

Documentation Guidelines for Emergency Repair and Restoration Vehicle Exclusions

Revised September 2009

Introduction

Section 707 of the Energy Policy Act of 2005 (EPAAct 2005) amended the list of excluded vehicles in section 301(9) of the Energy Policy Act of 1992 (EPAAct 1992) to add a new category of vehicles.¹ Excluded vehicles are not counted when determining if a fleet is covered under the U.S. Department of Energy's (DOE) State and Alternative Fuel Provider Fleet Program, and also are not counted when determining a fleet's annual alternative fuel vehicle (AFV)-acquisition requirements under this Program. The vehicles this amendment excludes are "...vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages...."²

Relevant Dates

Only vehicles acquired on or after August 8, 2005, qualify for the emergency vehicle exclusion.

Decision Process

Section 707 authorizes DOE to decide which vehicles qualify for exclusion. Thus, DOE requires that covered fleets submit their written requests for exclusions to the Department for case-by-case review. Under this process, the requesting fleet has the burden to justify that its vehicles are used directly in repair/restoration activities. Covered fleets must request exclusions with respect to vehicles described within section 707. Incorrect classification of vehicles may leave a fleet out of compliance and subject to penalties under the Program. DOE expects that its review of exclusion requests will be finished within 45 days of receipt of a complete exclusion request. DOE's decision will make clear to the requesting fleet how many vehicles it may subtract (exclude) from its covered light-duty vehicle (LDV) count.

Exclusion Request Contents

Fleets should submit exclusion requests in letter form, using their own letterhead. The request should indicate the number of vehicles for which exclusion status is sought and also provide justification as to why the vehicles qualify as directly used in the emergency repair of lines and restoration of electric service following power outages. This justification must set forth sufficient detail to allow DOE to decide how the subject vehicles are used. If there are several different classes or types of vehicles for which the exclusion is sought, the requestor must include a separate justification for each class, as well as the number of vehicles that fall into each class. If insufficient information is provided, DOE will return the submission with a request for additional information, and the 45-day period will start over upon receipt of the revised submittal. A separate request must be submitted for each model year unless DOE directs otherwise. Fleets should submit exclusion requests in triplicate to:

Regulatory Manager
Alternative Fuel Transportation Program
EE-2G Forrestal Bldg.
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
(202) 586-9171

¹ See 42 U.S.C.13211(9). While the title of section 707 is "Emergency Exemption," this provision actually describes an additional category of excluded vehicles added to the original list of excluded vehicles, set forth in section 301(9) of EPAAct 1992.

² EPAAct 2005, Section 707 states: "Emergency Exemption: Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended in paragraph (9)(E) by inserting before the semicolon at the end ', including vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by the Secretary.'"

Deciding Which Vehicles May Be Excluded

DOE expects covered fleets to limit their exclusions to vehicles “directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages,” as EAct 2005 Section 707 requires. DOE will work with fleets to verify the proper number of vehicles for which exclusion is being requested.

DOE does not have a list of the vehicle types that qualify or do not qualify for exclusion under section 707. DOE has developed, however, some basic guidelines that express its expectations for exclusion requests. In general, the decision to exclude a vehicle hinges on the issue of how “directly” the vehicle is used in repair and restoration efforts, as provided in a fleet’s justification statement. For example, vehicles that are permanently modified with special purpose equipment to assist in repair/restoration operations more likely will qualify for exclusion under this emergency vehicle provision. Vehicles that are only modified temporarily are less likely to be granted exclusions.

Vehicles Not Likely to be Excluded

- **Meter reader vehicles:** DOE expects that these vehicles are not used directly in the repair of lines and restoration of service.
- **“Pool” vehicles or vehicles to transport personnel to sites:** These types of vehicles typically would not be expected to meet the burden of proof required to support exclusion, as they are considered general support vehicles.
- **Administrative vehicles:** Such vehicles would rarely, if ever, be considered as being directly involved in repair/restoration operations.

Vehicles More Likely to be Considered Excluded

- **“Bucket” trucks:** Trucks capable of lifting personnel to the level of power lines and other equipment likely meet the requirements of section 707 (contingent on sufficient justification being provided). At the same time, these vehicles are typically over 8,500-lb gross vehicle weight rating and, thus, already excluded.
- **“Troublemens” trucks:** These trucks typically are considered trucks assigned to personnel to allow for quick response to service issues. The requesting fleet needs to provide specific information about exactly how the subject vehicles are used to support exclusion. Many of these vehicles tend to be assigned to personnel to bring home at night and, thus, are excluded as “take-home” vehicles.
- **Foreman vehicles:** Foremen or other supervisory personnel may use these vehicles to visit sites where repair/restoration activities are underway. The requesting fleet must specify exactly how the vehicles are used to support a claim that they are directly used in repair/restoration. If these vehicles are assigned to personnel to take home at night, they likely are already excluded vehicles.

DOE strongly encourages covered fleets to submit exclusion requests as soon as they know they may qualify—either before the beginning of the model year for which they are making the request or very early in the model year. This will allow sufficient time to adjust AFV- acquisitions, as necessary, based on

DOE's decision. A fleet that files a request late in a model year and that subsequently DOE rejects may find it difficult to ensure compliance.

Appeals

If DOE rejects a covered entity's exclusion request, it may appeal the decision to the Office of Hearings and Appeals using the procedures set forth in 10 C.F.R. Sections 490.204(h) (if applicable) and 490.308(g). Appeals must be filed within 30 days of notification that DOE has rejected the exclusion request.

Questions

Covered fleets with questions concerning excluded vehicles should contact the program's information line at (202) 586-9171, or email the program via regulatory.info@nrel.gov.

Example of How Exclusion Can Impact Calculation of AFV-Acquisition Requirements

Fuel Provider X acquires 100 covered LDVs in the subject model year. The AFV-acquisition requirement is 90% of the number of acquired vehicles, such that fuel provider X must acquire 90 AFVs to comply with its requirements (100×0.9).

If 10 of these vehicles are vehicles directly used in the repair of lines and restoration of service (which DOE will determine based upon an appropriate exclusion request), then the fleet's covered LDV count would decrease to 90 ($100-10$), and its AFV-acquisition requirement would then be 81 AFVs (90×0.9).