



Office of Gov. Dennis Daugaard
500 E. Capitol Ave.
Pierre, S.D. 57501
(605) 773-3212
www.sd.gov

FOR IMMEDIATE RELEASE: Monday, June 11, 2012
CONTACT: Tony Venhuizen or Joe Kafka at 605-773-3212

Governor: State to Implement Emergency Octane Rules

PIERRE, S.D. – Gov. Dennis Daugaard has directed the Department of Public Safety to implement an emergency rule allowing the sale of 85 octane gasoline with mandatory cautionary labels while permanent rules are publicly debated and adopted.

The emergency rules will require South Dakota retailers who choose to sell 85 octane to label their fuel pumps with a caution to consumers to check their vehicle owner’s manuals to determine what grade of motor fuel is appropriate. Many manufacturers recommend a minimum of 87 octane fuel.

Gov. Daugaard has asked Attorney General Marty Jackley for an official opinion on whether 85 octane may be sold legally in all or any part of South Dakota, so that the legal reasoning is clear and publicly available in written form. A recent review of laws and rules by the Office of Weights and Measures within the Department of Public Safety determined that 85 octane is illegal anywhere in South Dakota.

Because of concerns raised by petroleum marketers about possible fuel shortages, the emergency rules will temporarily allow the sale of 85 octane while the legal status of the product is determined and the permanent rule-making process plays out. That decision also recognized that 85 octane is a legal product in several Rocky Mountain states, including Wyoming and Montana, which have refineries that supply the only terminal serving western South Dakota. The rule-making process will include public hearings at which any interested parties may comment on proposed rules.

“The emergency rule is a temporary action to balance industry concerns about possible gasoline supply shortages and the consumer’s right to know whether a product is appropriate for their vehicle,” the Governor said. “That protects all parties while the permanent rules process continues with public input into the decision-making.”

The Governor also released a summary of the results of Office of Weights and Measures inspections that found instances of mislabeling of gasoline at several retail service stations in South Dakota. The results of the inspections will be turned over Monday, June 18, to the South Dakota Attorney General’s Office and to the appropriate states attorneys for their decisions on whether to prosecute, based on the information provided.

The Department of Public Safety has found no evidence of fuel being mislabeled since it warned marketers about the issue in late-March. At the urging of state officials, retailers selling 85 octane have since posted 85 octane labels on gas pumps to inform motorists.

Here is a brief summary of the situation and the actions being taken by state officials:

Emergency rule and permanent rules

An emergency rule will be implemented to maintain balance between industry supply concerns and the consumer's right to information about the product. The rule would temporarily allow the sale of 85 octane and mandate cautionary labeling: *Attention: This octane level may not meet minimum manufacturer specifications. Consult your owner's manual before fueling.*"

The emergency rules will be used as the starting point for the permanent rules in a process that includes time for public comment, public hearings, suggested alternatives, amendments and legislative review.

The proposed temporary and permanent rules will be filed with the Legislative Research Council on Friday, June 15.

Formal Opinion from Attorney General

A review by the Office of Weights and Measures recently concluded that the sale of 85 octane is illegal under existing laws and rules. The Governor has asked Attorney General Marty Jackley for an official opinion on the issue, so that the legal reasoning is clear and publicly available in written form.

Department of Public Safety octane and labeling inspection

Inspections by the DPS Office of Weights and Measures found several instances of mislabeled fuel being sold. Information from those inspections will be turned over on Monday, June 18, to the Attorney General and to states attorneys in the appropriate jurisdictions for possible prosecution.

Testing resources for Office of Weights and Measures

The Governor ordered the Department of Public Safety to obtain the necessary fuel-quality testing equipment to allow Weights and Measures to include octane-level testing in inspections. The state currently lacks the ability to test octane and has relied on documents prepared by the distributor. The Department is in contact with other states to determine the best equipment and practices and to secure agreements for access to ongoing testing. The State also is exploring an increase in the frequency of inspections in this area.

-0-

EDS: A copy of the emergency rules, the request for an official Attorney General's opinion and a summary of the Weights and Measures inspection may be found at: www.dps.sd.gov