

325D.01 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section, for the purposes of sections 325D.02 to 325D.07, shall be given the meanings subjoined to them.

Subd. 2. **Retailer.** The term "retailer" means any person, partnership, firm, corporation, or association, foreign or domestic, selling any commodity, article, goods, wares, or merchandise to the consumer and not for the purpose of resale in any form.

Subd. 3. **Wholesaler.** The term "wholesaler" means any person, firm, or corporation, partnership, association, business trust, or any unincorporated organization, selling or supplying any commodity, article, goods, wares, or merchandise to retailers, industrial buyers, restaurants, institutions, or the selling on the part of one wholesaler to another wholesaler.

Subd. 4. **Manufacturers or producers.** Creameries, canneries, and other processors of agricultural products are defined to be manufacturers or producers and are not included within the meaning of the term "wholesaler."

Subd. 5. **Cost.** The term "cost", as applied to the wholesale or retail vendor, means:

(1) the actual current delivered invoice or replacement cost, whichever is lower, without deducting customary cash discounts, plus any excise or sales taxes imposed on such commodity, goods, wares or merchandise subsequent to the purchase thereof and prior to the resale thereof, plus the cost of doing business at that location by the vendor;

(2) where a manufacturer publishes a list price and discounts, in determining such "cost" the manufacturer's published list price then currently in effect, less the published trade discount but without deducting the customary cash discount, plus any excise or sales taxes imposed on such commodity, goods, wares or merchandise subsequent to the purchase thereof and prior to the resale thereof, plus the cost of doing business by the vendor shall be prima facie evidence of "cost";

(3) for purposes of gasoline offered for sale by way of posted price or indicating meter by a retailer, at a retail location where gasoline is dispensed into passenger automobiles and trucks by the consumer, "cost" means the average terminal price on the day, at the terminal from which the most recent supply of gasoline delivered to the retail location was acquired, plus all applicable state and federal excise taxes and fees, plus the lesser of six percent or eight cents.

Subd. 6. **Customary cash discounts.** The term "customary cash discounts" means any allowance, not exceeding two percent, whether a part of a larger discount or not, made to the wholesale or retail vendor, where the wholesale or retail vendor pays for merchandise within a limited or specified time.

Subd. 7. **Cost of doing business or overhead expense.** The "cost of doing business" or "overhead expense" is defined as all current costs of doing business incurred in the conduct of such business and must include, without limitation, the following items of expense: Labor, including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising, and other fixed and incidental expenses.

The "cost of doing business" including, without limitation, these items of expenses incurred in the conduct of such business during the calendar year or the 12 months immediately preceding any alleged violation of sections 325D.02 to 325D.07; or, in the event any retailer or wholesaler

shall have been engaged in business within the state for a shorter period of time, then such cost for such period of time immediately preceding any alleged violation thereof shall be prima facie evidence of "cost".

Subd. 8. **Trade discount.** The term "trade discount" means all discounts made to the wholesale or retail vendee other than the customary cash discount.

Subd. 9. **Subjobber.** The term "subjobber" means any person, partnership, firm, corporation or association other than a wholesaler or retailer, who or which buys any commodity, article, goods, wares, or merchandise from a wholesaler and sells such merchandise directly to retailers, thereby performing the selling and delivering functions of a wholesaler.

Subd. 10. **Vending machines operator.** The term "vending machines operator" means any person, partnership, firm, corporation or association who or which owns, services and supplies ten or more merchandise vending machines placed in various locations for dispensing such merchandise to consumers.

Subd. 11. **Terminal.** "Terminal" means a storage facility to which gasoline is shipped by pipeline, barge, or rail, and from which gasoline is subsequently transferred into motor vehicles for delivery to other locations. For purposes of this chapter, an oil refinery is also a terminal.

Subd. 12. **Average terminal price.** "Average terminal price" means the arithmetic mean of all prices for an individual grade of gasoline at a terminal as published by a nationally recognized petroleum price reporting service.

History: (3976-42) 1937 c 116 pt 2 s 3; 1937 c 456 s 1; 1939 c 403 s 2; 1941 c 326 s 2; 1955 c 339 s 1-4; 1980 c 509 s 124; 1996 c 305 art 1 s 70; 2001 c 129 s 1-3