



**DEPARTMENT OF AGRICULTURE  
STATE OF NEW MEXICO**

**MSC 3189, Box 30005  
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
**MICHELLE LUJAN GRISHAM**  
*Governor*

**JEFF M. WITTE**  
*Secretary*

December 15, 2020

**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, 2020, through June 15, 2021.

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, November 20, 2020.



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November 20, 2020

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 46,735,512. In 2019 the qualifying gallons sold were 596,943,473 for a monthly average of 49,745,289. Based on the information provided for 2020 (Jan.-Sept.), the qualifying gallons sold were 413,342,443 for a monthly average of 51,667,805. NM Terminals supplied 58 percent of the diesel sold to 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).

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

**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 sold from reported data.

Under Category 170, NMTRD was unable to determine a biodiesel sales 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, NMTRD 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, plus the required biodiesel gallons necessary to fulfill the mandate are as follows:

<b>2017- 2019 CFT Biodiesel Report</b>		
<b>Year</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
2019	17,448,535	29,847,169
<b>2020 CFT Biodiesel Report</b>		
<b>Month</b>	<b>Biodiesel Gallons Reported</b>	<b>Biodiesel Gallons Required</b>
January	1,651,387	2,617,552
February	1,778,971	2,650,091
March	1,703,849	2,716,160
April	1,308,090	2,325,329
May	1,324,186	2,448,981
June	1,319,418	2,551,457
July	1,568,891	2,625,531
August	1,475,925	2,732,021
September	1,469,347	2,655,601

*\*Currently there are no active biodiesel producers in New Mexico, however HollyFrontier's renewable diesel plant, located in Artesia, is scheduled for completion the first quarter of 2022.*

(Attachment 2)

Secretary Cottrell Propst

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Supporting Information:

- Identified Supply Points and Their Ability to Blend Biodiesel
- Contracts
- Splash Blending
- Availability and Price Differentials (Attachment 3)
- Federal Register / Vol. 83, No. 219/ Tuesday, November 13, 2018, Notices (Attachment 4)

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 ULSD price quotes from OPIS for 2018-2020 (Attachment 7).

Industry feedback on availability and pricing provided by:

- Holly Frontier
- Exxon Mobil Corporation
- Magellan Midstream Partners, L.P.
- Marathon Petroleum Corporation
- Chevron Products Company
- Phillips 66
- Pilot Travel Centers
- National Biodiesel Board
- Renewable Energy Group (REG)  
(Attachment 7)

### **Recommendation:**

Based on the following impeding issues:

1. 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 warm 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.
2. 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.
3. The inability to deliver biodiesel via the pipeline requires that it be delivered via truck or rail infusing additional transportation costs as a result of the mandate.
4. The economics to blend biodiesel are not supported in part due to diminished RIN values, the loss of the federal tax credit for 2018/ 2019. Even though the biodiesel blender's credit was reinstated through December 31, 2022, there are still ongoing challenges with tariffs and international trade disputes.
5. Current reporting from NMTRD indicates the average monthly (2020 Jan.- 2020 Sept.) supply of biodiesel into the state is 1,511,118 gallons or 42 percent short on a monthly basis in order to fulfill the requirement of the mandate.

Secretary Cottrell Propst

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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 Energy reports supporting implementation. Factors that need to be addressed 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, 2020, through June 15, 2021.

Sincerely,



Jeff M. Witte

Director/Secretary

JMW/rmc



Secretary Cottrell Propst

Energy, Minerals and Natural Resources

I concur in issuing a temporary suspension effective December 16, 2020, of the biodiesel mandate as spelled out in Section 57-19-28 of the Petroleum Products Standards Act.