

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION OF
Temporary Emergency Rule I) TEMPORARY EMERGENCY RULE
pertaining to the waiver of fuel)
specifications related to the COVID-)
19 pandemic)

TO: All Concerned Persons

1. The Department of Labor and Industry (department) is adopting the following emergency rule for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana with regards to the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana with regards to the COVID-19 pandemic in Executive Order 3-2020.

D. The COVID-19 outbreak has been identified in all 50 United States and the District of Columbia. The United States and numerous individual states have declared states of emergency. Federal, state, and local governments are acting to meet Centers for Disease Control and Prevention guidelines requiring social distancing and to implement policies to reduce transmission of COVID-19.

E. Federal regulations under the Clean Air Act require the use of low volatility gasoline during summer months to limit the formation of ozone pollution. The low volatility regulations apply to refiners, importers, distributors, resellers, terminal owners and operators, and carriers beginning May 1, and to retailers and wholesale purchaser-consumers beginning June 1.

F. The COVID-19 outbreak and associated precautions have caused a dramatic decrease in gasoline demand which is preventing regulated parties ahead of retailers and wholesale purchaser-consumers from selling winter gasoline in their storage tanks and turning the storage tanks over to compliant summer gasoline by the May 1, 2020 federal deadline.

G. The United States Environmental Protection Agency (EPA) determined it is necessary to waive the federal Reid vapor pressure (RVP) requirements at C.F.R. 80.27 that apply to terminal owners, terminal operators, distributors, carriers, retailers, and wholesale purchaser-consumers throughout the United States to

minimize or prevent the disruption of an adequate gasoline supply. The federal waiver is effective May 1, 2020 and will continue through May 20, 2020.

H. In ARM 24.351.401, the Montana Department of Labor and Industry (department) has adopted regulations on fuel specifications and gasoline-oxygenate blends based on recognized standards and specifications of the National Institute of Standards and Technology (NIST). Specifically, the department has adopted regulations for Reid vapor pressure values in NIST Handbook 130, 2012 Edition, Section 2.1 in Part G, Uniform Engine Fuels and Automotive Lubrications Regulations.

I. The Commissioner of Labor and Industry finds that under the emergency circumstances of the COVID-19 pandemic, there is immediate peril to the public health, safety, and welfare through the likely disruption of an adequate gasoline supply due to the pandemic's negative impact on gasoline demand throughout the United States.

J. There is reasonable necessity to immediately adopt a temporary emergency rule to waive Montana's adoption of the Reid vapor pressure values in NIST Handbook 130, 2012 Edition, Section 2.1 in Part G, Uniform Engine Fuels and Automotive Lubrications Regulations to protect the public health, safety, and welfare by minimizing or preventing the disruption of an adequate gasoline supply due to the emergency conditions of the COVID-19 pandemic.

2. The temporary emergency rule is effective April 10, 2020, when this rule notice is filed with the Secretary of State. Section 2-4-303, MCA, provides that emergency rules may only be effective for a period not longer than 120 days. The department intends for this new rule to coincide with the term of the federal waiver, which will expire May 20, 2020. However, if the federal waiver is extended, this emergency rule will remain in effect for the duration of the extended federal waiver, not to exceed the statutory maximum of 120 days.

3. The text of the temporary emergency rule provides as follows:

NEW RULE I WAIVER OF FUEL SPECIFICATIONS AND OXYGENATE BLENDS DURING COVID-19 EMERGENCY (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The regulations concerning Reid vapor pressure values in NIST Handbook 130, 2012 Edition, Section 2.1 in Part G, Uniform Engine Fuels and Automotive Lubrications Regulations and as adopted by the department in ARM 24.351.401 are hereby waived for the duration of the governor's emergency declaration.

AUTH: 10-3-104, 82-15-102, MCA

IMP: 10-3-104, 82-15-103, MCA

4. The rationale for the temporary emergency rule is set forth in paragraph 1.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Tim Lloyd, Bureau Chief, Building and Commercial Measurements Bureau, Montana Department of Labor and Industry, P.O. Box 200516, Helena, MT 59620-0516, fax (406) 443-8163, or e-mail dmorrell@mt.gov or may be made by completing a request form at any rules hearing held by the department.

6. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ DARCEE L. MOE

Darcee L. Moe
Rule Reviewer

/s/ BRENDA NORDLUND

Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 10, 2020.