

Cowlitz Cnty Public Utility District No. 1

Thank you for the opportunity to comment on the proposed rule changes to WAC 173-423, Clean Vehicles Program. Public Utility District No. 1 of Cowlitz County (Cowlitz PUD) provides clean, affordable and reliable electricity to approximately 54,000 residential, commercial and industrial customers across Cowlitz County. The Advanced Clean Trucks and Heavy-Duty Low NOx regulations have a direct impact on Cowlitz PUD's ability to maintain reliable service throughout the year, across rugged topography, and during typical severe weather events experienced in the Pacific Northwest. The current rule, along with the proposed amendments, will increase the cost and difficulty of procuring the essential vehicles and field equipment that is necessary to maintain a safe and reliable electric grid. It is not clear whether safe, viable, and commercially-available zero-emission utility line vehicle alternatives exist at this time that could achieve compliance with the standard that is being implemented. Alternative administrative methods to achieve compliance will serve to restrict the supply of essential utility vehicles and equipment and drive up the price of the remaining available supply.

Recent federal actions taken by Congress and the Trump Administration rescinded the EPA's Clean Air Act waivers that supported California's ACT rule, upon which Washington's rule is founded. Out of a concern for caution, Cowlitz PUD urges the Department to refrain from further action on this rulemaking until the future of California Air Resources Board's rules are determined by federal courts, or the Washington State Legislature amends the statute to ensure WA State's Clean Vehicles Program is in compliance with federal law.

Notwithstanding the previous request, any future program rule should provide an exemption that allows for the exclusion of utility vehicle types that engage in the emergency repair of transmission lines and/or in the restoration of electricity service following power outages. The U.S. Department of Energy's "Guidance on Emergency Repair and Restoration Vehicle Exclusions" (attached) is an appropriate reference for the inclusion of a similar provision within the Clean Vehicle Program rule.

Thank you for your consideration.

Guidance on Emergency Repair and Restoration Vehicle Exclusions

Revised December 2019

Introduction

Section 707 of the Energy Policy Act of 2005 (EPA 2005) amended section 301(9)(E) of EPA 1992 by adding to the list of vehicles excluded from the definition of “fleet” a new subcategory of emergency motor vehicles, i.e., “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.”¹ Like other excluded vehicles, these light-duty vehicles (LDVs) do not count (1) when determining whether a fleet is covered under the U.S. Department of Energy’s (DOE) State and Alternative Fuel Provider Fleet Program (Program), and (2) for fleets that are covered under the Program, when calculating annual alternative fuel vehicle (AFV)-acquisition requirements. If the vehicles are AFVs, they may be included in the calculation of the number of AFVs acquired.

Exclusion Process

Section 707 authorizes DOE to determine which vehicles qualify for exclusion. Thus, covered and potentially covered fleets must submit to DOE a written exclusion request for a case-by-case review. Under this process, the requesting fleet has the burden of demonstrating in its written request that the subject vehicles are directly used in emergency repair/restoration activities. Fleets may request exclusions only for the vehicles described in section 707.

DOE’s review of an exclusion request can take up to 45 days after the receipt of a complete request, though reviews typically are completed much sooner. DOE’s determination, issued in writing, will make clear to the requesting fleet how many vehicles may be subtracted (i.e., excluded) from (1) the total number of LDVs owned, operated, leased, or otherwise controlled by the fleet (for purposes of determining coverage under the Program), or (2) in the case of a covered fleet, its non-excluded LDV acquisition count for the particular model year (upon which the fleet’s AFV-acquisition requirements are based).

Contents of a Complete Exclusion Request

Fleets should submit exclusion requests in letter form, using official State or company letterhead. The request should indicate the number of vehicles for which exclusion status is sought, and demonstrate that all of the vehicles are directly used in the emergency repair of transmission lines and/or in the restoration of electric service following power outages. The request must provide sufficient detail (or documentation) to enable DOE to determine how the subject vehicles are used.

If there are several different classes or types of vehicles for which exclusion status is sought, the requesting fleet must provide sufficient detail (or documentation) for each class (e.g., sport utility vehicle, sedan, standard pickup truck), as well as the number of vehicles that fall into each class. If insufficient information is provided, DOE will return the fleet’s submission with a request for clarification or additional information, and the 45-day review period will start anew upon DOE’s receipt of the revised submittal.

Unless DOE directs otherwise, a separate exclusion request must be submitted for each model year. Fleets must submit their exclusion requests to the following address:

Regulatory Manager

Alternative Fuel Transportation Program Vehicle Technologies Office (EE-3V)
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0121

An electronic version of the request should also be sent by email to regulatory.info@nrel.gov.

¹ EPA 2005, Section 707, codified at 42 U.S.C. 13211(9)(E) 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. The corresponding regulatory language appears at 10 C.F.R. 490.3(e).”

Deciding Which Vehicles May Be Excluded

As indicated, DOE expects fleets to limit their exclusion requests to qualifying vehicles only, i.e., vehicles directly used in the emergency repair of transmission lines and/or in the restoration of electricity service following power outages. DOE will work with fleets to verify the proper number of vehicles for which exclusion status is being requested.

DOE does not maintain a list of the vehicle types that do or do not qualify for exclusion under section 707, but over the years it has developed 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 emergency repair and restoration efforts, as provided in a fleet’s documentation. For example, vehicles that are permanently modified with special purpose equipment to assist in emergency repair/restoration operations more likely will qualify for exclusions, whereas vehicles that are only modified on a temporary basis are less likely to be granted exclusions.

Vehicles Not Likely to be Excluded

- **Meter reader vehicles:** DOE’s expectation is that these vehicles are not used directly in the emergency repair of lines and/or in the restoration of electricity service.
- **“Pool” vehicles or vehicles to transport personnel to work sites:** These types of vehicles typically are not expected to qualify for exclusion, as they are considered general support vehicles.
- **Administrative vehicles:** Such vehicles are rarely, if ever, considered directly involved in emergency repair/restoration operations.

Vehicles More Likely to be Excluded

- **“Bucket” trucks:** Trucks capable of lifting utility linemen or other personnel and equipment to the level of power lines likely meet the requirements of section 707 (assuming sufficient detail is provided). At the same time, these vehicles usually are over 8,500 lbs. gross vehicle weight rating and, thus, are already outside the purview of the Program.² For this reason, only light-duty bucket trucks should be included in a fleet’s exclusion request.
- **Light-duty “troublemen” trucks:** These pickup trucks typically are considered trucks assigned to personnel to allow for quick response to service issues. The requesting fleet should provide specific information about exactly how the subject vehicles are used to support their exclusion. Note that many of these vehicles tend to be assigned to personnel to take home at night and, thus, are already excluded under the Program as “take-home” vehicles.³
- **Foreman vehicles:** Foremen or other supervisory personnel may use these vehicles to visit sites where emergency repair/restoration activities are necessary or underway. The requesting fleet should specify exactly how the vehicles are used to support the claim that they are directly used in emergency repair/restoration efforts. If these vehicles are assigned to personnel to take home at night, note that they likely are already excluded under the Program.

DOE strongly encourages covered fleets to submit their written exclusion requests as soon as they have acquired vehicles that may qualify—ideally, at 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 determination. A covered fleet that files a written request late in a model year, and has that request denied by DOE, may find it difficult to adjust and achieve compliance. For fleets assessing whether they are covered under the Program, written exclusion requests should be submitted as early as possible.

² 10 C.F.R. 490.2 (definition of “light-duty motor vehicle”).

³ 10 C.F.R. 490.3(h).

Appeals

If DOE denies a fleet's exclusion request, it may submit an appeal to the DOE Office of

Hearings and Appeals. The appeal must be filed within 30 days of the date of DOE's denial letter and must be filed with:

Office of Hearings and Appeals
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0121

Other Questions

Fleets with other questions concerning emergency repair and restoration vehicles or any of the vehicles excluded under the Program should contact the Program's Regulatory Information Line at (202) 586-9171 or via email at regulatory.info@nrel.gov.

