

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 2-26

By the Governor

WHEREAS, on October 20, 2026, by proclamation issued under West Virginia Code § 15-5-6(b), I declared a State of Emergency in all fifty-five counties of West Virginia because of the high price and restricted supply of diesel fuel (the “Proclamation”); and

WHEREAS, the Proclamation aligns with and supports efforts by President Donald J. Trump to address fuel affordability for American consumers, farmers, truckers, and workers including those taken under Executive Order No. 14156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8433 (Jan. 29, 2025), *continued* 91 Fed. Reg. 1667 (Jan. 14, 2026), and Executive Order No. 14435, *Emergency Tax Relief on Diesel Fuel*, 91 Fed. Reg. 64747 (Oct. 9, 2026); and

WHEREAS, Executive Order 14435 directs the Secretary of the Treasury to direct the Internal Revenue Service to announce that it will not impose penalties under 26 U.S.C. 6715 when dyed diesel fuel is sold for use or used on the highway, and Section 8 of that order encourages States “to adopt policies that correspond to” that direction to the Secretary of the Treasury; and

WHEREAS, on October 14, 2026, the Internal Revenue Service announced in IR-2026-122 that it will not impose a penalty when dyed diesel fuel is sold for use or used on highways nationwide from October 1, 2026, through December 31, 2026, that during that period “no federal inspections of on-road dyed fuel usage will occur,” but it also concluded that this relief had no direct “effect on state fuel taxes and penalties that a state may impose on the use of dyed diesel fuel on the highway”; and

WHEREAS, West Virginia Code § 11-14C-36 imposes a civil penalty on any person who sells or stores dyed diesel fuel for use in a highway vehicle or uses dyed diesel fuel in a highway vehicle, in the amount of the greater of \$10 per gallon of fuel tank capacity or \$1,000 for each of

the first two violations in a calendar year, and the greater of \$15 per gallon or \$2,000 for each later violation in the same year; and

WHEREAS, West Virginia Code § 11-14C-41(a) makes it a misdemeanor, punishable by a fine of \$5,000 to \$25,000, confinement of up to one year, or both, to willfully use or sell twenty-five gallons or less of dyed diesel fuel for a taxable use; and

WHEREAS, West Virginia Code § 11-14C-41(b) makes it a felony, punishable by a fine of \$25,000 to \$50,000, imprisonment of one to five years, or both, to do so with more than twenty-five gallons with intent to evade or circumvent the motor fuel excise tax; and

WHEREAS, West Virginia Code § 11-14C-45 prescribes the procedures by which the State Tax Commissioner may stop motor vehicles, inspect and take samples of motor fuel, and issue citations; and it authorizes the Tax Commissioner to enter into agreements with other agencies of this State for assistance in stopping and inspecting motor vehicles; and

WHEREAS, West Virginia Code § 11-14C-36(d) provides that civil penalties shall be assessed, collected, and paid in the same manner as the motor fuel tax; West Virginia Code § 11-14C-27 creates additional penalties for refusing to allow an authorized inspection; and West Virginia Code § 11-14C-42 provides for the seizure of motor fuel and the forfeiture of vehicles and other property used to aid in the illegal transportation or sale of motor fuel; and

WHEREAS, so long as these penalties and enforcement procedures apply to dyed diesel fuel used on the highway, farmers, foresters, coal and gas producers, truckers, and the people of this State will be deterred from using dyed diesel fuel in highway vehicles and will not receive the benefit of the federal relief provided under Executive Order 14435, and continued inspections will occupy law enforcement and tax personnel during the emergency; and

WHEREAS, West Virginia Code § 15-5-6(g)(7) authorizes the Governor, under a duly proclaimed state of emergency, “[t]o suspend the provisions of any statute prescribing the procedures for the conduct of state business or the orders, or rules of any state agency, if strict

compliance therewith would in any way prevent, hinder, or delay necessary action in coping with the emergency”; and

WHEREAS, West Virginia Code § 15-5-6(g)(11) further authorizes the Governor “[t]o perform and exercise other functions, powers and duties that are necessary to promote and secure the safety and protection of the civilian population”; and

WHEREAS, I find that strict compliance with the provisions identified in this Order, as they apply to dyed diesel fuel sold for use or used in highway vehicles, would prevent, hinder, and delay necessary action in coping with the State of Emergency, because the availability of lower-cost dyed diesel fuel for highway use is necessary to keep essential supplies, agricultural products, and emergency services moving while diesel prices remain high.

NOW, THEREFORE, I, PATRICK MORRISEY, by virtue of the authority vested in me as the Governor of the State of West Virginia, including West Virginia Code § 15-5-6(g)(7) and (g)(11), and pursuant to the State of Emergency declared in the October 21, 2026, Proclamation, do hereby **DIRECT** and **ORDER**:

1. Suspension of enforcement: Pursuant to West Virginia Code § 15-5-6(g)(7), I hereby **SUSPEND**, for the duration of this Order, the enforcement of the following provisions insofar as they apply to the sale, storage, dispensing, or use of dyed diesel fuel for or in a highway vehicle:

- a. West Virginia Code § 11-14C-36(a)(1), (a)(3), (a)(4), and (a)(5), together with the procedures in § 11-14C-36(d) for assessing, collecting, and paying the civil penalty;
 - b. West Virginia Code § 11-14C-41(a)(15), (a)(16), and (a)(18), and § 11-14C-41(b)(7);
 - c. West Virginia Code § 11-14C-37, insofar as it penalizes a refusal to allow an inspection of, or the taking of a fuel sample from, a highway vehicle; and
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- d. West Virginia Code § 11-14C-42, insofar as it authorizes the seizure, sale, or forfeiture of dyed diesel fuel, a highway vehicle, or other property because dyed diesel fuel was sold, stored, dispensed, or used for or in a highway vehicle.

While this Order is in effect, no executive branch agency, officer, or employee shall assess or collect a civil penalty, issue a citation, make an arrest, seize property, or refer any person for prosecution under a provision suspended by this paragraph for conduct occurring on or after October 21, 2026.

2. Fuel tank inspections: Pursuant to West Virginia Code § 15-5-6(g)(7), I **SUSPEND** West Virginia Code § 11-14C-45, and every agreement entered into under § 11-14C-45(d), insofar as they authorize stopping a highway vehicle, inspecting or sampling the fuel in its supply tank, or issuing a citation, for the purpose of detecting dyed diesel fuel. I **DIRECT** the Superintendent of the West Virginia State Police, the Secretary of the Department of Transportation, and the State Tax Commissioner to cease, for the duration of this Order, all inspection and sampling of fuel in the supply tanks of highway vehicles for dyed diesel fuel, whether at a terminal, retail motor fuel facility, highway rest stop, designated inspection site, or roadside stop.

I further **REQUEST** that the Public Service Commission of West Virginia and local law enforcement likewise cease all inspection and sampling for dyed diesel fuel for the duration of this Order.

3. Provisions that remain in effect. This Order does not suspend:
 - a. the prohibitions on altering the strength or composition of a dye or marker in West Virginia Code §§ 11-14C-36(a)(2) and 11-14C-41(b)(8);
 - b. any other provision of West Virginia Code §§ 11-14C-36 and 11-14C-41, or of Article 14C, Chapter 11 of the West Virginia Code, except as stated in paragraphs 1 and 2;
 - c. the motor fuel excise tax levied by West Virginia Code § 11-14C-5;
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- d. commercial motor vehicle safety inspections, size and weight enforcement, or any other inspection conducted for a purpose other than detecting dyed diesel fuel; or
- e. any federal law or regulation.

4. Prosecuting attorneys: I further **REQUEST** that each county prosecuting attorney exercise prosecutorial discretion consistent with this Order and decline to prosecute offenses under the provisions suspended by paragraph 1 for conduct occurring from October 21, 2026, through the termination of this Order.

5. Cooperation by Executive Branch: All departments, commissions, boards, agencies and officers of the State are authorized and directed to cooperate in the implementation and compliance with this Order;

6. Duration: This Order is effective immediately and remains in effect until the earliest of: (a) the expiration or termination of the State of Emergency declared in the Proclamation, including any extension; or (b) its rescission by subsequent order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



By the Governor

DONE at the Capitol in the City of Charleston, State of West Virginia, this Twentieth Day of October, in the Year of our Lord, Two Thousand Twenty-Six in the One Hundred Sixty-Fourth Year of the State.

Patrick Morisy
GOVERNOR

Krista Warner
SECRETARY OF STATE