



2020 South Dakota Legislature
House Bill 1037
ENROLLED

AN ACT

ENTITLED An Act to update the adoption of certain American Society for Testing and Materials and National Institute of Standards and Technology standards and certain federal regulations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 37-2-5 be AMENDED:

37-2-5. Definitions.

Terms used in this chapter mean:

- (1) "Alcohol," a colorless volatile flammable liquid containing no more than 1.25 percent of water used for the purpose of blending or mixing with gasoline for use in motor vehicles and commonly known as alcohol, ethanol, or methanol;
- (2) "ASTM," the American Society for Testing and Materials;
- (3) "Aviation gasoline," a volatile hydrocarbon fuel free from suspended water and sediment matter and that is suitable for use as a fuel in an aviation spark ignition internal combustion engine designed for use in an aircraft;
- (3A) "Biodiesel," a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of the American Society of Testing and Materials D 6751 as of January 1, 2020, and is registered with the United States Environmental Protection Agency as a fuel and fuel additive under section 211(b) of the Clean Air Act in effect on January 1, 2020;
- (3B) "Biodiesel blend," a special blended fuel comprised of at least two percent by volume of biodiesel blended with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend;
- (4) "Department," the Department of Public Safety;

- (5) "Diesel fuel," a refined middle distillate hydrocarbon fuel free from suspended water and sediment matter that is suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine;
- (5A) "Ether," methyl tertiary butyl ether;
- (6) "Flash test" and "flash point," the flash point as determined by the method of the American Society for Testing Materials, using the instrument known as the Tagliabue closed cup tester;
- (7) "Gasoline," a volatile hydrocarbon fuel free from suspended water and sediment matter that is practicable and suitable used as fuel in a spark ignition internal combustion engine;
- (8) "Inspector," the secretary or any deputy or assistant appointed by the secretary for the purpose of enforcing the provisions of this chapter;
- (9) "Kerosene," a hydrocarbon fuel intended for use in heating and illumination and having an American Petroleum Institute gravity of not less than forty degrees. Kerosene shall also include coal oil and burner oil;
- (9A) "NIST," the National Institute of Standards and Technology;
- (10) "Petroleum products," gasoline, alcohol blended fuels, kerosene, diesel fuel, aviation gasoline, burner oil, naphtha and lubricating oils;
- (11) "Secretary," the secretary of the Department of Public Safety.

Section 2. That § 37-2-6 be AMENDED:

37-2-6. Promulgation of rules.

The secretary may, pursuant to chapter 1-26, and in general conformity with ASTM and NIST standards in effect on January 1, 2020, promulgate rules:

- (1) Establishing standards for the maximum volume percentages of ethanol, methanol, ether, and cosolvents in alcohol blended fuels;
- (2) Establishing a program for and prescribing the methods to be used for the inspection and testing of alcohol blended fuels, petroleum products, biodiesel, and biodiesel blends;
- (3) Requiring labeling of devices dispensing alcohol blended fuels, biodiesel, and biodiesel blends;
- (4) Establishing standards setting the specifications and tolerance requirements for petroleum products, biodiesel, and biodiesel blends; and
- (5) Regulating the filtering system to be used on devices dispensing alcohol blended fuels.

Section 3. That § 37-2-7 be AMENDED:

37-2-7. Examination and testing specifications and methods.

Specifications and methods for the examination and test of petroleum products shall be determined by the department and shall be based upon standards from ASTM and NIST as of January 1, 2020. If promulgated as rules of the department in accordance with the provisions of chapter 1-26, the specifications shall be the specifications for the petroleum products sold in this state and official tests of the petroleum products shall be based upon the test specifications determined, adopted, and promulgated.

Section 4. That § 37-2-41 be AMENDED:

37-2-41. Refiners, importers, and producers--Federal requirements.

A refiner, importer, or producer of petroleum products, as defined by subdivision 37-2-5(10), shall comply with the automotive fuel rating, certification, and record-keeping requirements of 16 C.F.R. §§ 306.5 to 306.7, inclusive, in effect on January 1, 2020.

Section 5. That § 37-2-42 be AMENDED:

37-2-42. Distributors--Federal requirements.

A licensed distributor of petroleum products, as defined by subdivision 37-2-5(10), shall comply with the certification and record-keeping provisions of 16 C.F.R. §§ 306.8 and 306.9 in effect on January 1, 2020.

Section 6. That § 37-2-43 be AMENDED:

37-2-43. Sales to consumers--Federal requirements.

A person responsible for the product who sells or transfers petroleum products, as defined by subdivision 37-2-5(10), to a consumer shall comply with the automotive fuel rating posting and record-keeping requirements, and the label specifications of 16 C.F.R. §§ 306.10 to 306.12, inclusive, in effect on January 1, 2020.

Section 7. That § 37-2-44 be AMENDED:

37-2-44. Minimum octane rating grades of petroleum in certain counties.

In general conformity with ASTM D4814 and the adoption of NIST Handbook 130, 2020, in rules promulgated pursuant to this chapter, the minimum (R+M)/2 octane rating grades of petroleum products, as defined by subdivision 37-2-5(10) in the counties of

Butte, Custer, Fall River, Harding, Lawrence, Meade, Oglala Lakota, Pennington, and Perkins shall be no less than the following:

- (1) Regular, unleaded, regular unleaded 85;
- (2) Midgrade, plus, or super unleaded 87, 88, 89, or 90; and
- (3) Premium, supreme, high test unleaded 91.

Section 8. That § 37-20-34 be AMENDED:

37-20-34. Promulgation of rules.

The secretary may promulgate rules, pursuant to chapter 1-26, for the enforcement of the provisions of chapter 37-20 in the following areas:

- (1) Tolerances, specifications, and requirements for testing standards to be used in South Dakota; and
- (2) Required compliance with standards issued by the National Institute of Standards and Technology in effect on January 1, 2020.

Section 9. That § 37-21-6 be AMENDED:

**37-21-6. Specifications and tolerances included in regulations--Purpose--
Conformity with national code.**

Rules promulgated under the provisions of § 37-21-5 may include specifications and tolerances for any weight, measure, or weighing or measuring device of the character of those specified in § 37-21-9. The rules shall prohibit the use of any weight, measure, or weighing or measuring device which is not accurate, is of construction that it is not reasonably permanent in its adjustment, will not repeat its indications correctly, or facilitates the perpetration of fraud. The specifications and tolerances shall be in conformity with the code of specifications, tolerances, and regulations for commercial weighing and measuring devices issued and recommended by the National Institute of Standards and Technology of the United States Department of Commerce and in effect on January 1, 2020.

Section 10. That § 37-22-3 be AMENDED:

**37-22-3. Installation, inspection, testing, and correction of scales--
Promulgation of rules.**

The secretary shall promulgate rules, pursuant to chapter 1-26, for:

- (1) The installation, testing, and maintenance of all heavy scales, including specifications in conformance with standards published by the National Institute for Standards and Technology in effect January 1, 2020;
- (2) The frequency of inspection of heavy scales; and
- (3) The schedule and procedure for the correction of any deficiencies.

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I certify that the attached Act originated in the:
House as Bill No. 1037

Chief Clerk

Speaker of the Houser of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1037
File No. _____
Chapter No. _____

Received at this Executive Office
this ____ day of _____,
2020 at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 2020

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Filed _____, 2020
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State