# WEST VIRGINIA CODE: §11-14C-34

**§11-14C-34. Shipping documents; transportation of motor fuel; civil penalty.**

(a) A person shall not transport motor fuel loaded at a terminal rack unless the person has a shipping document, that complies with this section. A terminal operator shall give a shipping document to the person who operates the means of conveyance into which motor fuel is loaded at the terminal rack.

(b) The shipping document issued by the terminal operator shall contain the following information and any other information required by the commissioner:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received;

(2) Date the motor fuel was loaded;

(3) Invoiced gallons loaded;

(4) Destination state of the motor fuel as represented by the purchaser of the motor fuel or the purchaser's agent;

(5) In the case of aviation jet fuel, the shipping document shall be marked with the phrase "Aviation Jet Fuel, Not for On-road Use" or a similar phrase;

(6) In the case of dyed diesel fuel, the shipping document shall be marked with the phrase "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase; and

(7) If the document is issued by a terminal operator, the invoiced gallons loaded and a statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. In the event that either the terminal operator, purchaser or transporter determines prior to the shipment of motor fuel leaving the terminal that the destination state indicated on the shipping document is incorrect, the diversion procedure provided in subdivision (3), subsection (d) of this section shall be used to obtain authorization to deliver the motor fuel to a different state. A purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the represented destination state.

(d) A person to whom a shipping document was issued shall:

(1) Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;

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(2) Show the shipping document upon request to any law-enforcement officer, representative of the commissioner and any other authorized individual when transporting the motor fuel described;

(3) Deliver motor fuel to the destination state printed on the shipping document unless the person:

(A) Notifies the commissioner's designated entity by the next business day that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

(B) Receives from the commissioner's designated entity, a confirmation number authorizing the diversion;

(C) Records with the shipping document the change in destination state and the confirmation number for the diversion; and

(4) Provides the confirmation number for the diversion to the person to whom the motor fuel is delivered.

(e) The person to whom motor fuel is delivered by any means of conveyance shall not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than West Virginia: *Provided*, That delivery may be accepted if the destination state is other than West Virginia if the document contains a diversion number authorized by the commissioner's designated entity. The person to whom the motor fuel is delivered shall examine the shipping document to determine that West Virginia is the destination state and shall retain a copy of the shipping document: (1) At the place of business where the motor fuel was delivered for ninety days following the date of delivery; and (2) at the place or another place for at least three years following the date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to section five of this article is jointly and severally liable for any tax due on the motor fuel.

(f) Any person who transports motor fuel by any means of conveyance without a shipping document or with a false or an incomplete shipping document or delivers motor fuel to a destination state other than the destination state shown on the shipping document, is subject to the following civil penalty.

(1) If the motor fuel is transported in a barge, watercraft, or transport vehicle, the civil penalty shall be payable by the person in whose name the means of conveyance is registered.

(2) If the motor fuel is transported in a railroad tank car, the civil penalty shall be payable by the person responsible for shipping the motor fuel in the railroad tank car.

(3) The amount of the civil penalty for a first violation is $5,000.



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(4) The amount of the civil penalty for each subsequent violation, after notice to correct the shipping document, is $10,000.

(5) Civil penalties prescribed under this section are assessed, collected, and paid in the same manner as the motor fuel excise tax imposed by this article.

(g) *Penalty Defense*. — Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section, resulting from the delivery of motor fuel to a state other than the destination state printed on the shipping document for the motor fuel. The commissioner shall waive a penalty imposed against the person who transported the motor fuel under that subsection, if that person establishes a defense under this subsection. The conditions for the defense are:

(1) The person who transported the motor fuel notified the commissioner's designated entity of the diversion and received a confirmation number for the diversion before the imposition of the penalty; and

(2) Unless the person is a motor fuel transporter, the tax was timely paid on the diverted motor fuel.

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