

August 29, 2017

Mr. John P. Moriarty  
Acting Associate Chief Counsel  
Passthroughs and Special Industries  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

VIA EMAIL & REGULAR MAIL

Re: Request for Temporary Fuel Waivers for Certain Diesel Fuel Requirements

Dear Mr. Moriarty:

The Texas Comptroller's office, on behalf of the state of Texas and Governor Greg Abbott, requests the U.S. Internal Revenue Service temporarily waive federal fuel requirements for dyed diesel fuels in certain Texas counties impacted by Hurricane Harvey to ensure efficient and reliable fuel sources to assist in responding to disaster relief efforts.

We are seeking a waiver concerning the requirement that all motor vehicle diesel fuel be free of visible evidence of red dye, to allow off-road diesel fuel to be used by on-road vehicles in the Texas counties referenced in footnote six for Texas Low Emission Diesel of the enclosed Environment Protection Agency (EPA) waiver for reformulated gasoline, Reid vapor pressure and Texas Low Emission Diesel. This dyed diesel waiver will facilitate prompt fueling of vehicles for emergency responders and vehicles needed to transport supplies into the areas affected by this unprecedented natural disaster.

We are requesting this dyed diesel waiver cover the period of Aug. 25, 2017 through Sept. 15, 2017, with the option to request an extension if needed, to correspond to the period covered by the waiver granted by the EPA.

If you have any questions, please feel free to contact Mr. Karey Barton, Deputy Comptroller of Tax, at 512-463-3895 or [Karey.Barton@cpa.texas.gov](mailto:Karey.Barton@cpa.texas.gov).

Sincerely,



Glenn Hegar

Enclosure

cc: Karey Barton  
Stephanie N. Bland  
Edward Kipping  
Michel Monconduit  
Amanda Dunlap  
Chase Langley  
Alfredo Valdespino





**E. SCOTT PRUITT**  
**ADMINISTRATOR**

August 26, 2017

The Honorable Greg Abbott  
Governor  
State of Texas  
P.O. Box 12428  
Austin, Texas 78711-2428

Re: Texas Fuel Waiver Request (Corrected)

Dear Governor Abbott:

On August 25, 2017, I granted a request from the State of Texas to waive the requirements for reformulated gasoline (RFG), Reid vapor pressure (RVP) and Texas Low Emission Diesel (TxLED) that apply in some of the counties covered by the Governor's Disaster Proclamation<sup>1</sup>. On August 26, 2017, I received a second request from the Texas Commission on Environmental Quality (TCEQ), made on your behalf, to expand the scope of the waiver in order to address a fuel supply emergency caused by refinery shutdowns, flooding and evacuations associated with Hurricane Harvey. TCEQ's August 26, 2017, letter requests that the U.S. Environmental Protection Agency expand the scope of the August 25, 2017 waiver to include the four-county Dallas-Fort Worth RFG area, the 98-counties that are required to use low RVP fuel, and the entire 110-county area required to use TxLED.

The EPA and the U.S. Department of Energy have continued to actively monitor the supply of fuel in Texas, in coordination with Texas officials, following landfall of Hurricane Harvey on August 25, 2017. Refineries in the immediately impacted areas remain shut-down, and the storm has caused significant and widespread destruction, including power outages and damage to infrastructure. The effect of the storm damage, evacuations, emergency response and recovery needs on the supply of fuel in Texas is now impacting other areas of the State, and the projected track of the storm is expected to exacerbate the current difficulties in the fuel supply storage and distribution system. The EPA has concluded, with the concurrence of DOE, that it is necessary to take additional action to minimize the disruption of an adequate supply of gasoline and TxLED in the affected areas of Texas.

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<sup>1</sup> See [https://gov.texas.gov/uploads/files/press/Governor\\_Abbott\\_Declares\\_State\\_of\\_Disaster\\_For\\_30\\_Texas\\_Counties.pdf](https://gov.texas.gov/uploads/files/press/Governor_Abbott_Declares_State_of_Disaster_For_30_Texas_Counties.pdf).

I have determined that an “extreme and unusual fuel [ ] supply circumstance” exists that will prevent the distribution of an adequate supply of gasoline and TxLED fuel to consumers in eastern Texas. CAA § 211(c)(4)(C)(ii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(I). This extreme and unusual fuel circumstance is the result of refinery shutdowns, flooding and evacuations associated with Hurricane Harvey, an event that could not reasonably be foreseen or prevented, and is not attributable to a lack of prudent planning on the part of suppliers of the fuel to these areas. CAA § 211(c)(4)(C)(ii)(II), 42 U.S.C. § 7545(c)(4)(C)(ii)(II). Further, I have determined that it is in the public interest to grant this waiver and that this waiver applies to the smallest geographic area necessary to address the fuel supply circumstances. CAA § 211(c)(4)(C)(ii)(III) and (iii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(III) and (iii)(I).

### RFG Waiver

I am issuing this waiver of the RFG requirements in the Houston-Galveston-Brazoria and the Dallas-Fort Worth, Texas areas (the “RFG Covered Areas”)<sup>2</sup> to minimize or prevent problems with the supply of gasoline to these areas. This waiver is effective immediately and will continue through September 15, 2017. Under this temporary waiver, regulated parties may sell or distribute conventional gasoline with a maximum RVP of 9.0 pounds per square inch (psi).<sup>3</sup> In addition, I am also waiving the requirement of 40 C.F.R. 80.27(d) for gasoline sold in the RFG Covered Areas. This section of the regulations requires gasoline to have between 9% and 10% ethanol by volume in order to qualify for the “special provisions for alcohol blends” that increase the RVP standard by 1 psi. Under this waiver, gasoline with less than 9% ethanol by volume will qualify for the “special provisions for alcohol blends” requirement.

Gasoline that does not meet the RFG requirements may not be introduced into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets in the RFG Covered Areas after September 15, 2017. Any gasoline meeting the conditions of this waiver that is stored in terminal storage tanks for distribution to retail outlets and wholesale purchaser-consumers in these areas on September 15, 2017, may be distributed and sold in the RFG Covered Areas until the supply is depleted. Likewise, retailers and wholesale purchaser-consumers in these areas may continue selling or dispensing gasoline that meets the conditions of this waiver after September 15, 2017, until their supplies are depleted. This waiver applies only to the applicable federal requirements cited above.

### RVP Waiver

TCEQ requested that the EPA expand its waiver of the 7.8 psi RVP standards to cover all of the 95 counties in eastern Texas that are subject to the Texas low-volatility gasoline program in the federally-enforceable State Implementation Plan (SIP) (Eastern Texas SIP RVP Counties).<sup>4</sup>

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<sup>2</sup> The Houston-Galveston-Brazoria RFG area consists of the counties of Brazoria, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller and Chambers. The DFW RFG covered area includes Collin, Dallas, Denton and Tarrant counties. 40 C.F.R. §§ 80.41, 80.70(h) and (j)(12).

<sup>3</sup> This waiver for the RFG covered areas includes a waiver of the provisions at 40 C.F.R. § 80.78(a)(7) that prohibit any person from combining any reformulated gasoline blendstock for oxygenate blending with any other gasoline, blendstock, or oxygenate, unless certain conditions are met.

<sup>4</sup> The following 95 eastern Texas counties have a 7.8 psi RVP requirement through October 1, 2008: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell,

This program requires gasoline to be sold in the Eastern Texas SIP RVP Counties to have a maximum RVP of 7.8 psi during the summer “high ozone” season, which starts June 1 and ends on October 1, 2016. These federal requirements are codified as part of the federally-approved Texas SIP. 66 Fed. Reg. 20,927 (April 26, 2001). I am issuing this waiver of the 7.8 RVP SIP requirements that apply to Eastern Texas SIP RVP Counties to minimize or prevent problems with the supply of gasoline to these areas.

The federal fuels regulations at 40 C.F.R. § 80.27 set an RVP standard of 7.8 psi in Jefferson, Orange and Hardin Counties. See <https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure#table>. I am issuing this waiver of the 7.8 RVP requirements for Jefferson, Orange and Hardin Counties to minimize or prevent problems with the supply of gasoline to these areas.

I am also waiving the requirement of 40 C.F.R. 80.27(d) for gasoline sold in the Eastern Texas RVP SIP Counties and in Jefferson, Orange and Hardin Counties. This section of the regulations requires gasoline to have between 9% and 10% ethanol by volume in order to qualify for the “special provisions for alcohol blends” that increase the RVP standard by 1 psi. Under this waiver, gasoline with less than 9% ethanol by volume will qualify for the “special provisions for alcohol blends” requirement.

The waiver of the RVP requirements is effective immediately and will continue through September 15, 2017. Under this temporary waiver, regulated parties may sell or distribute gasoline with a maximum RVP of 9.0 psi (10.0 psi if the gasoline ethanol blend contains up to 10% ethanol) in the Eastern Texas SIP RVP Counties and in Jefferson, Orange and Hardin Counties.

Gasoline that does not meet the 7.8 psi RVP requirements that apply in the Eastern Texas SIP RVP Counties may not be introduced into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets after September 15, 2017. Any gasoline meeting the conditions of this waiver that is stored in terminal storage tanks for distribution to retail outlets and wholesale purchaser-consumers in these areas on September 15, 2017, may be distributed and sold in the Eastern Texas SIP RVP Counties until the supply is depleted. Likewise, retailers and wholesale purchaser-consumers in these areas may continue selling or dispensing gasoline meeting the conditions of this waiver after September 15, 2017, until their supplies are depleted.<sup>5</sup>

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Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

<sup>5</sup> Since the RVP waiver for Jefferson, Orange and Hardin Counties will be in effect until the end high ozone season, this waiver does not address downstream standards under the federal RVP requirements at 40 C.F.R. 80.27 that apply after September 15, 2017.


## Texas Low Emission Diesel Waiver

TCEQ requested that the EPA expand its waiver of Texas' federally-approved SIP that requires TxLED to be sold in a 110-county area<sup>6</sup> of Texas (the "TxLED Counties"). TxLED is a Texas-specific diesel fuel that is required only in these counties in Texas, and nowhere else in the country. *See* 70 Fed. Reg. 17321 (April 6, 2005). TCEQ's original request only asked the EPA to waive these requirements for the counties that are covered by the Governor's Disaster Proclamation. TCEQ's August 26, 2017 request asked the EPA to expand the scope of the waiver to cover all TxLED Counties.

I am issuing a waiver of the TxLED requirements in all TxLED Counties to minimize or prevent problems with the supply of TxLED. Under this waiver, the EPA will allow regulated parties to use federally-compliant 15 parts per million Ultra Low Sulfur Diesel (ULSD) in the counties identified above. This waiver is effective immediately and will continue through September 15, 2017. Retail outlets and wholesale purchaser-consumers that receive fuel that meets the conditions of this waiver may continue selling or dispensing this fuel after September 15, 2017, until their supplies are depleted. This waiver only authorizes the distribution and sale of ULSD in the TxLED Counties. This waiver does not authorize the use of undyed highway diesel fuel nor dyed non-road diesel fuel meeting the 500 parts per million sulfur standard found at 40 C.F.R. Part 80, Subpart I.

This waiver supersedes my August 25, 2017 waiver, and applies only to the applicable federal requirements cited above. Other state or local requirements or restrictions related to this matter may need to be addressed by the appropriate authorities. Should conditions warrant, this waiver may be modified, terminated or extended as warranted. If you have questions you may call me, or your staff may call Phillip A. Brooks at (202) 564-0652.

Respectfully yours,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a large, sweeping flourish extending to the right.

E. Scott Pruitt

cc: The Honorable Rick Perry, Secretary of Energy  
Richard Hyde, P.E., Executive Director, Texas Commission on Environmental Quality

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<sup>6</sup> The "TxLED Counties" are as follows: The Houston-Galveston-Brazoria area (the counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller); the Beaumont-Port Arthur area (the counties of Hardin, Jefferson and Orange); the Dallas-Fort Worth area (the counties of Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker and Rockwall); and the counties of Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise and Wood.