

DRAFT INTERIM FINAL RULE (October 29, 2008)

DEPARTMENT OF ENERGY

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-10 CFR Part 611

Advanced Technology Vehicles Manufacturing Incentive Program

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-DEPARTMENT OF ENERGY

10 CFR Part 611

RIN 1901-xxxx

Advanced Technology Vehicles Manufacturing Incentive Program

AGENCY: Office of the Chief Financial Officer. Department of Energy

ACTION: Interim final rule and request for comment.

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SUMMARY: Pursuant to Section 136 of the Energy Independence and Security Act of 2007 (the Act), the Department of Energy (DOE) is establishing regulations for an Advanced Technology Vehicles Manufacturing Incentive Program. Specifically, Section 136 of the Act direct DOE to “carry out a program to provide a total of not more than \$25,000,000,000 in loans” to the manufacturers of advanced technology vehicles and qualifying components “for the costs” of the following activities: “(1) reequipping, expanding, or establishing a manufacturing facility in the United States to produce (A) qualifying advanced technology vehicles; or (B) qualifying components; and (2) engineering integration performed in the United States of qualifying vehicles and qualifying components.” Subsection 136(g) of the Act further directed DOE, in making “loans to those manufacturers that have existing facilities, [to] give priority to those facilities that are oldest or have been in existence for at least 20 years. Such facilities can currently be sitting idle.”

DATES: Effective Date: This interim final rule is effective [on date of publication in the Federal Register]. Comment Date: Written comments must be received by [60 days from the date of publication in the Federal Register]

ADDRESSES: You may submit written comments, identified by RIN 1901-xxxx, by any of the following methods:

1. E-mail to xxxxx. Include RIN 1901 -xxxx and Interim Final Rule Comments in the subject line of the e-mail. Please include the full body of your comments in the text of the message or an attachment.

2. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

3. Mail: Address the comments to XXXXX. Due to potential delays in the Department's receipt and processing of mail sent through the U.S. Postal Service, we encourage commenters to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: XXXXXXXX

SUPPLEMENTARY INFORMATION:

- I. Background and Discussion of Interim Final Rule
- II. Regulatory Review

## I. BACKGROUND AND DISCUSSION OF INTERIM FINAL RULE

Section 136 of the Energy Independence and Security Act of 2007 (Public Law 110-140) (the Act) directs DOE to “carry out a program to provide a total of not more than \$25,000,000,000 in loans” to the manufacturers of advanced technology vehicles and qualifying components “for the costs” of the following activities: “(1) reequipping, expanding, or establishing a manufacturing facility in the United States to produce (A) qualifying advanced technology vehicles; or (B) qualifying components; and (2) engineering integration performed in the United States of qualifying vehicles and qualifying components.” Subsection 136(g) of the Act further directs DOE, in making loans to those manufacturers that have existing facilities, [to] give priority to those facilities that are oldest or have been in existence for at least 20 years. Such facilities can currently be sitting idle.” Subsection 136(d)(1), as originally enacted, stated that this direct loan program was to be carried out “[n]ot later than 1 year after the date of enactment of this Act.” The Act was enacted on December 19, 2007, so Section 136 must be carried out by December 19, 2008.

On September 30, 2008, the “Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009” (Public Law 110-329) (Appropriations Act), was signed into law. Section 129 of Division A of this Appropriations Act “appropriated \$7,510,000,000 for fiscal year 2009” for Department of Energy -- Energy Programs -- Advanced Technology Vehicles Manufacturing Loan Program Account” for the “cost of direct loans as authorized” by Section 136 of the Act “to remain available until expended.”

The Appropriations Act amended Section 136(d) of the Act to require that DOE promptly issue an interim final rule to implement this direct loan program, specifically “[n]ot later than 60 days after the enactment” of the Appropriations Act, namely, not later than November 29, 2008.

Congress explicitly funded DOE administration of this direct loan program. DOE also may charge each applicant one administrative fee of not more than \$100,000. Section 136 of the Act further provides, in subsection (j), that “(1) The [DOE] Secretary may use direct hiring authority pursuant to Section 3304(a)(3) of title 5, United States Code, to appoint such professional and administrative personnel as the Secretary deems necessary to the discharge of the Secretary’s functions under this section. (2) The rate of pay for a person appointed pursuant to paragraph (1) shall not exceed the maximum rate payable for GS- 15 of the General Schedule under chapter 53 such title 5. (3) The Secretary may retain such consultants as the Secretary deems necessary to the discharge of the functions required by this section, pursuant to Section 31 of the Office of Federal Procurement Policy Act (41 U.S.C. 427).”

The Appropriations Act added to subsection 136(d) of the Act that: “The loans shall be made through the Federal Financing Bank, with the full faith and credit of the United States Government on the principal and interest. The full credit subsidy shall be paid by the Secretary using appropriated funds.”

The purpose of this DOE guaranteed direct loan program is to encourage the manufacture of advanced technology vehicles and qualifying components. Subsection 136(a) specifically defines what is meant by an advanced technology vehicle and a qualifying component. “The term ‘advanced technology vehicle’ means a light duty vehicle that meets (A) the Bin 5 Tier II emission standard established in regulations issued by the Administrator of the Environmental Protection Agency under Section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)), or a lower-numbered Bin emission standard; (B) any new emission standard in effect for fine particulate matter prescribed by the Administrator under that Act (42 U.S.C. 7401 et seq.); and (C) at least 125 percent of the average base year combined fuel economy for vehicles with substantially similar attributes.” “The term ‘qualifying components’ means components that the Secretary determines to be (A) designed for advanced technology vehicles; and (B) installed for the purpose of meeting the performance requirements of advanced technology vehicles.”

It is clear that the Congress intends that DOE implement this direct loan program very quickly. Section 136(d)(1), as originally enacted, requires DOE to “carry out” this program “not later than” December 19, 2008. The recent Appropriations Act requires that DOE issue an interim final rule to implement this direct loan program not later than November 29, 2008. Given recent economic events and the situation with automobile manufacturers in the United States, DOE agrees with the importance of implementing this direct loan program quickly. For this reason, Consolidated Application requirements and a submission deadline are included in this regulation.

Applicants may apply for direct loans for the development of eligible products. Eligible products include advanced technology vehicles and qualifying components, as well as the associated engineering integration costs as defined in subsection 136(a) of the Act. Specifically, the direct loans provided under Section 136 are to pay “the cost of (1) reequipping, expanding, or establishing a manufacturing facility in the United States to produce (A) qualifying advanced technology vehicles; or (B) qualifying components; and (2) engineering integration performed in

the United States of qualifying vehicles and qualifying components.”

DOE shall separately evaluate applications by manufacturers of advanced technology vehicles and applications by manufacturers of qualifying components. Manufacturers of advanced technology vehicles whose consolidated applications 1) demonstrate that the advanced technology vehicles included in the application will yield, in the aggregate, a lifetime fuel savings of at least one billion gallons, and 2) demonstrate that advanced technology vehicle models will be produced at multiple manufacturing facilities that have been in existence for at least 20 years, will receive first priority. To the extent that multiple applicants qualify for first priority, DOE shall allocate available funds so as to make loans to all first priority Applicants in an equitable manner. To the extent that funds remain after loans have been made to first priority Applicants, DOE shall use such funds to make loans to other Applicants. DOE will set aside \$2.5 billion for manufacturers of qualifying components.

Each applicant for Direct Loans must submit a single Consolidated Application covering all products for which loans are sought. It is DOE’s policy to approve consolidated loan applications with available loan funds as part of this regulation. For approved Consolidated Applications, DOE shall provide a 100 percent guarantee of principal and interest repayment to the Federal Financing Bank and loans equal to 80 percent of the total product costs.

Further, DOE will not select one type of eligible product in preference to another type. Instead, DOE intends to make a determination whether the eligible products selected by each applicant will meet the criteria and standards established by Section 136 of the Act and this part. The reason for this approach is that DOE recognizes that industry is in the best position to determine marketable products. The responsibility for market success resides with each applicant, not with DOE.

DOE has determined that NEPA review is not required for the promulgation of this interim final rule itself. First, DOE regulations at 10 CFR Part 1021.410, Appendix A, item A6, provide a categorical exclusion for "Rulemakings that are strictly procedural...such as...rulemaking...establishing application and review procedures for...grants and cooperative agreements." This interim final rule is a procedural rule governing the loan process and therefore fits within categorical exclusion A6. Second, even if this interim final rule were not subject to a categorical exclusion, the short timeframe established by Congress for the promulgation of these rules is inconsistent with NEPA review. Where the application of NEPA would interfere with an express deadline imposed by Congress, NEPA analysis is not required. See *Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Okla.*, 426 U.S. 776, 787-79 1 (1976).

DOE has also determined that NEPA review is inapplicable to DOE decisions regarding individual loan applications, for two reasons. First, when Congress enacted the loan program as part of the Energy Independence and Savings Act in December 2007, it directed that the loan program be initiated, subject to funding, within one year of enactment. Moreover, the September 2008 legislation in which Congress appropriated money to fund the loans declared the appropriation as an “emergency requirement . . . necessary to meet emergency needs.” Congress

has expressed its clear intent in these measures that DOE should get the loan program underway as quickly as possible. DOE is focused on achieving that objective. Second, DOE regulations at 10 CFR Part 1021.410, Appendix B, item B 5.1 provide a categorical exclusion for "Actions to conserve energy, demonstrate potential energy conservation, and promote energy-efficiency that do not increase the indoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals...organizations...and state and local governments." Here, DOE is making loans to automobile manufacturers and suppliers for the specific purpose of encouraging and assisting them to produce more fuel-efficient vehicles and components which will be used in more fuel-efficient vehicles. This amounts to financial assistance to organizations in order to "conserve energy, demonstrate potential energy conservation, and promote energy-efficiency." It is readily apparent that this program will not "increase the indoor concentrations of potentially harmful substances." The individual products are not expected to cause any new significant environmental effects and will have environmental benefits. As such, individual loans made under this program are subject to categorical exclusion B 5.1. For these reasons, DOE will not require information related to environmental assessments as part of the loan applications.

## II. REGULATORY REVIEW

- A. Executive Order 12866
- B. National Environmental Policy Act
- C. Regulatory Flexibility Act
- D. Paperwork Reduction Act
- E. Unfunded Mandates Reform Act of 1995
- F. Treasury and General Government Appropriations Act, 1999
- G. Executive Order 13132
- H. Executive Order 12988
- I. Treasury and General Government Appropriations Act, 2001
- J. Executive Order 13211
- K. Congressional Notification
- L. Approval by the Office of the Secretary of Energy

### LIST OF SUBJECTS IN 10 CFR PART 611

Administrative practice and procedure, Energy, Loan programs, and Reporting and recordkeeping requirements.

The Secretary of Energy has approved issuance of this interim final rule.

Issued in Washington, DC, on [the date it is signed].

XXXXXXXXXX

Chief Financial Officer.

For the reasons stated in the Preamble, chapter II of title 10 of the Code of Federal Regulations is amended by adding a new part 611 as set forth below.

## PART 611 -- ADVANCED TECHNOLOGY VEHICLES MANUFACTURING INCENTIVE PROGRAM

### Section

- 611.1 Purpose and scope.
- 611.2 Definitions.
- 611.3 Consolidated Application and processing schedule.
- 611.4 Confidential treatment of proprietary information.
- 611.5 Application requirements.
- 611.6 Programmatic, technical and financial evaluation of Consolidated Applications.
- 611.7 Term sheets and conditional commitments.
- 611.8 Closing on the Direct Loan agreement.
- 611.9 Direct Loan Agreement.
- 611.10 DOE guarantee of Federal Financing Bank Direct Loans.
- 611.11 Product costs.
- 611.13 Full faith and credit.
- 611.14 Default, demand, payment, and collateral. 611.15  
Perfection of liens and preservation of collateral. 611.16  
Audit and access to records.
- 611.17 Deviations.

Authority: 42 U.S.C. 7254 and 16512. 42 U.S.C. 17013, as amended by Section 129 in Division of Public Law 110-329.

### Sec. 611.1 Purpose and scope.

(a) This part sets forth the policies and procedures that DOE uses for receiving, evaluating, and, after consultation with the Department of the Treasury, approving Consolidated Applications for Direct Loans to eligible Advanced Technology Vehicle and Qualifying Component manufacturers under Section 136 of the Act and this part.

(b) Except as set forth in paragraph (c) of this section, this part applies to all Consolidated Applications, Conditional Commitments and Direct Loan Agreements to eligible Advanced Technology Vehicle and Qualifying Component manufacturers under Section 136 of the Act.

(c) Part 1024 of chapter X of title 10 of the Code of Federal Regulations shall not apply to actions taken under this part.

### Sec. 611.2 Definitions.

*Act* means the Energy Independence and Security Act of 2007 (Public Law 110-140; 42 U.S.C. 17013), as amended by Section 129 in Division A of Public Law 110-329.

*Advanced Technology Vehicle* means a light duty vehicle that meets:

- (1) the Bin 5 Tier II emission standard established in regulations issued by the Administrator of the Environmental Protection Agency under Section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)), or a lower-numbered Bin emission standard;
- (2) any new emission standard in effect for fine particulate matter prescribed by the Administrator under that Act (42 U.S.C. 7401 et seq.); and
- (3) at least 125 percent of the average base year combined fuel economy for vehicles with substantially similar attributes.

*Average base year combined fuel economy for vehicles with substantially similar attributes* is determined with reference to the table set forth below:

Inertia Weight Class (IWC)	Base Year Passenger Automobile Fuel Economy (mpg)	Base Year Non-Passenger Automobile Fuel Economy (mpg)
1500	45.5	34.6
1750	42.2	32.9
2000	39.1	31.3
2250	36.3	29.8
2500	33.7	28.3
2750	31.2	26.9
3000	29.0	25.6
3500	25.0	23.2
4000	21.5	21.0
4500	18.5	19.0
5000	15.9	17.2
5500	13.7	15.5
6000	11.8	14.1
6500	10.1	12.7
7000	8.7	11.5

*Aggregated Lifetime Fuel Savings* means the sum, for a Consolidated Application, of the Lifetime Fuel Savings for each Eligible Product multiplied by the projected sales for first two full model years for each Eligible Product.

*Applicant* means any individual, corporation, or other business entity that has submitted a Consolidated Application to DOE and has the authority to enter into a Direct Loan Agreement with DOE under Section 136 of the Act. In order for an automobile manufacturer to be eligible for a loan under Section 136 of the Act during a particular year, the adjusted average fuel economy of the manufacturer for light duty vehicles produced by the manufacturer during the



most recent year for which data are available shall be not less than the average fuel economy for all light duty vehicles of the manufacturer for model year 2005. In order to determine fuel economy baselines for eligibility of a new manufacturer or a manufacturer that has not produced previously produced equivalent vehicles, the Secretary is authorized to substitute industry averages.

*Application* means Consolidated Application.

*Base Year* means model year 2005.

*Borrower* means any Applicant who enters into a Direct Loan Agreement with DOE.

*Combined Fuel Economy* means:

(1) the combined city/highway miles per gallon values, as reported in accordance with chapter 329 of title 49, United States Code provided that Applicants may use estimates of the anticipated fuel economy of a model type based on predictive models that replicate the calculation of measured fuel economy set forth at 40 CFR Part 600 and reported to EPA's CFEIS/VERIFY database; and

(2) in the case of an electric drive vehicle with the ability to recharge from an off-board source, the reported mileage, as determined in a manner consistent with the Society of Automotive Engineers recommended practice for that configuration or a similar practice recommended by the Secretary.

*Conditional Commitment* means a Term Sheet offered by DOE and accepted by the Applicant, with the understanding of the parties that if the Applicant thereafter satisfies specified and precedent funding obligations and other contractual, statutory and regulatory requirements, DOE and the Applicant will execute a Direct Loan Agreement.

*Consolidated Application* means a single application covering all Eligible Products for which Direct Loans are sought by the Applicant pursuant to Section 136 of the Act and the application requirements set forth in this Part.

*Contracting Officer* means the Secretary of Energy or a DOE official authorized by the Secretary to enter into, administer and/or terminate Direct Loan Agreements and related contracts on behalf of DOE.

*Credit Subsidy Cost* has the same meaning as "cost of a Direct Loan" in Section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)), which is the net present value, at the time the Direct Loan Agreement is executed, of the following estimated cash flows, discounted to the point of disbursement:

(1) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other

payments; less

(2) Payments to the Government including fees to cover DOE administrative costs, recoveries, loan principal and interest payments, including the effects of changes in loan or debt terms resulting from the exercise by the Borrower included in the Direct Loan Agreement.

*Direct Loan* means a direct Federal Financing Bank loan for which DOE guarantees the payment of 100 percent of the principal and interest.

*Direct Loan Agreement* means a written agreement that, when entered into by DOE and a Borrower, pursuant to Section 136 of the Act, establishes the obligation of DOE to guarantee the payment of 100 percent of the principal and interest to the Federal Financing Bank on specified Direct Loans of a Borrower subject to the terms and conditions specified in the Direct Loan Agreement

*DOE* means the United States Department of Energy.

*Eligible Products* include Advanced Technology Vehicles and Qualifying Components.

*Engineering Integration Costs* means the costs specified in 611.11 of this part, including costs associated with --

(1) incorporating Qualifying Components into the design of Advanced Technology Vehicles; and

(2) vehicle design and integration, tooling design, manufacturing engineering, overhead, start-up, and launch leading to the production of an Advance Technology Vehicle or Qualifying Component.

*Equity* means cash or other in-kind contributions provided by the Borrower to fund a portion of the Product Costs of an Eligible Product. Equity does not include the value of any other form of Federal government assistance or support.

*Federal Financing Bank* means an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq.). The Bank is under the general supervision of the Secretary of the Treasury.

*Government* means the Federal government.

*Inertia Weight Class* has the same meaning as defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

*Lifetime Fuel Savings* means, for an Eligible Product, an amount equal to the excess (if any) of

(A) 120,000 divided by the Base Year Combined Fuel Economy (as set forth in the chart contained in the definition of *Average base year combined fuel economy for vehicles with substantially similar attributes*) for a vehicle of the same vehicle classification and inertia weight class as the Eligible Product, over (B) 120,000 divided by the Combined Fuel Economy of an Eligible Product. (“120,000” is the assumed lifetime mileage for a vehicle.)

*Loan Agreement* means a written agreement between a Borrower and DOE containing the terms and conditions under which the Federal Financing Bank will make loans to the Borrower for Product Costs.

*OMB* means the Office of Management and Budget in the Executive Office of the President.

*Product Costs* means all costs of creating and manufacturing an Advanced Technology Vehicle as specified in Sec. 611.11 of this part, as determined in accordance with 48 CFR part 31 (Cost Principles), including --

(1) reequipping, expanding, or establishing a manufacturing facility in the United States to produce--

(A) qualifying Advanced Technology Vehicles; or

(B) Qualifying Components;

(2) Engineering Integration Costs performed in the United States for qualifying Advanced Technology Vehicles and Qualifying Components.

(3) Costs incurred for incremental steps directly related to the production of an Advanced Technology Vehicle or Qualifying Component.

*Projected Life* means, for the purposes of the term length of the loan for Eligible Projects, eighteen years.

*Qualifying Components* means components that the Secretary determines to be:

(1) designed for Advanced Technology Vehicles; and

(2) installed for the purpose of meeting the performance requirements of Advanced Technology Vehicles.

*Secretary* means the Secretary of Energy or a duly authorized designee or successor in interest.

*Section 136 of the Act* means Section 136, “Advanced technology vehicles manufacturing incentive program,” of the Energy Independence and Security Act of 2007 (Public Law 110-140; 42 U.S.C. 17013), as amended by Section 129 of Division A of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110-329).

*Substantially Similar Attributes* means (1) vehicles that have the same classification as either a passenger automobile or a non-passenger automobile under 42 U.S.C. 32901; and (2) vehicles that are in the same inertia weight class.

*Term Sheet* means an offering document issued by DOE that specifies the detailed terms and conditions under which DOE may enter into a Conditional Commitment with the Applicant. A Term Sheet imposes no obligation on the Secretary to enter into a Conditional Commitment.

*United States* means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or any territory or possession of the United States of America.

#### Sec. 611.3 Consolidated Application and Processing Schedule.

(a) Applicants shall file Consolidated Applications with DOE within 21 days after publication of this part in the Federal Register. Each applicant may file only one Consolidated Application.

(b) Within 30 days after the end of the Application period set forth in subsection (a), DOE shall complete a review of each Consolidated Application to determine if it is eligible for a Direct Loan based on the requirements of Section 136 of the Act and this part, and notify the Applicant of the amount of the loan available for each Consolidated Application.

(c) Within 10 days after DOE has completed the review described in subsection (b), each Applicant shall file a modified Consolidated Application with DOE that conforms to the amount of loan funds available as indicated by DOE under subsection (b) of this section.

(d) Within 15 days after an Applicant has filed a modified Consolidated Application with DOE pursuant to subsection (c), DOE shall issue a loan Term Sheet to the Applicant.

(e) Within 15 days after a loan Term Sheet has been issued to an Applicant, the Applicant and DOE shall reach agreement on loan terms and enter into a Conditional Commitment.

(f) Within 30 days after an Applicant and DOE have reached a Conditional Commitment on loan terms, the Applicant and DOE shall reach agreement on a Direct Loan Agreement, including the Credit Subsidy Cost for each such loan.

(g) Direct Loan funds will be available to draw no later than 10 days after a Direct Loan Agreement is agreed upon.

#### Sec. 611.4. Confidential treatment of proprietary information.

(a) An Application may include technical and other data, including trade secrets, privileged information, or confidential commercial or financial information which shall be used solely for purposes of evaluating the Application and approving and administering the loan, and shall not

be disclosed publicly, unless such information is generally available to the public or is already the property of the DOE. DOE may not distribute such information within the Government except on a need to know basis. This part does not limit the DOE's right to use or disclose data obtained without restriction from any source, including data otherwise obtained without restriction from an Applicant.

(b) In order to protect technical and other data, including trade secrets, privileged information, or confidential commercial or financial information, the Applicant should specifically identify each page containing the data to be protected. The Applicant should mark the cover sheet of the Application with the following notice:

“Notice of Restriction on Disclosure and Use of Data”

“Data contained in this Application has been submitted in confidence and contains trade secrets, privileged information, or confidential commercial or financial information. Such data shall be used only for purposes permitted under 10 CFR Part 611.”

In addition, with respect to each page of the Application containing such data, the Applicant should mark each page of the Application with the following notice:

“Notice of Restriction on Disclosure and Use of Data”

“The data contained on this page has been submitted in confidence and contains trade secrets, privileged information, or confidential commercial or financial information. Such data shall be used only for purposes permitted under 10 CFR Part 611.”

(c) DOE shall not refuse to consider an Application solely on the basis that the Application is restrictively marked.

(d) Data (or abstracts of data) marked with the notice under this part shall be retained in confidence and used by DOE solely for the purpose of evaluating an Application. The data so marked shall not be disclosed or used for any other purpose except to the extent required by law, and not disclosed under the Freedom of Information Act (5 U.S.C. § 552) as long as it meets one of the exemptions therein. DOE shall not be liable for disclosure or use of unmarked data and may use or disclose such data for any purpose, provided however, that once notified that protected data was incorrectly provided without markings, DOE shall use reasonable efforts to cease use or dissemination of such protected data, except for the purposes of this Part.

Sec. 611.5 Application requirements.

(a) An Applicant submitting a Consolidated Application must meet all requirements and provide all information specified in this part. An initial Consolidated Application shall not exceed 50 pages. Recognizing that specific detail may not be available for Eligible Products that have not advanced through early development milestones, an approved Consolidated Application

may be amended from time to time to provide the required detail to support loan approval and future draw downs against approved funds.

(b) A Consolidated Application must include, at a minimum, the following information and materials:

(1) A completed Consolidated Application form shall be signed by an individual with authority to bind the Applicant;

(2) A list of all Eligible Products covered by the Consolidated Application including:

(A) A description of each Eligible Product, including the advanced technologies, scope of the activities related to the product, projected annual volumes, timing of first production units, and company ability and expertise to execute the plan;

(B) The estimated Product Costs of the Eligible Products;

(C) The expected manufacturing location and age of the facility associated with each Eligible Product;

(D) Combined Fuel Economy for each Advanced Technology Vehicle; and

(E) For Qualifying Components, a description of the Advanced Technology Vehicle in which the Qualifying Component will be installed and the Combined Fuel Economy of the Advanced Technology Vehicle;

(3) The Aggregated Lifetime Fuel savings of the Consolidated Application;

(4) A description of Eligible Product assets that will serve as collateral for the Direct Loan;

(5) A written statement that the Applicant has not filed for protection under Chapter 7 or Chapter 11 of the Bankruptcy Code, and is not in default of any required payments of loans under Section 136; and

(6) A written assurance that all laborers and mechanics employed by contractors or subcontractors during construction, alteration, or repair that is financed, in whole or in part, by a loan under Section 136 of the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with Sections 3141-3144, 3146, and 3147 of title 40, United States Code.

(c) Once loan approval occurs between the Applicant and DOE, loan drawdown will proceed in accordance with the drawdown schedule in the Direct Loan Agreement (as amended from time to time). For approved loan amounts, DOE will guarantee 100% of the principal and interest of the Direct Loan for 80% of Product Costs.

(d) DOE will not consider (i) any Consolidated Application complete or (ii) any draw of funds unless the Consolidated Application or loan agreement is signed by an individual with the authority to bind the Applicant to the commitments and make the representations made in the Consolidated Application on behalf of the Applicant.

(e) Consolidated Applications must be submitted to [insert address].

#### Sec. 611.6 Programmatic, technical and financial evaluation of Consolidated Applications.

(a) In evaluating Consolidated Applications submitted pursuant to Section 611.5, DOE will apply the criteria set forth in this section. Concurrent with its review process, DOE will consult with the Secretary of the Treasury regarding the terms and conditions of the potential loan. In order for a Consolidated Application to be considered under this section, it must meet the following minimum criteria:

(1) The Consolidated Application must pertain to either (A) reequipping, expanding, or establishing a manufacturing facility in the United States to produce Advanced Technology Vehicles or Qualifying Components, or (B) engineering integration performed in the United States of Advanced Technology Vehicles and Qualifying Components.

(2) The Consolidated Application must state that the Applicant will provide an Equity contribution of 20 percent of Product Costs.

(b) For Consolidated Applications that meet the minimum criteria set forth in subsection (a), DOE shall further evaluate each Consolidated Application with respect to the information required in Section 611.5.

(c) For Consolidated Applications that DOE determines are eligible for loans, DOE shall prioritize the making of loans in accordance with this subsection. DOE shall separately evaluate applications by manufacturers of advanced technology vehicles and applications by manufacturers of qualifying components.

(1) Consolidated Applications by Manufacturers of Advanced Technology Vehicles. In evaluating Consolidated Applications submitted by manufacturers of Advanced Technology Vehicles, DOE shall give first priority to Consolidated Applications meeting the following criteria:

(A) The Applicant demonstrates that the Advanced Technology Vehicles included in the Consolidated Application will yield an Aggregated Lifetime Fuel Savings of at least one billion gallons over the first two full model years; and

(B) For manufacturers that have existing facilities, the Applicant demonstrates that Advanced Technology Vehicle(s) will be produced at multiple manufacturing facilities that have been in existence for at least 20 years.

(2) Consolidated Applications by Manufacturers of Qualifying Components. DOE will set aside a maximum of \$2.5 billion for manufacturers of Qualifying Components

(3) To the extent that multiple Applicants qualify for first priority pursuant to subparagraph (1) above, DOE shall allocate available funds so as to make loans to all first priority Applicants in an equitable manner.

(4) To the extent that funds remain after loans have been made to Applicants pursuant to subparagraphs (1) through (3) above, DOE shall use such funds to make loans to other Applicants based on DOE's evaluation of their Consolidated Applications under subsection (b) above.

(d) If DOE determines that Consolidated Applications are eligible for a loan, DOE will notify the Applicant and the FEDERAL FINANCING BANK in writing and provide them with a Term Sheet. If DOE reviews a Consolidated Application and decides not to proceed further with the issuance of a Term Sheet, DOE will inform the Applicant in writing of the reason(s) for denial. For approved loan amounts, DOE will guarantee to the FEDERAL FINANCING BANK the payment of 100% of the principal and interest of the Direct Loan for 80% of Product Costs.

#### Sec. 611.7 Term sheets and conditional commitments.

(a) If DOE, after review and evaluation of the Consolidated Application, additional information requested and received by DOE, and information obtained as the result of meeting with the Applicant, determines that Eligible Products described in the Application are eligible for a loan, DOE shall deliver to Applicant a written Term Sheet signed by a Contracting Officer and addressed to the Applicant. The Term Sheet will include an expiration date on which the terms offered will expire unless the Contracting Officer agrees in writing to extend the expiration date or the Applicant agrees to the terms.

(b) A Term Sheet will include:

(1) A provision that the Borrower may elect an interest rate that, as of the date on which the Loan Agreement is made, is equal to the cost of funds to the Department of the Treasury for obligations of comparable maturities; or an interest rate that, as of the date on which draw downs are made, is equal to the cost of funds to the Department of Treasury for obligations of comparable maturities.

(2) A term equal to the lesser of the Projected Life, in years, of the Eligible Product to be carried out using funds from the loan, as determined by the Secretary, and 25 years;

(3) A provision that a Borrower shall not be in default unless it has failed to make a scheduled payment within thirty days after its due date or obtained a deferral pursuant to subsection(b)(5);



- (4) Provisions that loan repayment must begin when an Eligible Product enters the market, or five years from the first draw for that Eligible Product, whichever is earlier; until then accrued interest shall be considered to be part of Product Cost; and
  - (5) Provisions for a deferral in repayment of principal and interest for not more than 2 years after the date on which the Eligible Product enters the market, as determined by the Secretary.
- (c) DOE may charge each applicant one administrative fee of not more than \$100,000.
- (d) The Applicant may respond to the Term Sheet offer in writing or may request discussions or meetings on the terms and conditions contained in the Term Sheet, including requests for clarifications or revisions. When DOE and the Applicant agree on all of the final terms and conditions and all parties sign the Term Sheet, the Term Sheet becomes a Conditional Commitment. When and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant will enter into a Direct Loan Agreement.
- (e) DOE's obligations under each Conditional Commitment are conditional upon statutory authority having been provided in advance of the execution of the Direct Loan Agreement sufficient under Section 136 of the Act to execute the Direct Loan Agreement, and an appropriation has been made to cover the full Credit Subsidy Cost for the Direct Loan that is the subject of the Conditional Commitment.

#### Sec. 611.8 Closing on the Direct Loan agreement.

- (a) Subsequent to entering into a Conditional Commitment with an Applicant, DOE, after consultation with the Applicant, will set a closing date for execution of the Direct Loan Agreement.
- (b) By the closing date, the Applicant and the Federal Financing Bank must have satisfied all of the detailed terms and conditions contained in the Conditional Commitment and other related documents and all other contractual, statutory, and regulatory requirements. If the Applicant and the Federal Financing Bank have not satisfied all such terms and conditions by the closing date, the Secretary may, in his/her sole discretion, set a new closing date for the Conditional Commitment.
- (c) In order to enter into a Direct Loan Agreement at closing:
- (1) DOE must have received authority in an appropriations act for the Direct Loan; and
  - (2) All other applicable statutory, regulatory, or other requirements must be fulfilled.
- (d) Prior to, or on, the closing date, DOE will ensure that:

- (1) Adequate appropriations have been made to pay the Credit Subsidy Cost.
  - (2) OMB has consulted with DOE on DOE's calculation of the Credit Subsidy Cost of the Direct Loan Agreement;
  - (3) The Department of the Treasury has been consulted as to the terms and conditions of the Direct Loan Agreement;
  - (4) The Direct Loan Agreement and related documents contain terms and conditions DOE deems reasonable and necessary to protect the interest of the United States; and
  - (5) All conditions precedent specified in the Conditional Commitment are either satisfied or waived by a Contracting Officer and all other applicable contractual, statutory, and regulatory requirements are satisfied.
- (e) Not later than the period approved in writing by the Contracting Officer, the Applicant must provide in writing updated product financing information if the terms and conditions of the financing arrangements changed between execution of the Conditional Commitment and that date. The Conditional Commitment must be updated to reflect the revised terms and conditions.

Sec. 611.9 Direct Loan Agreement.

- (a) Only a Direct Loan Agreement executed by a duly authorized DOE Contracting Officer can contractually obligate DOE to guarantee loans or other debt obligations.
- (b) DOE is not bound by oral representations made during the Consolidated Application stage, or during any negotiation process.
- (c) Unless explicitly authorized by an Act of Congress, no loan funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay for administrative fees.
- (d) Prior to the execution by DOE of a Direct Loan Agreement, DOE must ensure that the following requirements and conditions, which must be specified in the Direct Loan Agreement, are satisfied:
  - (1) The product qualifies as an Eligible Product;
  - (2) The face value of the debt for all of the principal shall be equal to 80 percent of the total Product Costs.
  - (3) The Borrower has made or will make a 20 percent Equity investment in the Eligible Product;
  - (4) The Borrower is obligated to make full repayment of the principal and interest on the Direct

Loan over the Projected Life of the Eligible Product.

- (5) The Direct Loan does not finance tax-exempt debt obligations, consistent with the requirements of Section 149(b) of the Internal Revenue Code;
- (6) The amount of the Direct Loan, when combined with the equity contribution of the Applicant, will be sufficient to create and manufacture the product, including adequate contingency funds;
- (7) The Applicant has not filed for protection under Chapter 7 or Chapter 11 of the Bankruptcy Code, and is not in default of any required repayments of loans under Section 136;
- (8) The Borrower has pledged assets purchased with loan funds;
- (9) The Direct Loan Agreement and related documents include detailed terms and conditions necessary and appropriate to protect the interest of the United States;
- (10) The interest rate on any Direct Loan as determined by DOE, shall be for comparable term U.S. Treasury debt securities;
- (11) The Borrower has filed Consolidated Applications for or obtained any required regulatory approvals for the product and is in compliance, or promptly will be in compliance, where appropriate, with all Federal regulatory requirements; and
- (12) Borrower has no delinquent Federal debt, including tax liabilities, unless Borrower has in good faith disputed the delinquency with the appropriate Federal agency in accordance with the law applicable to such disputed delinquency.

Sec. 611.10 DOE guarantee of Federal Financing Bank Direct Loans.

- (a) The lender shall be the Federal Financing Bank.
- (b) DOE shall provide a 100 percent guarantee of the repayment of principal and interest for the Direct Loan to the Federal Financing Bank.

Sec. 611.11 Product Costs.

- (a) Before entering into a Direct Loan Agreement, DOE shall review the estimated Product Costs for the products that are the subject of the Agreement. To assist the Department in its review, the Applicant must estimate, calculate and record all such costs incurred in design, engineering, financing, construction, facilities, tooling, tooling design, startup, and launch of the product in accordance with generally accepted accounting principles and practices for Advance Technology Vehicles or Qualifying Components. Among other things, the Applicant must calculate the sum of necessary, reasonable and customary costs that it has paid and expects to pay, which are directly related to the product, including costs for escalation and contingencies.

The Applicant may provide, as appropriate, updates and adjustments to the Product Cost estimates in the Consolidated Applications during the negotiation of the Loan Agreement and during the drawdown phases of the Direct Loan.

(b) Product Costs include:

- (1) Costs of equipment purchases;
- (2) Costs of vehicle and component design, engineering integration, tooling design, tooling, facilities, information technology, startup, and launch;
- (3) Costs incurred for incremental steps directly related to the production of an Advanced Technology Vehicle or Qualifying Component;
- (4) A reasonable contingency reserve for cost overruns during vehicle design, component design, tooling, startup and launch, and facility construction;
- (5) Costs associated with the acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;
- (6) Costs associated with the engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the manufacturing facility; and materials, labor, services, travel and transportation for facility design, construction, and startup;
- (7) Costs to provide equipment, facilities, and services related to safety and environmental protection;
- (8) Financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;
- (9) Costs of necessary and appropriate insurance and bonds of all types;
- (10) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the products;
- (11) Interest costs incurred during product development, including product launch;
- (12) Costs consistent with 48 C.F.R. part 31 (Cost Principles); and
- (13) Other necessary and reasonable costs such as overhead.

Sec. 611.12 Full faith and credit.

The Direct Loans shall be made through the Federal Financing Bank, with the full faith and credit of the United States Government on the principal and interest.

Sec. 611.13 Default, demand, payment, and collateral.

(a) A default for non-payment occurs when the Borrower fails to make a scheduled payment within the grace period set forth in Section 61 1.7(b)(3) or obtains a deferral under Section 61 1.7(b)(5). In the event that the Borrower is in default for non-payment, the Borrower may cure the default by making the scheduled payment within thirty days of the default. If such default has not been corrected within the cure period, the Federal Financing Bank may make written demand upon the Secretary for payment pursuant to the provisions of the Direct Loan Agreement.

(b) In the event that the Borrower has not corrected the default, as described in subsection (a), the Secretary shall notify the U.S. Attorney General and may cause the principal amount of all Direct Loan Agreements, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Direct Loan Agreement, to become immediately due and payable by giving the Borrower written notice to such effect.

(c) Upon the making of demand for payment as provided in subsection (a) or (b) of this Section, the Federal Financing Bank shall provide, in conjunction with such demand or immediately thereafter, at the request of the Secretary, the supporting documentation specified in the Direct Loan Agreement and any other supporting documentation as may reasonably be required to justify such demand.

(d) Payment as required by the Direct Loan Agreement shall be made 60 days after receipt by the Secretary of written demand for payment, provided that the demand complies with the terms of the Direct Loan Agreement.

(e) The Direct Loan Agreement shall provide that, upon payment pursuant to the Direct Loan Agreement by the DOE, the Secretary shall have superior rights in and to the collateral pledged by the Borrower.

(f) Where the Direct Loan Agreement so provides, the Federal Financing Bank and the Secretary may jointly agree to a plan of liquidation of the collateral pledged to secure the Direct Loan Agreement.

Sec. 611.14 Perfection of liens and preservation of collateral.

The Direct Loan Agreement and other documents related thereto shall provide that:

(a) DOE in conjunction with the Federal Financing Bank will take those actions necessary to perfect and maintain liens, as applicable, on collateral which is pledged for the guaranteed

portion of the loan; and

(b) Upon default by the Borrower, the holder of pledged collateral shall take such actions as the Secretary may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged collateral.

(c) In the event the Borrower has not paid the amount owed under 611.13(b), there is no recourse by the Government except as to the pledged collateral or on an unsecured basis.

Sec. 611.15 Audit and access to records.

The Direct Loan Agreement and related documents shall provide that:

(a) The Secretary and the Comptroller General, or their duly authorized representatives, shall have reasonable access through formal, written notification for the purpose of audit and examination to any pertinent books, documents, papers, and records of the Borrower for the purpose of determining whether the proceeds of a loan have been used for an Eligible Product; and

(b) Borrower shall provide periodic reporting to certify that it has met its obligations under the Direct Loan Agreement.

Sec. 611.16 Deviations.

To the extent that such requirements are not specified by Section 136 of the Act or other applicable statutes, DOE may authorize deviations on an individual request basis from the requirements of this part upon a finding that such deviation is essential to program objectives and the special circumstances stated in the request make such deviation consistent with the purposes of Section 136. DOE will consult with OMB and the Secretary of the Treasury before DOE grants any deviation that would constitute a substantial change in the financial terms of the Direct Loan Agreement and related documents. Any deviation, however, that was not captured in the Credit Subsidy Cost may require an appropriation, if sufficient appropriations for that purpose are not available. A recommendation for any deviation may be submitted in writing to DOE. Such recommendation must include a supporting statement, which indicates briefly the nature of the deviation requested and the reasons in support thereof.