



Effective Date: April 13, 2010

**GUIDANCE FOR APPLICANTS TO
ADVANCED TECHNOLOGY VEHICLES MANUFACTURING LOAN PROGRAM**

The U.S. Department of Energy's Advanced Technology Vehicles Manufacturing Loan Program (ATVMLP) was established under Section 136 of the Energy Independence and Security Act of 2007. Its purpose is to arrange loans from the U.S. Department of Treasury's Federal Financing Bank to eligible manufacturers of advanced technology vehicles (ATVs) and ATV components. This memorandum provides guidance to ATVMLP applicants on (i) ATVMLP eligibility requirements, (ii) the ATVMLP application process, (iii) certain required terms and conditions for ATVMLP loans and (iv) certain other key matters relating to the ATVMLP. The guidance contained herein is based on the requirements of (i) Section 136 and the implementing Interim Final Rule (10 CFR 611) and (ii) ATVMLP programmatic policies. Please note that these requirements may be amended or changed from time to time. Applicants should read this memorandum in conjunction with the Interim Final Rule (available at www.atvmloan.energy.gov/keydocs.html).

This memorandum is not intended to be exhaustive or complete. The guidance contained herein is not intended to take the place of legal review or to constitute legal advice. The guidance does not constitute rulemaking by DOE and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person.

I. ATVMLP ELIGIBILITY REQUIREMENTS

- 1) Eligible Applicant.** The applicant must be an ATV manufacturer or ATV component manufacturer that is financially viable without the receipt of additional federal funding for the proposed project other than the ATVMLP loan.
 - a) Certain Manufacturer Requirements.**
 - i. **ATV Manufacturer.** If the applicant is an ATV manufacturer that built vehicles in model year 2005 that were subject to Corporate Average Fuel Economy (CAFE) standards, then the applicant must demonstrate that the adjusted average fuel economy for the vehicle fleet it produced in the most recent year for which final CAFE compliance date is available is at least equal to the adjusted average fuel economy of the applicant's fleet for model year 2005. If the applicant is an ATV manufacturer that did not build vehicles in model year 2005 that were subject to CAFE standards, then the applicant must demonstrate that the projected combined fuel economy for the vehicle being financed with the ATVMLP loan is at least equal to the industry adjusted average fuel economy for equivalent vehicles built in model year 2005.
 - ii. **ATV Component Manufacturer.** Before the ATVMLP issues a conditional commitment letter to an applicant that is an ATV component manufacturer, the applicant must demonstrate to the satisfaction of the ATVMLP that the ATV component will be installed in an ATV.

b) Financial Viability. The applicant must be financially viable without the receipt of additional federal funding for the proposed project other than the ATVMLP loan. This requires a determination by the ATVMLP that (i) there is a reasonable prospect that the applicant will be able to pay principal and interest as and when due under the ATVMLP loan and (ii) the applicant has a net present value that is positive, taking all costs, existing and future, into account. 10 CFR 611.100(c) sets forth some of the factors considered by the ATVMLP in determining the applicant's financial viability.

2) Eligible Project. The proposed project to be financed with the ATVMLP loan must consist of either (1) the reequipping, expanding or establishing of a manufacturing facility located in the United States which will produce ATVs or ATV components or (2) engineering integration performed in the United States for ATVs or ATV components.

3) ATVs/UEVs/ATV Components.

a) ATVs. ATVs are either:

- i. Ultra efficient vehicles (UEVs); or
- ii. Passenger automobiles or light duty trucks that meet the emission and fuel economy standards set forth in the definition of "advanced technology vehicle" in 10 CFR 611.2.

b) UEVs. UEVs are fully closed compartment vehicles designed to carry at least two (2) adult passengers that achieve: (i) at least 75 miles per gallon while operating on gasoline or diesel fuel, (ii) at least 75 miles per gallon equivalent while operating as a hybrid electric-gasoline or electric-diesel vehicle, or (iii) at least 75 miles per gallon equivalent while operating as a fully electric vehicle.

c) ATV Components. ATV components are components that are designed for ATVs and installed in ATVs for the purpose of meeting the emission and fuel economy standards set forth in the definition of "advanced technology vehicles" in 10 CFR 611.2.

4) Eligible Costs. The ATVMLP loan can only be used to reimburse the applicant for (i) costs that are reasonably related to reequipping, expanding or establishing a manufacturing facility in the United States or (ii) costs of engineering integration performed in the United States. Such costs cannot have been incurred before substantial completion of the application. The ATVMLP loan cannot be used to reimburse the applicant for costs associated with vehicle variants that are not ATVs.

II. ATVMLP APPLICATION PROCESS

1) Application. The application must contain the information specified in 10 CFR 611.101. There is no application form. The applicant should submit one (1) paper copy of its application and one (1) searchable electronic copy of its application on CD-ROM by mail or hand-delivery to: Advanced Technology Vehicles Manufacturing Loan Program, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Chris Foster.

2) Application Review Process. The application review process consists of three steps:

1. **Substantial Completeness Review.** The ATVMLP will review the application to determine whether it contains substantially all of the information required by 10 CFR 611.101. The ATVMLP will notify the applicant if the application is substantially complete or if any further information is required for the application to become substantially complete. DOE's determination that an application is substantially complete does not preclude DOE from requesting additional information from the applicant.
2. **Eligibility Review.** Once the application is substantially complete, the ATVMLP will conduct an eligibility review of the application by determining whether (i) the applicant is an Eligible Applicant and (ii) the proposed project is an Eligible Project. Applications will be submitted to eligibility review in the order in which they achieved substantial completion. Applications will be rejected if they do not satisfy the eligibility review.
3. **Substantive Review.** In addition to the eligibility review, the ATVMLP will conduct a substantive review of the application, including but not limited to (i) a technical merit review, (ii) a market review, (iii) a financial review and (iv) a legal due diligence review. On the basis of the substantive review, the ATVMLP will determine whether the application merits recommendation to DOE's approval authorities.

3) **Conditional Commitment Letter.** If the application satisfies the eligibility review and merits recommendation to DOE's approval authorities, the ATVMLP will negotiate a conditional commitment letter with the applicant which contains the terms and conditions of the proposed ATVMLP loan. See Section III below for certain required terms and conditions of ATVMLP loans. Once the conditional commitment letter is in substantially final draft form, the ATVMLP will submit the proposed ATVMLP loan to DOE's approval authorities for consideration. If the proposed ATVMLP loan is approved, DOE will execute the conditional commitment letter with the applicant. See <http://www.atvmlp.energy.gov/c-commit.html> for conditional commitment letters executed with prior ATVMLP applicants.

4) **Loan Arrangement Agreement.** After the conditional commitment letter has been executed, the ATVMLP and the applicant will negotiate and enter into a loan arrangement agreement and other transaction documents which reflect the terms and conditions set forth in the conditional commitment letter. Once the transaction documents have been executed, the parties will proceed to financial close, after which advances will be available for disbursement under the ATVMLP loan.

III. ATVMLP LOANS: CERTAIN REQUIRED TERMS AND CONDITIONS

This Section III sets forth certain key terms and conditions which must be contained in the conditional commitment letter and loan arrangement agreement under the requirements of (i) Section 136 and the Interim Final Rule and (ii) ATVMLP programmatic policies. Please note that these requirements may be amended or changed from time to time. The conditional commitment letter and loan arrangement agreement will also contain such other provisions as are necessary or appropriate to the specific nature of the applicant and proposed project.

- 1) **Loan Amount.** The principal amount of the ATVMLP loan cannot be greater than eighty percent (80%) of reasonably anticipated total costs of the proposed project. Total project costs may include

any costs that have been or will be incurred by the applicant in connection with the proposed project, whether before or after submission of the application.

- 2) **Other Loan Terms.** The initial principal payment date must occur no later than five (5) years after the commencement of operations of the proposed project. The maturity period must be equal to the projected life of the proposed project, as determined by the ATVMMLP, but in any event no greater than 25 years.
- 3) **Collateral.** The ATVMMLP loan must be secured by a first priority security interest in any assets financed with the ATVMMLP loan. The ATVMMLP may also request a security interest in any other assets of the applicant. Please note that DOE's failure to obtain a first priority security interest in such other assets may substantially impact the ability of the ATVMMLP loan to obtain required DOE approvals.
- 4) **Non-Investment Purpose.** Loan advances may not be used for investment purposes. Any return on loan advances in excess of interest owing on the ATVMMLP loan must be returned to the U.S. Treasury.
- 5) **Warrants.** DOE may require the issuance of warrants to acquire common or preferred stock in the applicant.
- 6) **Fees.** At the financial closing date, the applicant must pay a fee equal to 0.1% of the principal amount of the ATVMMLP loan. The ATVMMLP may also require the applicant to pay certain customary administrative or collateral agency fees.
- 7) **Conditions Precedent/Reporting Requirements.** Please contact the ATVMMLP by email at atvmloan@hq.doe.gov to request a copy of an ATVMMLP memorandum identifying key conditions precedent and reporting requirements that are customarily included in conditional commitment letters and loan arrangement agreements.

IV. OTHER KEY MATTERS

- 1) **NEPA Review.** The application is required to include an environmental report containing the matters set forth in 10 CFR 611.106. The ATVMMLP will review the environmental report to determine the level of National Environmental Policy Act (NEPA) review required for the proposed project. The level of NEPA review will be either an environmental impact statement or an environmental assessment, unless a categorical exclusion applies. A categorical exclusion is unlikely if the ATVMMLP loan is used to finance the construction of a new manufacturing facility. The NEPA review process must be completed as a condition to financial close. The ATVMMLP must conduct a separate NEPA review for any facility into which the project is moved after the first loan advance has been made. For more information on the NEPA review process, please consult www.atvmloan.energy.gov/nepa-index.html.
- 2) **Background Checks.** As part of its customary due diligence, the ATVMMLP may conduct background checks on (i) management and other key personnel of the applicant and (ii) key shareholders of the applicant.

- 3) **Corporate governance.** As part of its customary due diligence, the ATVMLP will review the applicant's corporate governance structure to ensure consistency with best industry practices and standards.
- 4) **Business Plan.** The application must include a detailed business plan for the proposed project which contains at least project milestones, project costs, production targets and vehicle fuel efficiency targets. At financial close, the applicant must certify that the business plan is complete and accurate. As a condition to each loan advance, a responsible officer of the applicant must certify that the loan advance is consistent with the business plan. The business plan will be reviewed by the ATVMLP on a quarterly basis. Material modifications to the business plan are subject to ATVMLP approval.
- 5) **Davis-Bacon Act.** All laborers or mechanics employed by contractors or subcontractors during construction, alteration, or repair that is financed, in whole or in part, by the ATVMLP loan must 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 the Davis-Bacon Act. Recordkeeping and other requirements will also apply if the ATVMLP loan is used to finance construction, alteration, or repair. Applicants are strongly encouraged to consult <http://www.atvmloan.energy.gov/DBAC-index.html> for more information on the Davis-Bacon Act requirements under the ATVMLP.

For more information on the ATVMLP, please consult the ATVMLP's website at www.atvmloan.energy.gov. Please send questions or comments by email to: atvmloan@hq.doe.gov.