WEST VIRGINIA CODE: §11-14C-2

§11-14C-2. Definitions.

As used in this article and unless the context requires otherwise, the following terms have the meaning ascribed herein.

(1) "Agricultural purposes" means the activities of:

(A) Cultivating the soil, including the planting and harvesting of crops, for the commercial production of food, fiber and ornamental woodland products;

(B) Using land for breeding and management of farm livestock including dairy, apiary, equine or poultry husbandry; and

(C) Using land for the practice of horticulture including the growing of Christmas trees, orchards and nursery stock. Agricultural purposes do not include commercial forestry, growing of timber for commercial purposes or other activity that normally would not be included in subdivision (A), (B) or (C) of this definition.

(2) "Aircraft" includes any airplane or helicopter.

(3) "Alcohol" means motor fuel-grade ethanol or a mixture of motor fuel-grade ethanol and methanol, excluding denaturant and water that is a minimum of 98 percent ethanol or methanol by volume.

(4) "Alternative fuel" means a combustible gas or liquid that is used or suitable for use as a motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine or mechanical contrivance and includes, but is not limited to, products commonly known as butane, propane, compressed natural gas, liquefied natural gas, liquefied petroleum gas, natural gas hydrocarbons and derivatives, liquid hydrocarbons derived from biomass, P-series fuels and hydrogen. "Alternative fuel" does not include diesel fuel, gasoline, blended fuel, aviation fuel or any special fuel. For purposes of this article electricity is not an alternative fuel.

(5) "Alternative-fuel bulk end user" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a motor vehicle.

(6) "Alternative-fuel commercial refueling infrastructure" means property owned by a commercial establishment and used for storing alternative fuels and for dispensing such alternative fuels into the fuel tanks of vehicles owned by the same person or entity that owns the alternative-fuel commercial refueling infrastructure or into the fuel tanks of privately owned vehicles or commercial vehicles other than those owned by the same person or entity that owns the alternative-fuel commercial refueling infrastructure, or any combination thereof. "Alternative-fuel vehicle commercial refueling infrastructure" includes, but is not

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limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered: *Provided*, That the property is not located on a private residence or private home. "Alternative-fuel commercial refueling infrastructure" does not include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel vehicle commercial refueling infrastructure" includes alternative-fuel vehicle commercial refueling infrastructure property as described in this subdivision which is owned by a lessor or landlord and leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(7) "Alternative-fuel home refueling infrastructure" means property owned by a private individual for personal use that is located at the individual's private residence or private home and used for storing and dispensing alternative fuels into fuel tanks of the property owner's motor vehicles. This includes, but is not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered. For purposes of this article, "alternative-fuel home refueling infrastructure" does not include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel home refueling infrastructure" does not include alternative-fuel vehicle refueling infrastructure property owned by a lessor or landlord which is leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(8) "Article" or "this article" means article fourteen-c, chapter eleven of this code.

(9) "Assessment" means a written determination by the commissioner of the amount of taxes owed by a taxpayer.

(10) "Aviation fuel" means aviation gasoline or aviation jet fuel.

(11) "Aviation gasoline" means motor fuel designed for use in the operation of aircraft other than jet aircraft and sold or used for that purpose.

(12) "Aviation jet fuel" means motor fuel designed for use in the operation of jet or turbo-prop aircraft and sold or used for that purpose.

(13) "Biodiesel fuel" means motor fuel or mixture of motor fuels that is derived, in whole or in part, from agricultural products or animal fats, or the wastes of such products or fats, and is advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion engine.

(14) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol, fuel-grade alcohol, diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

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(15) "Blender" means a person who produces blended motor fuel outside the bulk transfer/terminal system.

(16) "Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil in the production of lubricating oils and greases.

(17) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(18) "Bulk transfer" means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within a bulk transfer/terminal system, including, but not limited to, all of the following:

(A) Movement of motor fuel from a refinery or terminal to a terminal by a marine vessel;

(B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

(C) Book transfer of motor fuel within a terminal between licensed suppliers prior to completion of removal across the rack; and

(D) Two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

(19) "Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored motor fuel to operate a motor vehicle, watercraft or aircraft.

(20) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels and terminals. Motor fuel in a refinery, a pipeline, a terminal or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of an engine or motor vehicle, in a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system, or in a tank car, rail car, trailer, truck or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

(21) "Carrier" means an operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

(22) "Code" means the Code of West Virginia, 1931, as amended.

(23) "Commercial watercraft" means a watercraft employed in the business of commercial

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fishing, transporting persons or property for compensation or hire or other trade or business.

(24) "Commissioner" or "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her delegate.

(25) "Compressed natural gas" means natural gas that has been compressed and dispensed into motor fuel storage containers and is advertised as, offered for sale as, suitable for use as or used as an engine motor fuel.

(26) "Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership or member of a limited liability company who as an officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership or limited liability company, the tax collection, accounting or remitting obligations.

(27) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel storage tank because the motor fuel is below the mouth of the draw pipe. The amount of motor fuel in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more.

(28) "Denaturants" means and includes gasoline, natural gasoline, gasoline components or toxic or noxious materials added to motor fuel-grade ethanol to make it unsuitable for beverage use but not unsuitable for automotive use.

(29) "Designated inspection site" means a state highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the commissioner to be used as a motor fuel inspection site.

(30) "Destination state" means the state, territory or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container or a type of transportation equipment for the purpose of resale or use. The term does not include a tribal reservation of a recognized Native American tribe.

(31) "Diesel fuel" means a liquid that is advertised as, offered for sale as, sold for use as, suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene but does not include gasoline or aviation fuel.

(32) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier or from another licensed distributor for subsequent sale or use.

(33) "Diversion" means transporting motor fuel outside a reasonably direct route from the source to the destination state.

(34) "Division" or "State Tax Division" means the Tax Division of the West Virginia Department of Revenue.

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(35) "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed.

(36) "End seller" means the person who sells motor fuel to the ultimate user of the motor fuel.

(37) "Export" means to obtain motor fuel in West Virginia for sale or other distribution in another state, territory or foreign country.

(38) "Exporter" means a person that exports motor fuel from this state. The seller is the exporter of motor fuel delivered out-of-state by or for the seller and the purchaser is the exporter of motor fuel delivered out-of-state by or for the purchaser.

(39) "Fuel" means motor fuel.

(40) "Fuel-grade ethanol" means the ASTM standard in effect on the effective date of this article as the D-4806 specification for denatured motor fuel grade ethanol for blending with gasoline.

(41) "Fuel supply tank" means a receptacle on a motor vehicle from which motor fuel is supplied for the propulsion of the motor vehicle.

(42) "Gallon" means a unit of liquid measure as customarily used in the United States containing 231 cubic inches by volume and expresses the volume at 60 degrees Fahrenheit.

(43) "Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

(44) "Gasoline" means a product commonly or commercially known as gasoline, regardless of classification, that is advertised as, offered for sale as, sold for use as, suitable for use as or used as motor fuel in an internal combustion engine, including gasohol, but does not include special fuel as defined in this section.

(45) "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be blended for use in a motor fuel. The term does not include any substance that will be ultimately used for consumer nonmotor fuel use and is sold or removed in drum quantities of 55 gallons or less at the time of the removal or sale.

(46) "Gallon equivalent" means the amount of an alternative fuel that is considered to be the equivalent of a gallon of gasoline according to the National Institute of Standards and Technology Handbook 130 or pursuant to guidelines issued by the Tax Commissioner.

(47) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations or deductions, in U. S. gallons.

(48) "Governmental entity" means this state or a political subdivision thereof or the United

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States or its commissioners, agencies and instrumentalities.

(49) "Heating oil" means any combustible liquid, including, but not limited to, #1 fuel oil, #2 dyed fuel oil and kerosene that is burned in a boiler, furnace or stove for heating or industrial processing purposes.

(50) "Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state including the streets and alleys in towns and cities.

(51) "Highway vehicle" means any self-propelled vehicle, trailer or semitrailer that is designed or used for transporting persons or property over the public highway and includes all vehicles subject to registration under article three, chapter seventeen-a of this code.

(52) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline or any other means. Import does not include bringing motor fuel into this state in the motor fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle.

(53) "Importer" means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(54) "Import verification number" means the number assigned by the commissioner to a single transport vehicle delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying taxable motor fuel into this state for the account of an importer.

(55) "In this state" means the area within the borders of West Virginia including all territory within the borders of West Virginia that is owned by the United States of America.

(56) "Invoiced gallons" means the gallons actually billed on an invoice for payment.

(57) "Licensee" means a person licensed by the commissioner pursuant to section ten of this article.

(58) "Liquid" means a substance that is liquid above its freezing point.

(59) "Liquefied natural gas" means natural gas that has been liquefied at -126.1 degrees centigrade and stored in insulated cryogenic tanks for use as an engine motor fuel.

(60) "Motor carrier" means a vehicle used, designated or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding 26,000 pounds or having three or more axles regardless of weight or used in combination when the weight of the combination exceeds 26,000 pounds or registered gross vehicle weight, and

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any aircraft, barge or other watercraft or railroad locomotive transporting passengers or freight in or through this state: *Provided*, That the gross vehicle weight rating of the vehicles being towed is in excess of 10,000 pounds. The term "motor carrier" does not include any type of recreational vehicle.

(61) "Motor fuel" means gasoline, blended fuel, aviation fuel, any special fuel and alternative fuel.

(62) "Motor fuel transporter" means a person who transports motor fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car or a marine vessel.

(63) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of motor fuel.

(64) "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds pressure per square inch.

(65) "Permissive supplier" is a person who may not be subject to the taxing jurisdiction of this state but who meets both of the following requirements: (A) Is registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system; and (B) a position holder in motor fuel only located in another state or a person who receives motor fuel only in another state pursuant to a two-party exchange: *Provided*, That a person is classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent or representative (by whatever name called) operating within this state under the authority of the supplier or its subsidiary.

(66) "Person" means an individual, firm, cooperative, association, corporation, limited liability corporation, estate, guardian, executor, administrator, trust, business trust, syndicate, partnership, limited partnership, copartnership, organization, limited liability partnership, joint venture, receiver and trustee in bankruptcy. "Person" also means a club, society or other group or combination acting as a unit, a public body including, but not limited to, this state and any other state and an agency, commissioner, institution, political subdivision or instrumentality of this state or any other state and, also, an officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article.

(67) "Position holder" means the person who holds the inventory position in motor fuel in a terminal as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term

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includes a terminal operator who owns motor fuel in the terminal.

(68) "Principal" means:

(A) If a partnership, all its partners;

(B) If a corporation, all its officers, directors, and controlling direct or indirect owners;

(C) If a limited liability company, all its members; or

(D) An individual.

(69) "Producer/manufacturer" means a person who produces, refines, blends, distills, manufactures or compounds motor fuel.

(70) "Provider of alternative fuel" means a person who does one or more of the following:

(A) Acquires alternative fuel for sale or delivery to an alternative-fuel bulk end user or an alternative-fuel retailer;

(B) Maintains storage facilities for alternative fuel including alternative-fuel home refueling infrastructures and alternative-fuel commercial refueling infrastructures, part or all of which the person uses or sells to someone other than an alternative-fuel bulk end user or an alternative-fuel retailer to operate a highway vehicle;

(C) Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicles to the engine of the vehicle;

(D) Imports alternative fuel into this state by a means other than the usual tank or receptacle connected with the engine of a highway vehicle for use by that person to operate a highway vehicle.

(71) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, marine vessel or bulk plant into a transport vehicle, railroad tank car or other means of transfer that is outside the bulk transfer/terminal system.

(72) "Railroad locomotive" means diesel-powered equipment or machinery that rides on railroad rails and includes a switching engine.

(73) "Receive" means acquisition of ownership or possession of motor fuel.

(74) "Refiner" means a person who owns, operates or otherwise controls a refinery.

(75) "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

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(76) "Removal" means a physical transfer other than by evaporation, loss or destruction. A physical transfer to a transport vehicle or other means of conveyance outside the bulk transfer/terminal system is complete upon delivery into the means of conveyance.

(77) "Retailer" means a person who sells motor fuel at retail or dispenses motor fuel at a retail location.

(78) "Retailer of alternative fuel" means a person who maintains storage facilities, including alternative-fuel vehicle commercial refueling infrastructure, for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a motor vehicle.

(79) "Special fuel" means a gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine, or mechanical contrivance and includes products commonly known as natural or casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, ethanol, M100, ethanol fuel, E100, ethanol fuel blend, E85 and any fuel mixture that contains 85 percent or more alcohol by volume when combined with gasoline or other fuels and liquid fuel derived from coal through the Fischer-Tropsch process. "Special fuel" does not include alternative fuel or any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine.

(80) "State" or "this state" means the State of West Virginia.

(81) "Supplier" means a person that is:

(A) Subject to the general taxing jurisdiction of this state;

(B) Registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal distribution system; and

(C) One of the following:

(i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently be a position holder in motor fuel in another state; or

(ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

A terminal operator is not a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

(82) "Tax" or "this tax" is the motor fuel excise tax imposed by this article and includes within its meaning interest and additions to tax and penalties unless the context requires a more limited meaning.

(83) "Taxpayer" means a person required to file a return for the tax imposed by this article

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or a person liable for payment of the tax imposed by this article.

(84) "Terminal" means a motor fuel storage and distribution facility to which a terminal control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

(85) "Terminal operator" means a person who owns, operates or otherwise controls a terminal.

(86) "Transmix" means: (A) The buffer or interface between two different products in a pipeline shipment; or (B) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

(87) "Transport vehicle" means a vehicle designed or used to carry motor fuel over the highway and includes a straight truck, a straight truck/trailer combination and a semitrailer combination rig.

(88) "Trustee" means a person who is licensed as a supplier or a permissive supplier and receives tax payments from and on behalf of another pursuant to section twenty-four of this article.

(89) "Two-party exchange" means a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier pursuant to an exchange agreement; and

(A) Includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator;

(B) Is completed prior to removal of the product from the terminal by the receiving exchange partner; and

(C) Is recorded on the terminal operator’s books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

(90) "Use" means the actual consumption or receipt of motor fuel by a person into a motor vehicle, aircraft or watercraft.

(91) "Watercraft" means any vehicle used on waterways.

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