

ARTICLE 19 Petroleum Products

Section

57-19-1 to 57-19-22	Repealed.
57-19-23	[Oxygenated fuels]; prohibited acts.
57-19-24	Repealed.
57-19-25	Short title.
57-19-26	Purpose.
57-19-27	Definitions.
57-19-28	Duties of the board; authority of the director.
57-19-29	Quality standards.
57-19-30	Inspection of measuring devices.
57-19-31	Inspection and certification of vehicle tanks used as measures.
57-19-32	Labeling.
57-19-33	Deceit; petroleum products; purchasers.
57-19-34	Fees.
57-19-35	Money collected.
57-19-36	Penalties; administrative procedures; appeals.
57-19-37	Injunction.
57-19-38	Aversive or bittering agent in engine coolant and antifreeze; liability limitation; exceptions; penalty.

57-19-1 to 57-19-22. Repealed.

Repeals. — Laws 1993, ch. 98, § 14 repeals 57-19-1 to 57-19-22 NMSA 1978, as amended or enacted by Laws 1937, ch. 102, §§ 2 to 6, 14, Laws 1959, ch. 302, §§ 1 to 3, 5, 11, Laws 1973, ch. 117, §§ 4 to 6, 8 and 9, Laws 1977, ch. 71, §§ 1 to 5, Laws 1979, ch. 171, § 1 and Laws 1987, ch. 91, §§ 1 and 2, relating to petroleum products, effective July 1, 1993. For provisions of former sections, see the 1987 Replacement Pamphlet.

57-19-23. [Oxygenated fuels]; prohibited acts.

No supplier of gasoline shall prohibit or prevent a wholesaler or retailer of gasoline from selling oxygenated fuels at a location owned by the wholesaler or retailer, provided that:

A. a wholesaler or retailer shall not represent any oxygenated fuel as the branded product of the supplier without the consent of the supplier and shall sell and represent such oxygenated fuels in a manner not inconsistent with reasonable and material terms and conditions in any contract with the supplier and in conformity with the provisions of the Petroleum Marketing Practices Act, 15 U.S.C. 2801 et seq. However, no contractual term or condition shall be construed to prohibit or prevent the blending of oxygenates with gasoline by the wholesaler or retailer; and

B. any supplier who furnishes during any month fifty percent or more of its gasoline sold in New Mexico in such manner and form that any oxygenate can be added by the wholesaler or retailer is exempt from the requirements of this section during each such month.

History: 1978 Comp., § 57-19A-1, enacted by Laws 1987, ch. 91, § 1.

Compiler's notes. — Laws 1988, ch. 15, § 2, effective February 25, 1988, repealed Laws 1987, ch. 91, § 3, which repealed this section effective July 1, 1989.

Although Laws 1987, ch. 91, § 1 codified this section in Article 19A, this section was recompiled in Article

19 as a more logical location.

57-19-24. Repealed.

Repeals. — Laws 1993, ch. 98, § 14 repeals 57-19-24 NMSA 1978, as enacted by Laws 1987, ch. 91, § 2, relating to injunctions, effective July 1, 1993. For provisions of former section, see the 1987 Replacement Pamphlet.

57-19-25. Short title.

This act [57-19-25 to 57-19-37 NMSA 1978] may be cited as the "Petroleum Products Standards Act".

History: Laws 1993, ch. 98, § 1.

57-19-26. Purpose.

It is the purpose of the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978] to guarantee adequate quality and quantity standards for petroleum products through a strong and comprehensive program involving inspection, sampling, testing and enforcement measures.

History: Laws 1993, ch. 98, § 2.

57-19-27. Definitions.

As used in the Petroleum Products Standards 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 American society for testing and materials specification for biodiesel fuel, B100, blend stock for distillate fuels;
- B. "board" means the board of regents of New Mexico state university;
- C. "dealer" means a dealer as defined by the Special Fuels Supplier Tax Act [7-16A-1 NMSA 1978];
- D. "department" means the New Mexico department of agriculture;
- E. "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle;
- F. "director" means the director of the New Mexico department of agriculture;
- G. "distributor" means a distributor as defined by the Gasoline Tax Act [7-13-1 NMSA 1978];
- H. "lubricating oil" means any oil used to lubricate transmissions, gears or axles;
- I. "motor fuel" means any liquid product used for the generation of power in an internal combustion engine, excluding liquified petroleum gases and aviation fuels;
- J. "motor oil" means oil for use in lubricating internal combustion engines;
- K. "person" means any natural person, firm, partnership, association or corporation;
- L. "petroleum product" means motor fuel, kerosene, lubricating oil, motor oil, anti-freeze or brake fluid; and

M. "retailer" means any person who sells motor fuel and delivers the motor fuel into the supply tanks of motor vehicles.

History: Laws 1993, ch. 98, § 3; 2007, ch. 208, § 1.

Cross references. — For the department of agriculture, see 76-1-1 NMSA 1978.

The 2007 amendment, effective June 15, 2007, added Subsections A and E to provide definitions of "biodiesel" and "diesel fuel".

57-19-28. Duties of the board; authority of the director.

A. The board is responsible for the administration and enforcement of the provisions of the Petroleum Products Standards Act. The board shall adopt rules and regulations necessary to administer and enforce the provisions of that act. The board shall provide public notice and allow public comment on all proposed rules and regulations.

B. The director shall have the authority to:

(1) inspect, investigate, analyze and take appropriate actions to administer and enforce the provisions of the Petroleum Products Standards Act;

(2) enter any commercial premises from which petroleum products are offered for sale during normal business hours. If the premises are not open to the public, the director shall present the director's credentials and enter only with consent from the commercial entity. If no consent is given, the director shall obtain a search warrant;

(3) collect or cause to be collected samples of petroleum products offered for sale and cause such samples to be tested or analyzed to determine if they are in compliance with the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(4) issue and enforce stop-sale, hold and removal orders with respect to a petroleum product kept, offered or exposed for sale in violation of the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(5) require distributors and retailers to retain records pertaining to petroleum product purchases and sales for a period of not more than one year;

(6) maintain and operate a petroleum product testing laboratory to ensure that all petroleum products offered for sale in New Mexico meet standards prescribed in the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(7) issue and enforce stop-use orders for measuring equipment or vehicle tanks that are used commercially and that do not conform to the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act; and

(8) delegate to authorized representatives any of the responsibilities for the proper administration of the Petroleum Products Standards Act.

C. If in consultation with the secretary of energy, minerals and natural resources and pursuant to regular, periodic monitoring, the director determines that sufficient amounts of biodiesel are not available to meet the requirements of Section 57-19-29 NMSA 1978 or that the price of the biodiesel blend significantly exceeds the price of diesel fuel for at least two months, the director shall suspend those requirements for a period of up to six months.

History: Laws 1993, ch. 98, § 4; 2007, ch. 208, § 2.

The 2007 amendment, effective June 15, 2007, added Subsection C.

57-19-29. Quality standards.

A. Unless modified by regulation of the board, the quality standards, tests and methods of conducting analyses on petroleum products manufactured, kept, stored, sold or offered for sale in New Mexico shall be those last adopted and published by the American society for testing and materials or the society of automotive engineers and shall be used to determine compliance with the Petroleum Products Standards Act and regulations adopted pursuant to that act. In the absence of a petroleum product quality standard, test or method from the American society for testing and materials or the society of automotive engineers, the board may adopt a regulation that establishes a quality standard, test or method to conduct analyses on petroleum products.

B. After July 1, 2010 and before July 1, 2012, all diesel fuel sold to state agencies, political subdivisions of the state and public schools for use in motor vehicles on the streets and highways of this state shall contain five percent biodiesel, except that this standard may be temporarily suspended by the director in accordance with Section 57-19-28 NMSA 1978.

C. On or after July 1, 2012, all diesel fuel sold to consumers for use in motor vehicles on the streets and highways of this state shall contain five percent biodiesel, except that this standard may be temporarily suspended by the director in accordance with Section 57-19-28 NMSA 1978. History: Laws 1993, ch. 98, § 5; 2007, ch. 208, § 3.

The 2007 amendment, effective June 15, 2007, added Subsections B and C.

57-19-30. Inspection of measuring devices.

A. The director shall inspect all equipment used commercially in measuring or dispensing petroleum products in the state. The director shall ascertain that all such equipment is correct and accurate. The specifications, tolerances and other requirements for equipment used commercially in measuring petroleum products shall be set by regulations adopted by the board.

B. No person shall refuse to permit the director or his authorized representative to inspect, test and seal as necessary any commercial device designed to measure and dispense petroleum products. No person shall break the seal without permission from the director or his authorized representative. A broken seal on a commercial device designed to measure or dispense petroleum products shall be prima facie evidence of a violation of the Petroleum Products Standards Act.

History: Laws 1993, ch. 98, § 6.

57-19-31. Inspection and certification of vehicle tanks used as measures.

A. The director shall establish calibration stations to inspect, measure and calibrate the capacity of a vehicle tank used as a measure to deliver petroleum products in New Mexico. The director shall determine where to locate the stations.

B. The owner or operator of a vehicle tank used as a measure to deliver petroleum products in the state shall notify the director before he uses the vehicle tank, and the director shall set a time to inspect and calibrate the vehicle tank at a calibration station. The director may accept calibration certificates from other agencies.

History: Laws 1993, ch. 98, § 7.

57-19-32. Labeling.

A. No person shall sell, offer for sale or permit the sale of any petroleum product unless there is firmly attached or painted on the container or dispenser from which the petroleum product is offered for sale a sign or label stating the grade or type of product being offered for sale. The sign or label shall be plainly, visibly and prominently displayed in a manner prescribed by regulation of the board.

B. The board may identify petroleum products of a special nature, composition or quality, and it may establish labeling requirements for such products.

C. A sign or label used in connection with automotive motor or lubricating oil shall include the society of automotive engineers viscosity grade classification number preceded by the letters "SAE".

History: Laws 1993, ch. 98, § 8; 1998, ch. 20, § 1.

The 1998 amendment, effective March 5, 1998, deleted "and the American petroleum institute service classification preceded by the words 'API service'" at the end of Subsection C.

57-19-33. Deceit; petroleum products; purchasers.

No person shall store, sell, offer or advertise for sale a petroleum product that may deceive, tends to deceive or has the effect of deceiving the purchaser of that product about the composition, grade, quantity or price of the product or that the product meets the standards prescribed by the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978] and regulations adopted pursuant to that act.

History: Laws 1993, ch. 98, § 9.

57-19-34. Fees.

The board may authorize the director to establish and publish a schedule of fees to recover the cost of services performed by the director at the request of a person or firm.

History: Laws 1993, ch. 98, § 10.

57-19-35. Money collected.

All money collected pursuant to the provisions of the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978] shall be deposited with the board of regents of New Mexico state university for use by the department in carrying out the provisions of that act.

History: Laws 1993, ch. 98, § 11.

57-19-36. Penalties; administrative procedures; appeals.

A. No person, by himself, by his servant or agent or as the servant or agent of another person shall:

(1) violate the provisions of the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978];

(2) violate any regulation adopted pursuant to the Petroleum Products Standards Act;
or

(3) misrepresent a petroleum product as meeting the standards of the Petroleum

Products Standards Act.

B. Any person who violates Subsection A of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. The board shall establish a system of administrative penalties for violations of the Petroleum Products Standards Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt rules that meet the following minimum requirements:

(1) the maximum amount of any administrative penalty shall not exceed one thousand dollars (\$1,000) for any one violation of the Petroleum Products Standards Act by any person;

(2) violations for which administrative penalties may be assessed shall be clearly defined, along with a scale of administrative penalties relating the amount of the administrative penalty to the severity and frequency of the violation;

(3) provisions shall be included for due process, including proper notification of administrative proceedings, right to discovery of charges and evidence and appeal procedures; and

(4) prior to assessing administrative penalties pursuant to the provisions of the Petroleum Products Standards Act, the department shall comply with Paragraphs (2) and (3) of this subsection.

D. Appeals from decisions of the director regarding the assessment of an administrative penalty shall be to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1993, ch. 98, § 12; 1998, ch. 55, § 51; 1999, ch. 265, § 54.

Cross references. — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

The 1998 amendment, effective September 1, 1998, in Subsection B, substituted "is" for "shall be"; in Subsection C, substituted "rules" for "regulations"; and rewrote Subsection D.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection D.

Compiler's notes. — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

57-19-37. Injunction.

A. In order to ensure compliance with, and in order to enforce the provisions of, the Petroleum Products Standards Act [57-19-25 to 57-19-37 NMSA 1978] the director may apply to a court of competent jurisdiction to have a person enjoined from engaging in a practice prohibited by that act.

B. Upon application to a court for the issuance of an injunction against a person who is not complying with the provisions of the Petroleum Products Standards Act, the court may issue an order to restrain the person temporarily from engaging in the prohibited practice. The court shall hear the matter and, upon a preponderance of the evidence that the person is not complying with the provisions of the Petroleum Products Standards Act, the court shall enjoin the person from engaging in the prohibited practice.

History: Laws 1993, ch. 98, § 13.

Severability clauses. — Laws 1993, ch. 98, § 15 provides for the severability of the act if any part or application thereof is held invalid.

57-19-38. Aversive or bittering agent in engine coolant and antifreeze; liability limitation; exceptions; penalty.

A. Engine coolant or antifreeze sold in this state after January 1, 2006 that is manufactured after July 1, 2005 and that contains more than ten percent ethylene glycol shall include denatonium benzoate at a minimum of thirty parts per million and a maximum of fifty parts per million as an aversive or bittering agent within the product so as to render it unpalatable. A manufacturer or packager of engine coolant or antifreeze subject to the provisions of this section shall maintain a record of the trade name, scientific name and active ingredients of an aversive or bittering agent used pursuant to this section. Information and documentation maintained pursuant to this section shall be furnished to a member of the public upon request.

B. The requirements of this section apply only to manufacturers, packagers, distributors, recyclers or sellers of engine coolant or antifreeze.

C. A manufacturer, packager, distributor, recycler or seller of engine coolant or antifreeze that is required to contain an aversive or bittering agent pursuant to this section is not liable to any person for personal injury, death, property damage, damage to the environment or natural resources or economic loss that results from the inclusion of denatonium benzoate in engine coolant or antifreeze.

D. The limitation on liability provided in Subsection B of this section is only applicable if denatonium benzoate is included in engine coolant or antifreeze in the concentrations mandated by this section. The limitation on liability provided in Subsection B of this section does not apply to a particular liability to the extent that the cause of that liability is unrelated to the inclusion of denatonium benzoate in engine coolant or antifreeze.

E. No political subdivision of this state shall have authority to establish or continue in effect a prohibition, limitation, standard or other requirement relating to the inclusion of an aversive or bittering agent in engine coolant or antifreeze, with respect to retail containers containing less than fifty-five gallons of engine coolant or antifreeze, which is different from, or in addition to, the provisions of this section.

F. The provisions of this section do not apply to the sale of a motor vehicle that contains engine coolant or antifreeze.

G. The New Mexico department of agriculture has the authority to inspect, investigate, analyze and take appropriate actions to administer and enforce the provisions of this section.

H. A person who violates the provisions of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2005, ch. 62, § 1.

Effective dates. — Laws 2005, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.