



**DEPARTMENT OF AGRICULTURE  
STATE OF NEW MEXICO**

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**MICHELLE LUJAN GRISHAM**  
*Governor*

**JEFF M. WITTE**  
*Secretary*

December 13, 2019

MEMORANDUM

TO: Petroleum Refiners, Marketers, and Biodiesel Suppliers

FROM: Jeff M. Witte, Secretary of Agriculture 

SUBJECT: Temporary Suspension of New Mexico's Biodiesel Mandate

In accordance with Section 57-19-28, paragraph C NMSA 1978 and in consultation with the secretary of the Energy, Minerals and Natural Resources Department and pursuant to regular, periodic monitoring of biodiesel supplies and price differentials, New Mexico Department of Agriculture (NMDA) has issued a "Temporary Suspension of New Mexico's Biodiesel Mandate."

Section 57-19-29, paragraph C of the Petroleum Products Standards Act will be suspended for a period of six months effective December 16, 2019, through June 15, 2020.

The concurrence letter from Secretary Cottrell Propst with Energy, Minerals and Natural Resources Department is attached which details the justification for the suspension.

If you have any questions or need additional information, please contact Mr. Raymond Johnson, division director for Standards and Consumer Services Division, at (575) 646-1616.

Attachment: Secretary Cottrell Propst Letter, December 3, 2019.



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December 3, 2019

The Honorable Sarah Cottrell Propst  
Secretary  
Energy, Minerals and Natural Resources  
1220 South St. Francis Drive  
Santa Fe, NM 87505

RE: Biodiesel Mandate

Dear Secretary Cottrell Propst:

In accordance with the Petroleum Products Standards Act:

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

*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.*

**57-19-29. Quality standards**

*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.*

Availability and pricing have been evaluated, and the following information has been compiled:

**Diesel sold in the New Mexico Market:**

In 2017 New Mexico sold 524,820,613 <sup>1</sup> qualifying gallons of diesel for a monthly average of 43,735,051. In 2018 the qualifying gallons sold were 560,826,143 for a monthly average of

<sup>1</sup> Qualifying gallons are calculated by New Mexico Tax and Revenue on reported special fuel sales (New Mexico Terminals 2A plus Import schedule 3 minus Export schedule 7 minus US Government schedule 8).

46,735,512. In 2019 the qualifying gallons sold through September were 453,198,828 for a monthly average of 50,355,425. Based on the information provided for 2019, New Mexico terminals supplied 58 percent of the diesel sold in the state; and 42 percent of the diesel sold in the state was imported. These numbers have been trending the same for the last several years. (Attachment 1).

**Biodiesel sold in the New Mexico Market:**

A breakdown of biodiesel sold by category (B100, B99, B02, B05, B20, and 170) was provided by the New Mexico Tax and Revenue Department (NMTRD). For categories B100, B99, B02, B05, and B20, NMTRD was able to calculate the biodiesel used from reported data.

Under Category 170, NMTRD was unable to determine a biodiesel usage number as this reporting line could be a combination of B02, B05, or B20. To address the omission of data, through a statistical analysis using historical sampling data, NMDA calculated a distribution of product by percentage for Category 170.

Biodiesel gallons sold in the New Mexico market were derived from the NMTRD reporting biodiesel data plus the statistical distribution of Category 170. The cumulative monthly totals of biodiesel sold and the required biodiesel gallons necessary to fulfill the mandate follows:

<b>2017 – 2018 CFT Biodiesel Report</b>		
	<b>Biodiesel Gallons Reported</b>	<b>Biodiesel Gallons Required</b>
2017	14,904,347	26,091,704
2018	16,508,941	27,812,896
<b>2019 CFT Biodiesel Report</b>		
January	1,008,928	2,451,966
February	1,245,409	2,267,594
March	1,858,835	2,546,940
April	1,324,428	2,516,856
May	1,718,071	2,587,064
June	1,039,182	2,464,712
July	1,840,332	2,645,696
August	1,506,244	2,640,227
September	1,630,669	2,538,883

Attachment 2)

**Identified supply points and their ability to blend biodiesel:**

By directly contacting the various terminals, refiners, and biodiesel producers located within New Mexico, New Mexico Department of Agriculture obtained the information on supply points and their ability to blend biodiesel. The out-of-state terminals, refiners, and biodiesel producers self-reported.

The information was compiled and updated on a continual basis.

New Mexico (nine supply points):

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- One supply point – Bloomfield (blends seasonally during the warmer months – B5 is shipped via Holly pipeline from Moriarty).
- One supply point – Ciniza (splash blends seasonally during the warmer months – does not have the infrastructure to in-line blend).
- Five supply points – Albuquerque (two terminals blend year round, two terminals have no blending (infrastructure is lacking), one biodiesel producer blends year round – (offers splash blending) \* (Attachment 3).
- One supply point – Artesia (has the ability to blend year round).
- One supply point – Moriarty (blends seasonally during the warmer months – has infrastructure to in-line blend, does not have infrastructure to blend during winter months).
  - a. Four (44 percent) have year-round blending capability.
  - b. Two (22 percent) have seasonal blending capability (during the warmer months).
  - c. Three (34 percent) have zero blending capability.

Texas (nine supply points):

- Two supply points – Amarillo (one terminal blends year round, one terminal blends seasonally during the warmer months).
- One supply point – Abernathy (blends seasonally during the warmer months).
- One supply point – Big Spring (blends year round).
- Five supply points – El Paso (one terminal blends year round, three terminals have no blending, one biodiesel producer blends year round).
  - a. Four (44 percent) have year-round blending capability.
  - b. Two (22 percent) have seasonal blending capability (during the warmer months).
  - c. Three (34 percent) have zero blending capability.

Colorado (two supply points):

- One supply point – Alamosa (blends year round).
- One supply point – La Junta (blends seasonally during the warmer months).
  - a. One (50 percent) has year-round blending capability.
  - b. One (50 percent) has seasonal blending capability (during the warmer months).

Out-of-state percentages for blending:

- a. Five (45 percent) have year-round blending capability.
- b. Three (27 percent) have seasonal blending capability (during the warmer months).
- c. Three (27 percent) have zero blending capability.

**\*\* None of the out-of-state sources will guarantee product availability (Attachment 3).**

**Contracts:**

When marketers purchase fuel, they do so through contracts or agreements with suppliers. Suppliers can be branded or unbranded (Chevron, Shell, etc.). These suppliers can be the owners/operators of terminals/racks from where they receive fuel or they contract storage space at a location where they do not own any infrastructure. Purchase and sales contracts or agreements require customers to comply with all

laws and ordinances, orders, or regulations relating to the handling, use, sale, and transportation of products sold to them on the contract or agreement. Additional blending outside the terminal could potentially violate this part of the contract or agreement should the blended biodiesel product not meet specifications and violate laws or regulations. Due to the terms of contracts or agreements, most do not have the flexibility to purchase outside their contract terms.

**Splash Blending:**

Although splash blending is not a prohibited practice in the petroleum business, splash blending is not the ideal method for blending biodiesel into petroleum diesel. Branded customers (Chevron, Shell, etc.) are usually restricted from splash blending altogether because those companies have to maintain control over what is marketed with their name brand. Additionally, marketers are prohibited through contract, agreement, or company policies to splash blend due to concerns of fuel quality.

Identified splash-blending concerns:

- Stratification of the denser biodiesel layer (as loading velocities, volumes, or sequencing) can be inadequate for proper mixing.
- Mixing is dependent on the length of time that a tank truck travels down a particular type of road.
- If the ambient temperature is low, the biodiesel can gel when in contact with the sides of a metal tank and not mix with the diesel fuel.
- If the loading temperature of the biodiesel is low, the biodiesel can gel before it mixes with the diesel fuel.
- If there is any remaining retain volume in the tank truck, the full quantity of second blend component or fuel may not be able to be loaded.

**Availability and price differentials:**

- Of the nine terminals in New Mexico, three terminals (or 34 percent) have no infrastructure to blend. Of the 11 out-of-state terminals, 3 terminals (or 27 percent) do not have infrastructure to blend. Lack of infrastructure causes availability issues by not having product available in the market where needed. In most cases the retailer who is selling the product has a contract or agreement that limits or defines the terminal(s) where they can purchase fuel and what they can do to the fuel once it has been purchased. Some retailers have the ability to amend product after it has been picked up at a terminal (add-in biodiesel);

those retailers become solely responsible for the quality of the product – this is an option not many retailers are willing to undertake.

- Additionally, the lack of infrastructure in-state and out-of-state creates price differential issues due to the need to source product from nonlocal terminals. For example, in the Albuquerque market, two terminals do not have the infrastructure to blend biodiesel. In order to meet the needs of the mandate, customers of those terminals will have to source their B05 diesel from other terminals that do have the infrastructure to blend biodiesel. Those terminals for the Albuquerque market are located in El Paso (288 miles away) or Amarillo (265 miles away); this would undoubtedly add an additional freight cost to the product of at least 17 cents per gallon. The additional driving distances limit the number of deliveries that pull from those terminals and would create the need for more trucks and drivers and an increased demand on out-of-state terminals, which may not have the capacity to handle. The economics created by this action would be detrimental to the markets in New Mexico as well as increased prices for the drivers in New Mexico.
- Furthermore, in 2016 the Department of Commerce placed countervailing duties on imports of biodiesel from Argentina and Indonesia, lowering the nationwide supply by significantly limiting import into the United States. In 2017 the Department of Commerce increased tariffs on Argentinian and Indonesian biodiesel by adding additional antidumping tariffs, effectively removing these sources from the United States market. Domestic biodiesel production remains less than demand, resulting in higher incremental costs (Attachment 4).
- Prices for blending biodiesel have been uneconomical for 2018 and 2019 through September. The Environmental Protection Agency (EPA) Renewable Identification Number (RIN) prices for 2018 started at 91 cents per gallon and ended the year at 43 cents per gallon. RIN prices for 2019 are in the price range of 33 cents to 56 per gallon. The Biodiesel Blender Tax Credit (\$1.00 per gallon) was not available for 2018 or 2019. The United States House of Representatives is working on legislation that will reinstate the biodiesel blender's tax credit retroactively for 2018 and ultimately phase out the tax credit by 2024.
- Pricing data obtained from Oil Price Information Service (OPIS) and the United States Department of Energy are reporting price differentials that will negatively affect the consumers in New Mexico. Pricing data from OPIS from the Albuquerque and El Paso markets for 2018/2019 show a price differential between diesel and biodiesel; the United States Department of Energy report mirrors the same trend.
- From the Department of Energy Clean Cities Alternative Fuel Price Report (July 2019), the national average retail price for biodiesel (B20) was \$2.86/gal., biodiesel (B99/B100) was \$3.62/gal., and diesel #2 was \$3.04/gal. For the West Coast (including but not limited to California), the average retail price for biodiesel (B20) was \$3.22/gal., biodiesel (B99/B100) was \$3.97/gal., and diesel #2 was \$3.85/gal. That is a .35/gal price differential for biodiesel (B99/B100).

To meet the requirements of the mandate, New Mexico needs on average of 2.4 million gallons of biodiesel per month. For 2019 the monthly aggregate average usage of biodiesel has been 1.5 million gallons. The prevailing issue in New Mexico is that in order to deliver more biodiesel into the marketplace (i.e., make it available to the end consumer), the lack of infrastructure at terminals that supply the New Mexico market at both the in-state and out-of-state terminals is lacking. Additionally, the lack of a blender tax credit (\$1.00 per gallon), lower RIN prices, and ongoing changes with tariffs and international trade disputes have affected biodiesel pricing.

Price differentials were sourced from:

- Federal EPA RIN pricing (Attachment 5)
- United States Department of Energy – Clean Cities Alternative Fuel Price Report (Attachment 6)
- HollyFrontier – Biodiesel, RIN, and ultra-low sulfur diesel price quotes from OPIS for 2018/2019 (Attachment 7).

Industry feedback on availability and pricing provided by: (Attachment 7)

- Marathon Petroleum Corporation
- Magellan Midstream Partners, L.P.
- Holly Frontier
- Exxon Mobil
- Chevron
- Phillips 66

There were no comments received from the biodiesel industry.

**Recommendation:**

Based on the following impeding issues:

1. Current and historical reporting from NMTRD indicates the average monthly supply of biodiesel into the state is 1,463,566 gallons (42 percent short) on a monthly basis in order to fulfill the requirement of the mandate.
2. Infrastructure at 30 percent of distribution points lack the ability to blend on an annual basis. Of the remaining distribution points, 25 percent can only blend during warmer months.  
Based on discussions with the petroleum industry (Chevron, Exxon Mobil, Marathon, and HollyFrontier) to build infrastructure would require 24 to 30 months to accomplish; however, there is not an economic incentive to undergo the construction.
3. The inability to deliver biodiesel through the pipeline requires delivery by truck or rail, which infuses additional transportation costs because of the mandate.
4. Implementation of the mandate without infrastructure would cause availability issues in the state, driving up costs to the end consumer and making New Mexico a drive-through state for the trucking industry — removing the tax base from the New Mexico economy.
5. Currently the economics to blend biodiesel are not supported, in part, due to diminished RIN values, the loss of the federal tax credit, and ongoing changes with tariffs and international trade disputes.

It is my recommendation that implementation of the biodiesel mandate be suspended until there is sufficient infrastructure to support the mandate and OPIS pricing and United States Department of

The Honorable Sarah Cottrell Propst

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Energy reports supporting implementation. Factors to address would be infrastructure necessary to deliver biodiesel into the New Mexico market and pricing reports generated by the United States Department of Energy showing that price differentials do not exist that impede implementation. As such, the suspension should remain in place based on reviews completed in six-month intervals.

I request your concurrence in issuing a temporary suspension of the biodiesel mandate as spelled out in Section 57-19-28 of the Petroleum Products Standards Act effective December 16, 2019, through June 15, 2020.

Sincerely,

A handwritten signature in blue ink, appearing to read "JM Witte", with a long horizontal stroke extending to the right.

Jeff M. Witte

JMW/dt

Attachments: Seven (7)

A handwritten signature in blue ink, appearing to read "Sarah Cottrell Propst", written over a horizontal line.

Secretary Cottrell Propst  
Energy, Minerals and Natural Resources

I concur in issuing a temporary suspension effective December 16, 2019, of the biodiesel mandate as spelled out in Section 57-19-28 of the Petroleum Products Standards Act.