

State of North Carolina

ROY COOPER
GOVERNOR

September 20, 2018

EXECUTIVE ORDER NO. 60

**AMENDING EXECUTIVE ORDER NO. 57 TO PERMIT SALE, DISTRIBUTION, AND USE
OF CERTAIN NONHIGHWAY DIESEL FUELS IN SUPPORT OF HURRICANE
FLORENCE RELIEF EFFORTS**

WHEREAS, Hurricane Florence (“Hurricane”) made landfall off the coast of North Carolina on or about 14 September 2018; and

WHEREAS, the Hurricane has placed North Carolina residents and visitors at substantial risk of death or injury; and

WHEREAS, impacts from the Hurricane constitute a State of Emergency, as defined in N.C. Gen. Stat. § 166A-19.3(19); and

WHEREAS, N.C. Const. art. III § 5(4) vests the Governor with the duty to take care that the laws be faithfully executed; and

WHEREAS, the undersigned issued Executive Order No. 51 declaring a State of Emergency on 7 September 2018, to provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, Executive Order No. 51 invokes the Emergency Management Act, and authorizes the Governor to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, the Hurricane has inflicted significant damage on public and private property, and disrupted the supply of certain diesel fuels necessary for recovery and response operations; and

WHEREAS, the undersigned issued Executive Order No. 57 on 16 September 2018 (“Exec. Order 57”), to suspend the enforcement of certain state statutory or regulatory requirements restricting the use of certain diesel fuels in highway vehicles; and

WHEREAS, the Environmental Protection Agency (“EPA”), upon request from the undersigned, issued a Clean Air Act (“CAA”) waiver on 17 September 2018 that permits the sale, use, and distribution of red dyed fifteen (15) parts per million (“ppm”) non-road locomotive and marine (“NRLM”) diesel fuel in diesel-powered highway vehicles in the State of North Carolina (“EPA Waiver”); and

WHEREAS, in response to diesel fuel shortages, the Internal Revenue Service (“IRS”) issued a waiver on 18 September 2018 that lifts the IRS penalty associated with the sale and use of red dyed fifteen (15) ppm NRLM diesel fuel in diesel-powered highway vehicles in the State of North Carolina, provided the operator or the person selling the fuel pays the 24.4 cents per gallon federal tax applied to diesel fuel for highway use (“IRS Waiver”); and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b) authorizes and empowers the undersigned to make and amend orders, rules, and regulations within the limits of the authority conferred upon him in the Emergency Management Act; and

WHEREAS, the execution of the undersigned's emergency powers under N.C. Gen Stat. § 166A-19.30 is appropriate to ensure the public safety of our residents and visitors located in North Carolina during the State of Emergency; and

WHEREAS, in order to take care of important public safety requirements, the undersigned has made the determination that it is in the State's interest to ensure consistency with regards to efforts facilitating the supply of certain diesel fuels to Hurricane-impacted areas.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1.

Section 1 of Exec. Order 57 is hereby rescinded.

Section 2.

Section 2 of Exec. Order 57 is hereby amended as follows:

The provisions in N.C. Gen. Stat. § 105-449.117 prohibiting the use of dyed diesel motor fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes shall not be enforced, provided the operator or person selling the fuel pays the 35.1 cents per gallon state motor fuel excise tax applied to diesel fuel for highway use.

Section 3.

Exec. Order 57 is amended consistent with the EPA Waiver, which suspends certain CAA statutory provisions and CAA regulations and authorizes the sale, distribution, and/or use of red dyed fifteen (15) ppm NRLM diesel fuel in diesel-powered highway vehicles in the State of North Carolina.

Section 4.

Exec. Order 57 is amended consistent with the IRS waiver, which lifts the IRS penalty associated with the sale and/or use of red dyed fifteen (15) ppm NRLM diesel fuel in diesel-powered highway vehicles in the State of North Carolina, provided the operator or the person selling the fuel pays the 24.4 cents per gallon federal tax applied to diesel fuel for highway use.

Section 5.


Section 1 of this Executive Order is effective immediately and shall remain effective until rescinded. Sections 2 through 4 of this Executive Order are effective 17 September 2018 and shall remain in effect until 28 September 2018 or until they are amended pursuant to subsequent Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 20th day of September in the year of our Lord two thousand and eighteen.



Roy Cooper
Governor

ATTEST:



Haley Haynes
Deputy Secretary of State

