person distributing any amount of fuel via cargo tank must first fully comply with the provisions of §911 and §913(A) of the Fuel Excise Tax. For purposes of §913(A)(1) of the Fuel Excise Tax, the ONTC may pre-issue several manifests to an Authorized Distributor.
- B. Number of manifests. Each fuel load being distributed must have a manifest. A separate manifest, signed by the person accepting the fuel load or portion thereof, is required for every separate delivery of such fuel in the load.

Example 1: Taylor's Fuel Distributorship, Inc. picks up an 8,000-gallon load of fuel at a refinery located in Farmington, New Mexico, completely filling the cargo tank on a fuel tanker truck. Taylor's Authorized

Carrier then proceeds to deliver the fuel at four different retail locations within the Navajo Nation, with each separate delivery amounting to 2,000 gallons unloaded at each retail facility. Taylor's must use four separate manifests for the total 8,000 gallons delivered, since the entire load is delivered at four separate retail locations.

- C. Carrying of manifests. The manifest pertaining to a fuel load shall be carried with such fuel load being distributed until the fuel is resold or removed from the cargo tank.
- D. Information on manifests. The following information must be completed in full on each and every manifest pertaining to any fuel load, or portion thereof (split load):
 - 1. Origin of fuel load; and
 - 2. Date of pickup of fuel load; and
 - 3. Destination/delivery location(s) of fuel load or any portion thereof; and
 - 4. The number of the Bill of Lading for that fuel load, or portion thereof; and
 - 5. A signature certification of the Authorized Distributor and the Authorized Carrier obtaining the fuel load (the Authorized Distributor must sign both certifications in cases where the Authorized Distributor also serves as an Authorized Carrier); and
 - 6. A signature certification of the person accepting the fuel load or any portion thereof, with a notation as to the exact amount of fuel accepted by that person; and
 - 7. A description of the fuel transportation vehicle or cargo tank, including license and vehicle unit numbers; and
 - 8. The total quantity and type(s) of fuel distributed.
- E. Exceptions to requirement of manifests. This section does not apply to a pipeline operating as a common carrier or to the transportation of motor fuel in the fuel supply tanks of motor vehicles.
- F. Fees for manifests. The ONTC may charge appropriate fees for the issuance of manifests, in order to defray administrative costs.

9.1007. **BILLS OF LADING**

Pursuant to §913(A)(2) of the Fuel Excise Tax, when fuel is obtained from a refinery, a bill of lading shall be secured and carried with each load, and the bill of lading number shall be recorded on each Manifest.

Example 1: Blackgoat's Gasoline Delivery Company picks up an 8,000-gallon load of fuel at a refinery located in Phoenix, Arizona, completely filling the cargo tank on a fuel tanker truck. Blackgoat's Authorized Carrier then proceeds to deliver the fuel at four different retail locations within the Navajo Nation, with each separate delivery amounting to 2,000 gallons unloaded at each retail facility. Blackgoat's must use four separate manifests for the total 8,000 gallons delivered because the load is delivered at four separate retail locations.

Blackgoat's Authorized Carrier must complete the bill of lading with the required information and must carry the bill of lading in the fuel truck at all times. Blackgoat's must record the number of the bill of lading on each manifest used for each delivery.

9.1008. **FORMS**

Forms required. In addition to the Application for License, the following forms must be submitted to the ONTC in a timely manner as herein specified:

- 1. Fuel Excise Tax Return (Forms 900, 901, 902, and 903 - filed by distributors);
- 2. One of the four original non-carbon copies of the Manifest(s) issued by the

- ONTC (filed by distributors - must be submitted with Form 900);
3. Carrier's Reporting Form (filed by carriers);
 4. Refiner's Reporting Form (filed by refiners);
 5. Retailer's Reporting Form (filed by retailers);
 6. Fuel Excise Tax Return (Forms 904 and 905 - filed by retailers who have acquired fuel on which the tax has not been paid).

9.1009. **APPLICABILITY OF TAX**

- A. State and federal government vehicles. There shall be no exemption for fuel distributed for use in state and federal government vehicles.

Example 1: The State of Arizona owns and operates school buses, which serve state elementary and secondary public schools located within the Navajo Nation. All fuel distributed for use in such school buses is taxed, and a refund is not allowed for such use.

Example 2: The State of New Mexico owns and operates state vehicles for use by state government employees on official state business. All fuel distributed for use in such vehicles is taxed, and a refund is not allowed for such use.

- B. Vehicles used off-road. There shall be no exemption for fuel distributed for use in off-road vehicles.

Example 1: Reservation Coal Mining Company, Inc. owns and operates several coal-haul trucks. In the course of Reservation Company's daily mining activities, these trucks are only incidentally operated on highways and roads within the Navajo Nation, and are not primarily used for transportation of persons or agricultural purposes. Nevertheless, all fuel distributed for use in such vehicles is taxed, and a refund is not allowed for such use.

Example 2: Joe's Road and Building Construction Company own and operate earth-moving, paving, and grading equipment and vehicles. In the course of Joe's daily construction work, the equipment and vehicles are only incidentally operated on highways and roads within the Navajo Nation, and are not primarily used for transportation of persons or agricultural purposes. All fuel distributed for use in such equipment and vehicles are taxed, and a refund is not allowed for such use.

9.1010. **THIRD PARTY EXCHANGES OR CONSIGNMENT SALES**

The owner of any fuel at the time of importation into the Navajo Nation shall be responsible for all filings and payments under this statute, notwithstanding the existence of any contractual agreements.

Example 1: Jackson Oil Company, Inc. seeks to distribute fuel to several retail facilities within the Navajo Nation, which only sell Name-Brand Gasoline. In order to acquire Name-Brand Gasoline from the refinery, Jackson Oil must contract with a fuel distributor having a franchise to distribute the Name-Brand Gasoline.

Jackson Oil contracts with Quality Gasoline Distributors Company, who has such a franchise. Jackson Oil then acquires the Name-Brand Gasoline from the refinery on the account of Quality, and the refinery bills Quality for the load acquired by Jackson Oil. Pursuant to an agreement with Quality that Jackson will be billed by Quality for the cost of the fuel load, Jackson will pay Quality's invoice by some future date. Notwithstanding this sale of Name-Brand Gasoline on a consignment basis, the owner of the fuel load at the time of importation is Jackson Oil Company. Thus, as a

distributor, Jackson Oil Company is liable for filing all required documents and making all required payments.

9.1011. **ARIZONA INTERGOVERNMENTAL AGREEMENT**

The following provisions apply only to activities within the Arizona portion of the Navajo Nation:

- A. Arizona licensing requirements. No Authorized Distributor shall knowingly manufacture or refine fuel, nor import fuel, nor purchase fuel for resale outside the Navajo Nation by such Authorized Distributor or any other person, unless said Authorized Distributor is also licensed as a fuel supplier under Arizona law.
- B. Monthly reporting requirements. On or before the 20th day of each month, all Authorized Distributors shall file the Form 900 with the ONTC and the ADOT. In addition, any distributor of fuel intended for use in aircraft shall report all gallons distributed to the ONTC and the ADOT on or before the 20th day of the month immediately following the month in which fuel was distributed.
- C. Fuel supplier records to ADOT. All Authorized Distributors shall authorize and instruct their fuel suppliers located outside the State of Arizona to provide the ADOT with records of sales of fuel to such Authorized Distributors, in the same form as those records required of suppliers and vendors under Arizona law.
- D. Maintenance of records. All Authorized Distributors and Authorized Retailers shall prepare and maintain the same books and records pertaining to their fuel business as must be prepared and maintained by suppliers and vendors licensed under Arizona law.
- E. ONTC and ADOT access to records. Upon reasonable notice, all licensees shall permit the ONTC and the ADOT access and the opportunity to examine their books and records.
- F. Retailer invoices.
 1. Use class vehicles. All retail facilities within the Navajo Nation shall issue invoices in the form provided by the ONTC to purchasers of fuel, which is dispensed into the fuel supply tanks of motor vehicles, and shall maintain a copy of such invoice for a period of four years from the date of sale.
 2. Light-use class vehicles. All retail facilities who dispense fuel into the fuel supply tanks of motor vehicles shall maintain appropriate documentation indicating the quantity of fuel purchased by the retailer, including the date and place of such purchase, and the quantity of fuel sold by the retailer which was placed into the fuel supply tanks of motor vehicles.
- G. ADOT access to records. All Authorized Distributors shall provide the ADOT access to their books and records that pertain to fuel acquisition and usage for a period of four years after the payment of taxes.
- H. Documents required by ADOT. All Authorized Distributors shall send to the ADOT copies of the bills of lading and purchase invoices for all fuel purchases which exceed one thousand gallons per delivery at any location. The documents shall be sent to the ADOT no later than the last day of the month following the month in which the delivery was made.
- I. Joint compliance visits. Upon reasonable notice, all licensees shall permit the ONTC and the ADOT to conduct joint compliance visits to wholesale and retail facilities to examine inventory and review accounting records as they pertain to fuel sales, purchases, and distribution.
- J. No refund of Arizona tax.
 1. Notice. All retailers shall keep posted at all times on all fuel pumps or other fuel dispensing apparatus at any and all retail facilities located within the Navajo Nation a notice regarding the Arizona fuel excise tax reading substantially as follows:
"NO REFUND OF ARIZONA FUEL TAXES IS AVAILABLE UNDER A.R.S. § 28-

5610(A)(3) OR (4) OR A.R.S. § 28-5716(A)(3) OR (4)."

2. No Arizona refund available. Distributors, retailers, and consumers shall not be entitled to claim refunds of the Arizona fuel tax.
- K. ADOT inspection and surveys. All licensees shall permit the ADOT to conduct reasonable inspections, surveys, studies, and sampling within the Navajo Nation to become informed about any matter relevant to the proper calculation of the amount of taxable and exempt fuel for purposes of the variables used in the formula contained in Exhibit 2 of the IGA-AZ.
- L. Arizona inspection. All Authorized Distributors shall permit Arizona and officials of the ONTC at Ports of Entry or on highways to inspect any tank truck or similar vehicle importing fuel into the Arizona portion of the Navajo Nation, and shall present licenses or bills of lading upon request. Any person discovered importing fuel illegally into the Navajo Nation or using a fraudulent bill of lading shall be subject to the penalties provided for by laws of the Navajo Nation and may be immediately detained by Arizona officials.
- M. Copies of the IGA-AZ. Any person may request a copy of the IGA-AZ from the ONTC. The ONTC may charge a nominal fee for supplying such copies, to defray copying and administrative costs.

9.1012. RESERVED

9.1013. RESERVED

9.1014. BONDS

- A. Release of bond. Any bond posted by an Authorized Distributor for the benefit of the ONTC shall be released only upon the following circumstances:
 1. Receipt by the ONTC of a request by the Authorized Distributor that the bond be released; and
 2. Review and determination by the ONTC that the Authorized Distributor has been in full compliance with all applicable provisions of the Fuel Excise Tax and these regulations for the entire duration that the bond has been held, or a review and determination by the ONTC that the Authorized Distributor is no longer distributing fuel within the Navajo Nation.
- B. Forfeiture of bond. Any bond posted by an Authorized Distributor may be forfeited for nonpayment of taxes, and may be collected by the ONTC no sooner than 60 days past the due date for payment of taxes owed.

9.1015. DISTRIBUTORS' REQUIREMENTS

In addition to any appropriate licensing requirements, the following shall apply:

- A. Reporting and payment. Forms 900, 901, 902, and 903, accompanied by payment in full of any Fuel Excise Tax due, are due on the 20th day of each month for the preceding month's activity.
- B. Recordkeeping. All distributors shall keep all records, which pertain to or relate in any manner to the distribution of fuel for a period of four years beyond the period to which the records relate. Such records shall be maintained separately for each reporting period during which fuel is distributed, and shall contain at least the following:
 1. The total amount of fuel distributed during the period; and
 2. The information required pursuant to Paragraphs 9.1006 and 9.1007 of this Chapter.

9.1016. CARRIERS' REQUIREMENTS

In addition to any appropriate licensing requirements, the following shall apply:

- A. Reporting. The Form NN-CAR Carrier's Report is due on the 25th day of each month

for the preceding month's activity.

- B. Recordkeeping. All carriers shall keep all records, which pertain to or relate in any manner to the carrying of fuel for a period of four years beyond the period to which the records relate. Such records shall be maintained separately for each reporting period during which fuel is carried, and shall contain at least the following:
 - 1. The total amount of fuel carried during the period; and
 - 2. The information required pursuant to Paragraphs 9.1006 and 9.1007 of this Chapter.

9.1017. REFINERS' REQUIREMENTS

In addition to any appropriate licensing requirements, the following shall apply:

- A. Reporting. The Form NN-REF Refiner's Report for the first calendar quarter is due April 20th, for the second calendar quarter on July 20th, for the third calendar quarter on October 20th, and for the fourth calendar quarter on January 20th.
- B. Recordkeeping. Each refinery shall maintain and preserve, for four years beyond the end of the period to which the records relate, all records, which pertain to or relate in any manner to its sales of fuel at each refinery. Such records shall be maintained separately for each reporting period during which the refiner sells fuel, and shall contain at least the following:
 - 1. All inventory or fuel stocks on hand at the refinery; and
 - 2. All fuel produced during the period by the refinery; and
 - 3. All fuel sold during the period by the refinery; and
 - 4. All distributors, whether registered or not, to whom the refinery sold fuel during the period.

9.1018. RETAILERS' REQUIREMENTS

- A. Reporting and payment. The FORM NN-RET Retailer's Report for the first calendar quarter is due April 25th, for the second calendar quarter on July 25th, for the third calendar quarter on October 25th, and for the fourth calendar quarter on January 25th.

In addition, a Form 904 is required for all fuel purchased by the retailer on which the Fuel Excise Tax has not been collected from the retailer by the distributor.

- B. Recordkeeping. Each retailer shall maintain and preserve, for four years beyond the end of the period to which the records relate, all records, which pertain to or relate in any manner to its sales of fuel at each retail facility. Such records shall be maintained separately for each reporting period during which the retailer sells fuel, and shall contain at least the following:
 - 1. All inventory or fuel stocks on hand at the retail facility; and
 - 2. All fuel sold for the period by the retailer from each retail facility; and
 - 3. All distributors, whether registered or not, from whom the retailer acquired fuel during the period.

9.1019. INVENTORIES

- A. Inventory and payment of tax required of all owners. Every owner of fuel storing, controlling, transporting, holding or otherwise possessing any amount of fuel for which a fuel inventory is required under §908 of the Fuel Excise Tax must submit a Retailer's Fuel Inventory Report and Fuel Excise Tax Return with all inventory indicated, accompanied by payment in full of the tax due on such inventory.
- B. Refund requests for tax on inventory. If such owner is entitled to a refund of Fuel Excise Tax under any of the exemptions listed in §909 of the Fuel Excise Tax, such owner may submit a Refund Request Form along with the Fuel Inventory Report and Return.

9.1020. DISCOUNT

Any allowable discount for timely payment of the Fuel Excise Tax shall be claimed on the Fuel Excise Tax Return (Form 900). The Authorized Distributor shall deduct from the total number of gallons reported on the return one-half of one percent of the number of gallons reported (.005 x gallons). The Authorized Distributor shall then remit full payment of the Fuel Excise Tax on the remaining gallons.

No discount shall be permitted unless the Form 900 is timely filed with the ONTC along with full payment of the tax due.

9.1021. REFUNDS

Any person seeking a refund shall submit a written request to the ONTC, indicating the basis for entitlement to the refund. Refund requests shall not be honored unless accompanied by proof of payment of all applicable Fuel Excise Tax or taxes due by the person seeking the refund, and must be submitted to the ONTC within one calendar year after the date of purchase by such person of the fuel for which a refund is being sought.

A. Consumer refunds. Refunds based on exemptions listed in §909 of the Fuel Excise Tax shall be available only to consumers who show proof of the following:

1. That fuel for which a refund of the Fuel Excise Tax is being sought was purchased at a retail facility located within the Navajo Nation; and
2. That such fuel was purchased at a price which has included the Navajo Fuel Excise Tax; and
3. That such fuel was purchased by the consumer applying for a refund of the Fuel Excise Tax, which proof shall consist only of an original receipt or non-carbon reproduction thereof, any kind of photocopy being unacceptable; and
4. Applicability of an exemption under §909 of the Fuel Excise Tax for the fuel sale for which a refund is being requested.

Example 1: Mr. Manygoats purchases ten gallons of fuel, which he then dispenses into the tank of a gasoline-powered generator, that he uses to provide electricity to his home. Mr. Manygoats may submit to the ONTC a Refund Request Form, with the required information, an explanation of his use of the fuel, and the original receipt documenting his purchase of the fuel.

Pursuant to §909(B) of the Fuel Excise Tax, Mr. Manygoats is entitled to a refund of the Fuel Excise Tax on the ten gallons purchased, provided that he submits the Refund Request Form and supporting documentation within one calendar year from the date he purchased the fuel.

Example 2: Reservation Chapter owns and operates cars, trucks, and earth-moving equipment. A chapter employee purchases 200 gallons of fuel from a retail facility, paying the Fuel Excise Tax on the purchase. This fuel is then transported by the employee to the chapter vehicle yard and dispensed into the chapter's vehicles, which are used exclusively by chapter employees on chapter business. Reservation Chapter may submit to the ONTC a Refund Request Form, with the required information, an explanation of the chapter's use of the fuel, and the original receipt(s) documenting the chapter's purchase of the fuel. Pursuant to §909(D) of the Fuel Excise Tax, Reservation Chapter is entitled to a refund of the Fuel Excise Tax on the 200 gallons purchased, provided that it submits the Refund Request Form and supporting documentation within one calendar year from the date of purchase of fuel.

Example 3: Mr. Jones purchases ten gallons of fuel, which he then dispenses into the tank of a tractor that he uses for agricultural work such as grading and plowing of his cornfield. Mr. Jones may submit to the ONTC a Refund Request Form, with the required information, an explanation of his use of the fuel, and the original receipt documenting his purchase of the fuel. Pursuant to §909(A) of the Fuel Excise Tax, Mr. Jones is entitled to a refund of the Fuel Excise Tax on the ten gallons purchased, provided that the submits the Refund Request Form and supporting documentation within one year of the date he purchased the fuel.

- B. Refunds to distributors and retailers. Any application for refund by a distributor or retailer under §910 of the Fuel Excise Tax must be accompanied by a complete description of the method of loss or destruction. The ONTC may inspect a distributor's fuel transportation vehicle or devices and/or a retailer's facilities to verify such loss or destruction.

9.1022. VIOLATIONS AND PENALTIES

The determination and administration of violations and penalties described under §§917-918 of the Fuel Excise Tax shall be governed by the following provisions.

- A. The following penalties apply:
1. Distributors and carriers. Distributors and carriers shall be subject to immediate suspension of their license(s) and immediate detention and/or impoundment of fuel load, vehicles and/or property.
 2. Refiners and retailers. Refiners and retailers shall be subject to immediate suspension of their license(s) and immediate detention and/or impoundment of fuel inventory, vehicles, and/or property, and immediate closure of refinery or retail facility, pending a preliminary review.
- B. Suspension and revocation of license. The ONTC shall issue a Notice of License Suspension or Revocation indicating the effective date of suspension or revocation. Automatic suspension is deemed effective as of the first date of any violation, pending a preliminary review. Any and all activity requiring a license performed or occurring after the date of automatic suspension shall constitute a separate and additional violation.
- C. Detention or impoundment. For good cause, the ONTC may immediately detain and impound, without prior notice, any fuel loads and/or inventory, and fuel transportation vehicles and/or property, pending a preliminary review.
- D. Closure of refinery or retail facility. The ONTC shall issue a Notice of Closure indicating the effective date of closure of a refinery or retail facility. Immediately thereafter, the ONTC may close the refinery or retail facility, pending a preliminary review. The Notice shall indicate the specific violation(s) and the starting date of the violation(s).

9.1023. STANDARD PENALTY AMOUNT

Pursuant to §918(F)(2)(a) of the Fuel Excise Tax, a civil penalty between \$500.00 and \$1500.00 shall apply to all violations as follows:

<u>Violation:</u>	<u>Amount of penalty per violation</u>
• Failure to present required documents	\$500.00 per day
• Failure to permit inspection of fuel or property	\$500.00 per attempted inspection by the ONTC or ADOT
• Unlawful distribution of fuel	\$1500.00 per load

- Unlawful transportation of fuel \$1500.00 per load
- Unlawful refining of fuel \$1500.00 per day
- Unlawful retailing of fuel \$1500.00 per day
- Failure to file a report or return \$1000.00 per report due
- Failure to remit timely payment of any Fuel Excise Tax due \$1000.00 per period for which payment is due
- Making a false statement on any document submitted to the ONTC or the ADOT \$500.00 per statement
- Failure to keep records (including failure to account for all manifests) \$500.00 per inspection or audit visit by the ONTC
- Collection of a refund or discount of Fuel Excise Tax or taxes without being lawfully entitled \$1500.00 per discount or payment issued by the ONTC
- Causing to be paid to any other person a refund or discount of the Fuel Excise Tax or taxes, to which refund or discount such person is not lawfully entitled \$1500.00 per discount or payment issued by the ONTC
- Violation of any applicable Navajo Nation law or any applicable federal law at any time during which the violator is licensed \$500.00 per violation
- Any other violation of an applicable provision of the Fuel Excise Tax \$500.00 per violation
- Failure to post required notices at a retail facility \$500.00 per pump

9.1024. REQUEST FOR PRELIMINARY REVIEW

- A. Request for preliminary review. The alleged violator shall have ten days from the date of receipt of a notice of suspension, impoundment, closure, or other penalty to request a preliminary review from the ONTC.
- B. 30 days for review. The ONTC must hold a preliminary review within 30 calendar days after the ONTC's receipt of a request from the alleged violator.

9.1025. PRELIMINARY REVIEW

At the preliminary review, the alleged violator may present any evidence in support of his contention that he has committed no violation. The alleged violator shall have the burden to prove, by a preponderance of the evidence, that any action taken pursuant to §§917-918 of the Fuel Excise Tax, or Paragraph 9.1023-24 of these regulations,

should be revoked or discontinued. The preliminary hearing shall result in the following actions:

- A. License suspension. The ONTC may determine to continue a license suspension for an appropriate period, or to lift such suspension.
- B. License revocation. The ONTC may determine to revoke a license.
- C. Lifting of license suspension. Upon a decision to lift a license suspension, the ONTC shall reinstate the license, indicating the effective date of reinstatement, which shall be no later than ten days after the determination to reinstate.
- D. Continuation of closure. The ONTC may determine to continue the closure of a refinery or retail facility for an appropriate period, or to rescind such closure.
- E. Closure. The ONTC may determine to close a refinery or retail facility.
- F. Rescind closure. Upon a decision to rescind a closure, the ONTC shall permit the reopening of a refinery or retail facility, and indicate the effective date of the permission to reopen, which shall be no later than ten days after the determination to rescind.
- G. Continuation of impoundment. The ONTC may determine to continue the impoundment of fuel, vehicles, or other property for an appropriate period of time, or to release such fuel and/or property to the person from whom it was seized.
- H. Sale after impoundment. If impoundment continues for at least 15 days with no proof submitted that any outstanding liability under the Fuel Excise Tax has been paid in full, or other payment arrangements acceptable to the ONTC have been made, the ONTC may sell such fuel and/or property to satisfy the liability for taxes.
- I. Release of impounded property. If the ONTC determines to release fuel, vehicles, or other property, it shall, within 24 hours after the determination to release is made, notify the person from whom such fuel, vehicles, or other property was seized of the determination to release, indicating the effective date of release, which shall be no later than ten days after the determination to release.