U.S. DEPARTMENT OF
ENERGY
Advanced Technology Vehicles
Manufacturing Loan Program

Energy Independence and Security Act (EISA) 2007 Section 136 Interim Final Rule

Board's staff. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended on September 22, 2008. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register on July 24, 2008 (73 FR 43056), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 981—ALMONDS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 981, which was published at 73 FR 43056 on July 24, 2008, is adopted as a final rule without change.

Dated: November 5, 2008.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. E8–26851 Filed 11–10–08; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 611

RIN 1901–AB25

Advanced Technology Vehicles Manufacturing Incentive Program

AGENCY: Office of the Chief Financial Officer, Department of Energy (Department or DOE).

ACTION: Interim final rule; request for comment.

SUMMARY: Today's interim final rule establishes the Advanced Technology Vehicles Manufacturing Incentive Program authorized by section 136 of the Energy Independence and Security Act of 2007, as amended. Section 136 provides for grants and loans to eligible automobile manufacturers and component suppliers for projects that reequip, expand, and establish manufacturing facilities in the United States to produce light-duty vehicles and components for such vehicles, which provide meaningful improvements in fuel economy performance beyond certain specified levels. Section 136 also provides that grants and loans may cover engineering integration costs associated with such projects. This interim final rule establishes applicant eligibility and project eligibility requirements for both the grant and the loan program. Today's interim final rule also establishes the application requirements and the general terms for the loan program. At present, Congress has appropriated funds through the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, for only the loan program. As such, DOE will be implementing the loan program only at this time, though issuing rules for both the grant and loan programs.

DATES: This interim final rule is effective November 12, 2008. Applications for a direct loan will be reviewed by DOE in tranches. To be eligible for the first tranche, applications may be submitted or hand delivered to the Postal Mail address listed in ADDRESSES until December 31, 2008. The deadline for loan applications for subsequent tranches of loans will be the end of every calendar quarter thereafter as funds and available loan authority permit. Comments must be received by DOE no later than December 12, 2008. If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

ADDRESSES: You may submit comments, identified by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: ATVMLoan@hq.doe.gov*.
- *Postal Mail:* Advanced Technology Vehicles Manufacturing Incentive Program, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.
- *Hand Delivery/Courier:* Advanced Technology Vehicles Manufacturing Incentive Program, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Lachlan Seward, Advanced Technology Vehicles Manufacturing Incentive Program, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–8146; or Daniel Cohen, Assistant General Counsel for Legislation and Regulatory Law, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–2918.

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I. Introduction and Background

Section 136 of the Energy Independence and Security Act of 2007 ("EISA"), enacted on December 19, 2007, Public Law 110–140, authorizes the Secretary of Energy ("Secretary") to make grants and direct loans to eligible applicants for projects that reequip, expand, or establish manufacturing facilities in the United States to produce qualified advanced technology vehicles, or qualifying components and also for

To determine the relevant fuel economy baselines for a new manufacturer or for a manufacturer that has not previously produced equivalent vehicles, the statute allows the Secretary to substitute industry averages. (42 U.S.C. 17013(e))

Today's interim final rule establishes the regulations necessary to determine whether an automobile manufacturer meets the minimum fuel economy improvement threshold. If the applicant is an automobile manufacturer that manufactured vehicles in model year (MY) 2005 that were subject to the CAFE standards (existing manufacturers), that manufacturer must demonstrate that the fuel economy of its vehicle fleet (the manufacturer's passenger and light-duty truck fleets) for the most recent MY that data are available is no less than the fuel economy of its MY 2005 fleet.

The statute requires that an existing manufacturer's MY 2005 average fuel economy is to be compared to the adjusted average fuel economy of that manufacturer's light-duty fleet from the most recent year for which there is available data, but the statute does not specify which data. DOE interprets the "most recent year for which data are available" to mean the most recent model year for which a manufacturer has final data for the purpose of compliance with the fuel economy standards for passenger automobiles (49 CFR Part 531) and light trucks (49 CFR Part 533).[1] By relying on the most recent MY for which final CAFE compliance data are available, the fuel economy comparison for existing manufacturers will be based on data approved by the U.S. Environmental Protection Agency (EPA) under 10 CFR Part 600.[1]

Section 136 directs that this fuel economy comparison is to be based on an adjusted average fuel economy. Although the statute does not define "adjusted average fuel economy," DOE, for purposes of today's interim final rule, has defined "adjusted average fuel economy" to mean a harmonic production weighted average of the combined fuel economy, as determined under the Energy Policy and Conservation Act (Pub. L. 94–163; "EPCA"), as amended, of the vehicles within a manufacturer's vehicle fleet. In MY 2005, there was a CAFE standard applicable to vehicles defined as passenger automobiles [2] and a CAFE standard applicable to vehicles defined as light trucks.[3] The adjusted average fuel economy combines a manufacturer's passenger automobile fleet and light truck fleet, measured in miles per gallon (mpg).

The fuel economy improvement threshold for eligibility specified in section 136(e) requires that automobile manufacturers applying under either the loan or grant program demonstrate a history of maintaining or improving the fuel economy of its fleet. Consistent with section 136, DOE is requiring that an existing manufacturer demonstrate that the fuel economy of its passenger automobile and light duty truck fleet is at least as efficient as that manufacturer's MY 2005 fleet.

To demonstrate compliance with the fuel economy level as required by subsection (e) of section 136, the adjusted average fuel economy of an existing automobile manufacturer's MY 2005 passenger automobile and light truck fleet is compared to the adjusted average fuel economy of that manufacturer's passenger automobile and light truck fleet for the most recent year in which final CAFE compliance data are available. The adjusted average fuel economy of an existing automobile manufacturer's fleet in the most recent year for which CAFE compliance data are available must be no less than the adjusted average fuel economy of that manufacturer's fleet in MY 2005.

For example, if in MY 2005 a manufacturer produced vehicles as follows:

Model	MPG	Production volume
Passenger Automobile A	27	150,000
Light Truck B	20	200,000
Light Truck C	17	100,000

the adjusted average fuel economy for that manufacturer in MY 2005 would be calculated as:

$$\frac{\textit{Total Production Volume}}{\frac{\#\ \textit{VehicleA}}{\textit{FuelEconomy}} + \frac{\#\ \textit{VehicleB}}{\textit{FuelEconomy}} + \frac{\#\ \textit{VehicleC}}{\textit{FuelEconomy}}}, \text{ or}$$

$$\frac{450{,}000}{\frac{150{,}000}{27} + \frac{200{,}000}{20} + \frac{100{,}000}{17}} = 20.99 \text{ MPG}$$

In this example, the manufacturer's adjusted fuel economy average for the most recent year, at time of application, for which CAFE compliance data are available, must be no less than 20.99 mpg. Otherwise the manufacturer would not be eligible for a section 136 grant award or direct loan.

[1] Compliance with the fuel economy standards is based on data approved by EPA. (*See*, 49 CFR 537.9).

[2] "Passenger automobile" is defined for the purpose of CAFE as essentially any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public roads, is rated at 10,000 pounds gross vehicle weight or less, is manufactured primarily for the use in the transportation of 10 or fewer individuals, and is not a "light truck." (*See*, 42 FR 38362, July 28, 1977, as amended at 43 FR 12013, March 23, 1978; 44 FR 4493, Jan. 2, 1979)

[3] "Light truck" is defined for the purpose of the CAFE requirements, as

(a) an automobile other than a passenger automobile which is either designed for off-highway operation, as described in paragraph (b) of this section, or designed to perform at least one of the following functions:

(1) Transport more than 10 persons;

(2) Provide temporary living quarters;

(3) Transport property on an open bed;

(4) Provide greater cargo-carrying than passenger-carrying volume; or

(5) Permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through the removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level surface extending from the forward most point of installation of those seats to the rear of the automobile's interior.

(b) An automobile capable of off-highway operation is an automobile—

(1)(i) That has 4-wheel drive; or

(ii) Is rated at more than 6,000 pounds gross vehicle weight; and

(2) That has at least four of the following characteristics | |—

(i) Approach angle of not less than 28 degrees.

(ii) Breakover angle of not less than 14 degrees.

(iii) Departure angle of not less than 20 degrees.

(iv) Running clearance of not less than 20 centimeters.

(v) Front and rear axle clearances of not less than 18 centimeters each.

(*See*, 42 FR 38362, July 28, 1977, as amended at 43 FR 12013, Mar. 23, 1978; 58 FR 16029, Apr. 7, 1993).

today's interim final rule requires applicants to submit this required assurance as part of any direct loan application.

C. Project Eligibility for Grant and Loan Programs

Under section 136, grants and direct loans may be provided for the costs of reequipping, expanding, or establishing manufacturing facilities in the United States to produce qualified advanced technology vehicles, or qualifying components. Section 136 also authorizes the Secretary to issue grants and direct loans for the costs of engineering integration performed in the United States of qualifying advanced technology vehicles and qualifying components. Specifically, subsection (b) of section 136 directs that for the grant program [5]—

The Secretary shall provide facility funding awards under this section to automobile manufacturers and component suppliers to pay not more than 30 [6] percent of 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.

(42 U.S.C. 17013(b))

Under the loan provisions of section 136, the Secretary is directed "to provide a total of not more than $25,000,000,000 in loans to eligible individuals and entities (as determined by the Secretary) for the costs of activities described in subsection (b)." (42 U.S.C. 17013(d)(1)). Section 136 provides two categories of projects eligible for direct loans: (1) Manufacturing facilities in the United States designed to produce qualified advanced technology vehicles or qualified components; and (2) engineering integration performed in the United States of qualifying advanced technology vehicles and qualifying components. Eligible costs of such projects are: (a) Those costs that are reasonably related to the reequipping, expanding, or establishing a manufacturing facility in the United States to produce qualifying advanced technology vehicles or qualifying components; (b) costs of engineering integration performed in the United States for qualifying vehicles or qualifying components. Costs eligible for payment with loan proceeds are costs incurred, but not yet paid by the borrower, after a substantially complete application has been submitted to DOE and costs incurred after the closing of the loan.

The statute defines "advanced technology vehicle" as—

[L]ight 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.

(42 U.S.C. 17013(a)(1))

As stated above, the statute does not define "light duty vehicle." DOE interprets "light duty vehicles" to be vehicles currently subject to the CAFE requirements under EPCA, (i.e., passenger automobiles and light trucks).

The first two provisions of the statutory definition of "advanced technology vehicle" ensure that such a vehicle has low emissions. Pursuant to its authority under the Clean Air Act, on February 10, 2000, the EPA published a final rule establishing new Federal emission standards for passenger cars and light trucks (see *65 FR 6698*). Known as the Tier II Program, the emissions standards in EPA's final rule cover light-duty vehicles (i.e., passenger cars and light trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less, as well as "medium-duty passenger vehicles" (MDPVs)).[7]

The Tier II standards are designed to reduce the emissions most responsible for the ozone and particulate matter impact from these vehicles (e.g., nitrous oxides and non-methane organic gases) and contributing to ambient volatile organic compounds.

The Tier II emission standards are based on a system of emission bins in which light-duty vehicles are certified in one of eight bins; Bin 1 represents the cleanest or lowest emitting vehicles, and Bin 8 represents the highest emitting vehicles of the Tier II bins. The emission standards for a manufacturer's vehicle fleet must comply on average with the Tier II Bin 5 level. Thus, the Tier II Bin 5 emission certification levels are the average of the Tier II emission levels with lower bins (i.e., 4, 3, 2, or 1) representing lower emitting vehicles and higher bins (i.e., 6, 7, or 8) representing vehicles that are more polluting. 72 FR 29102, 29103 (May 24, 2007). Section 136 limits "advanced technology vehicles" to those vehicles that, at a minimum, comply with Bin 5 levels at the time an application is submitted to DOE.

The grant and loan programs provide assistance for the production of vehicles and components that demonstrate advanced fuel economy improvements. In order to qualify as an "advanced technology vehicle" a vehicle must meet at least 125 percent of the average base year combined fuel economy for vehicles with substantially similar attributes.[8] It should be noted that the at least 25 percent improvement in fuel economy performance necessary for a vehicle to qualify as an advanced technology vehicle is the minimum improvement necessary for eligibility under the section 136 grant and loan programs. As discussed later in this notice, in prioritizing projects to receive either a grant or a loan, DOE will consider the extent to which an advanced technology vehicle exceeds the 125 percent minimum.

For the purpose of demonstrating the at least 25 percent improvement, vehicle fuel economies are compared without consideration of whether the vehicles are dual fueled automobiles under CAFE. A "dual fueled automobile" is an automobile that is capable of operating on alternative fuel or a mixture of biodiesel and diesel, and on gasoline or diesel. 49 U.S.C. 32901(a)(9). Dual fueled vehicles are commonly referred to as flexible fuel vehicles.

The CAFE statute specifies special calculations for determining the fuel economy of dual fueled automobiles that give those vehicles higher fuel economy ratings than automobiles that

[5] At this time, no funds have been appropriated for the purpose of making grant awards under section 136(b).

[6] As discussed later in this document, section 136 does not place a restriction on the percent of costs eligible under the direct loan program.

[7] An MDPV is defined as a light truck rated at more than 8,500 lbs GVWR, or that has a vehicle curb weight of more than 6,000 pounds, or that has a basic vehicle frontal area in excess of 45 square feet. MDPV does not include a vehicle that:

Is an "incomplete truck"; or

Has a seating capacity of more than 12 persons; or

Is designed for more than 9 persons in seating rearward of the driver's seat; or

Is equipped with an open cargo area (for example, a pick-up truck box or bed) of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for purposes of this definition.

40 CFR 86–1803–01.

[8] In calculating the percent improvement in average base year combined fuel economy, if the vehicle at issue is an all electric drive, a range extended electric vehicle, or a plug in hybrid vehicle, then the applicant will need to submit information that allows the Department to determine that the vehicle meets the 125% average combined fuel economy test.

Class	Passenger & cargo volume (cu. ft.)
Standard	4,500–8,500 pounds.
Vans	
Passenger	< 8,500 pounds.
Cargo	< 8,500 pounds.
Minivans	< 8,500 pounds.
Sport Utility Vehicles (SUVs)	< 8,500 pounds.

DOE notes that in MY 2005 not every EPA vehicle class was populated by vehicle models manufactured in that model year (i.e., small pickups and large wagons). If an EPA class did not have a representative MY 2005 model, DOE combined that class with another EPA class in a manner consistent with the grouping of vehicles by "substantially similar attributes."

DOE further categorized vehicles by performance. Performance vehicles generally have lower fuel economy ratings than non-performance vehicles in the same EPA class. Also, different fuel economy technologies may be applicable to performance as opposed to non-performance vehicles (i.e., additional aerodynamic improvements may not be available for performance vehicles). In order to distinguish between vehicles that are manufactured to achieve higher performance from other similarly sized non-performance vehicles, DOE evaluated the peak horsepower to curb weight ratio of each vehicle in a size class. DOE plotted the peak horsepower to curb weight ratio for each vehicle by EPA class. Generally, if there was at least a doubling of the peak horsepower to curb weight ratio along the plotted line, as compared to the lowest plotted value, DOE then looked at the plotted data to see if there was a reasonably identifiable point beyond the doubling that divided the vehicles, i.e., a break point. For those classes in which DOE was able to identify a break point, DOE created an additional "performance" class. DOE identified a point in several of the EPA classes at which there was a substantial increase in the ratio. In those instances in which there was a marked increase, the more powerful vehicles were placed into a "performance class." This additional analysis resulted in a total of 17 classes.

Class of vehicles with substantially similar attributes	Example of MY 2005 vehicles
Two-seater	Mazda MX–5 Miata, Chrysler Crossfire Roadster, Porsche Boxter.
Two Seater Performance	GMC Corvette, Mercedes SL65 AMG, Chrysler Viper Coupe.
Minicompact sedan	Mini Cooper, Volkswagen Beetle Convertible, Mitsubishi Eclipse Spyder.
Minicompact sedan Performance	Porsche 911, Ford Jaguar XKR Convertible, Mercedes CLK55 AMG.
Subcompact sedan	GMC Aveo, Toyota Celica, Honda Acura.
Subcompact performance sedan	Mercedes CLK500, BMW M3.
Compact sedan	Volkswagen Jetta, Toyota Corolla, Ford Focus, Chrysler Sebring convertible.
Compact performance sedan	Mercedes CL 55 AMG, Bentley Continental GT.
Mid-size sedan	Mercury Sable, Chevrolet Malibu, Honda Accord, GM Monte Carlo, Hyundai Sonata, Toyota Camry, Nissan Altima.
Mid-size performance sedan	Ford Jaguar S–Type, Mercedes E55 AMG, Nissan Infiniti G35.
Large sedan	Mercedes S C lass, Cadillac Deville, Kia Amanti, Dodge 300 Base, Ford Five Hundred, General Motors Impala.
Small wagon	Toyota Corolla Matrix, GMC Vibe, Chrysler PT Cruiser, Toyota Scion.
Mid-size and large wagons	Volkswagen Passat Wagon, Ford Taurus wagon, Mercedes E320, GM Saab 9–5 Wagon.
Small and standard pickup	Ford F150, GM Silverado, Nissan Frontier, Dodge Dakota, Toyota Tundra, GM Sierra.
Minivan	Dodge Caravan, Chrysler Town & Country, Toyota Sienna, GMC Montana, Nissan Quest, Honda Odyssey, Ford Monterey Wagon.
Cargo van	Chevrolet Astro, Ford E150.
Sport Utility Vehicle	Jeep Wrangler, Ford Escape, Chevrolet Blazer, Range Rover, Mercedes M-class, GM Equinox, Toyota Sequoia, GMC Envoy.

In order to determine the average combined fuel economy for each class, DOE will calculate the harmonic production weighted average for each class. As previously stated, DOE relied on the MY 2005 CAFE compliance data that are available, and assumed each vehicle was a non-dual fueled vehicle.

Vehicle class	Power[1]/ weight[2]	2005 Fuel economy average[3]	2005 mpg × 125%
Two-Seater	< 0.121	25.3	31.6
Two-Seater Performance	≥ 0.121	22.2	27.8
Minicompact Sedan	< 0.088	29.3	36.7
Minicompact Performance Sedan	≥ 0.088	22.4	28.0
Subompact Sedan	< 0.082	29.6	37.0
Subcompact Performance Sedan	≥ 0.082	22.8	28.5
Compact Sedan	< 0.073	33.8	42.2
Compact Performance Sedan	≥ 0.073	23.6	29.5
Mid-Size Sedan	< 0.085	29.4	36.7
Mid-Size Performance Sedan	≥ 0.085	23.1	28.9

materials are intended to provide adequate information for the Department to comply with the requirements and goals of section 136 and other applicable legal and regulatory requirements. One such requirement, written assurance that all laborers and mechanics are paid prevailing wages, explicitly appears in section 136(d)(2) and appears in today's interim final rule. Other requirements in section 136 relate to Secretarial determinations of applicant eligibility such as: (i) Financial viability absent receipt of additional Federal funding associated with the proposed project and (ii) the efficient and effective expenditure of loan proceeds. Today's interim final rule specifies the information to be submitted by an applicant in order for the Secretary to be able to make such determinations.

F. Credit Subsidy Cost for Direct Loans

To date, Congress has appropriated $7,500,000,000 to cover the subsidy cost of the direct loans issued under section 136, and provided an overall cap of $25,000,000,000 on the principal amount of the loans that may be issued. Under the Federal Credit Reform Act of 1990, the subsidy cost reflects "the estimated long-term cost to the Government of the direct loan, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays." 2 U.S.C. 661a(5)(A). This amount will be unique for each loan issued under section 136, and is dependent on the particular circumstances of the borrower and the project for which the loan will be issued. While Congress has appropriated funds at approximately a 30 percent subsidy rate, the subsidy cost for individual borrowers and projects may be valued at more or less than 30 percent. If the subsidy costs are estimated to be higher than 30 percent the Department will only be able to issue loans which may be covered by the actual amount appropriated for use as the subsidy, an amount which will not reach the $25,000,000,000 cap. Thus, while there is a limit on the total amount of loans the Department is able to make, the value of the loans the Department is able to make with the credit subsidy amount appropriated may be less than $25,000,000,000.

G. Project Costs

Section 136 states that awards under the grant program for eligible projects shall pay "not more than 30 percent" of project cost. On the other hand, section 136 does not impose a maximum percentage of funding associated with a particular project for the direct loan program. In accordance with Federal credit policies under OMB Circular A–129, the Department will adhere to requirements for a significant borrower stake. Under the interim final rule, the Federal loan may only constitute up to 80% of a project's cost. Section 611.102 sets forth the types of costs the Department will consider to be eligible project costs—i.e., costs for which grant or loan proceeds may be expended. Eligible costs are: (a) Those costs that are reasonably related to the reequipping, expanding, or establishing a manufacturing facility in the United States to produce qualifying advanced technology vehicles or qualifying components; (b) costs of engineering integration performed in the United States for qualifying vehicles or qualifying components. Costs eligible for payment with loan proceeds are costs incurred, but not yet paid by the borrower, after a substantially complete application has been submitted to DOE and costs incurred after the closing of the loan. In determining the overall total cost of an Eligible Project, DOE and the applicant may include significant costs already incurred and capitalized by the applicant in accordance with Generally Accepted Accounting Principles and these costs may be considered by DOE in determining the Borrower's contribution to total project costs.

H. Assessment of Fees for Direct Loans

Section 136(f) states that administrative costs "shall be no more than $100,000 or 10 basis points of the loan." The Department interprets this subsection as authorizing DOE to charge borrowers an administrative fee, which shall be deposited into the U.S. Treasury, and as providing DOE with the flexibility to choose either monetary option set forth in the statute. DOE has decided that administrative costs for a particular loan will be 10 basis points of the loan to be paid by the borrower on the closing date of the loan. No application fee will be charged, and therefore applicants that do not receive a loan will pay no administrative fee. The Department bases its decision on the need for fairness among applicants and the belief that administrative costs for a loan will be in excess of 10 basis points. By including a fee provision in section 136, Congress demonstrated an intent that applicants should pay a fee in connection with a loan. By selecting 10 basis points as the fee for all loans, the Department assures that applicants for smaller loans will pay smaller fees.

I. Assessment of Applications and Priorities

All applications received will be reviewed to determine whether the applicant is eligible and that the application contains all information required of an applicant by section 136, this interim final rule and other applicable law. Applications that are determined to be eligible and substantially complete will undergo a substantive review by DOE based upon certain evaluation factors. These factors include, but are not limited to, the technical merit of the proposed advanced technology vehicles or qualifying components, with greater weight given for improved vehicle fuel economy above the minimum required for an advanced technology vehicle, potential contributions to improved fuel economy of the U.S. light-duty vehicle fleet, promotion of the use of advanced fuel (e.g., E85, ultra-low sulfur diesel), and potential reductions in petroleum use by the U.S. light-duty fleet. DOE will also assess the adequacy of the proposed provisions to protect the Government, including offers of participation in project gains, sufficiency of Security, the priority of the lien position in the Security, and the percentage of the project to be financed with the loan.

III. Application Submission

Section 611.101 of this interim final rule sets forth the information DOE will need an applicant to submit in order to make the determinations required in section 136 and this interim final rule for issuance of a loan or award. Applicants may submit loan requests for multiple eligible projects in a single application provided that the application provides a way to segregate each proposed eligible project in such a way that permits DOE to evaluate each project in the application. Applications for the first tranche of loans may be submitted or hand delivered to the Postal Mail address listed in ADDRESSES. DOE will consider and evaluate substantially complete applications as and when they are submitted during the first tranche period, which will close December 31, 2008. DOE may make decisions on such applications and close loans with respect to such applications at any time. After December 31, 2008, subsequent tranche periods will close on the last day of each calendar year quarter (i.e., March 31, 2009; June 30, 2009, etc.) For applications submitted during those subsequent periods, no final decisions will be made with respect to such

new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule. The report will state that it has been determined that the interim final rule is a "major rule" as defined by 5 U.S.C. 804(2). Pursuant to 5 U.S.C. 808(2), DOE finds good cause that the effective date of this major rule need not be delayed because notice and public procedure thereon are unnecessary, impracticable, and contrary to the public interest. In the Continuing Resolution, 2009, Congress amended section 136 of EISA to require DOE to act with extreme expedition in the establishment and implementation of the Advanced Technology Vehicle Manufacturing Incentive Program. Specifically, Congress mandated that the Secretary issue an interim final rule—a rule that is issued and becomes effective without prior public notice and comment. Furthermore, Congress mandated that this interim final rule be promulgated no later than 60 days after enactment of the Continuing Resolution 2009. In addition, the Department is cognizant of the current extraordinary and adverse credit market conditions, and believes it would be contrary to the public interest to delay the effective date of regulations implementing a program that may help respond to those conditions. Thus, it would be inconsistent with that Congressional mandate, and thereby unnecessary, impracticable and contrary to the public interest, for the effective date of this interim final rule to be delayed beyond the date of its publication. For the reasons stated above, DOE also finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30-delay in effective date required by the rulemakings provisions of the Administrative Procedure Act.

L. Approval by the Office of the Secretary of Energy

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

List of Subjects in 10 CFR Part 611

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

Issued in Washington, DC, on November 5, 2008.

Owen Barwell,

Deputy 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 MANUFACTURER ASSISTANCE PROGRAM

Subpart A—General

§ 611.1 Purpose.
§ 611.2 Definitions.
§ 611.3 Advanced technology vehicle.

Subpart B—Direct Loan Program

§ 611.100 Eligible applicant.
§ 611.101 Application.
§ 611.102 Eligible project costs.
§ 611.103 Application evaluation.
§ 611.104 [Reserved].
§ 611.105 Agreement.
§ 611.106 Environmental requirements.
§ 611.107 Loan terms.
§ 611.108 Perfection of liens and preservation of collateral.
§ 611.109 Audit and access to records.
§ 611.110 Assignment or transfer of loans.
§ 611.111 Default, demand, payment, and collateral liquidation.
§ 611.112 Termination of obligations.

Subpart C—Facility Funding Awards

§ 611.200 Purpose and scope.
§ 611.201 Applicability.
§ 611.202 Advanced Technology Vehicle Manufacturing Facility Award Program.
§ 611.203 Eligibility.
§ 611.204 Awards.
§ 611.205 Period of award availability.
§ 611.206 Existing facilities.
§ 611.207 Small automobile and component manufacturers.
§ 611.208 [Reserved].
§ 611.209 [Reserved].

Authority: Pub. L. 110–140 (42 U.S.C. 17013), Pub. L. 110–329.

Subpart A—General

§ 611.1 Purpose.

This part is issued by the Department of Energy (DOE) pursuant to section 136

Subpart B—Direct Loan Program

§ 611.100 Eligible applicant.

(a) In order to be eligible to receive a loan under this part, an applicant

(1) Must be either—

(i) An automobile manufacturer that can demonstrate an improved fuel economy as specified in paragraph (b) of this section, or

(ii) A manufacturer of a qualifying component; and

(2) Must be financially viable without receipt of additional Federal funding associated with the proposed eligible project.

(b) Improved fuel economy. (1) If the applicant is an automobile manufacturer that manufactured in model year 2005, vehicles subject to the CAFE requirements, the applicant must demonstrate that its adjusted average fuel economy for its light-duty vehicle fleet produced in the most recent year for which final CAFE compliance data is available, at the time of application, is greater than or equal to the adjusted average fuel economy of the applicant's fleet for MY 2005, based on the MY 2005 final CAFE compliance data.

(2) If the applicant is an automobile manufacturer that did not manufacture in model year 2005, vehicles subject to the CAFE requirements, the applicant must demonstrate that the projected combined fuel economy for the relevant the advanced technology vehicle that is the subject of the application is greater than or equal to the industry adjusted average fuel economy for model year 2005 of equivalent vehicles, based on final CAFE compliance data.

(3) The CAFE values under this paragraph are to be calculated using the CAFE procedures applicable to the model year being evaluated.

(4) An applicant must provide fuel economy data, at the model level, relied upon to make the demonstration required by this section.

(5) An applicant that is a manufacturer of a qualifying component under paragraph (a)(1)(ii) of this section does not need to make a showing of improved fuel economy under this paragraph.

(c) In determining under paragraph (a)(2) of this section whether an applicant is financially viable, the Department will consider a number of factors, including, but not limited to:

(1) The applicant's debt-to-equity ratio as of the date of the loan application;

(2) The applicant's earnings before interest, taxes, depreciation, and amortization (EBITDA) for the applicant's most recent fiscal year prior to the date of the loan application;

(3) The applicant's debt to EBITDA ratio as of the date of the loan application;

(4) The applicant's interest coverage ratio (calculated as EBITDA divided by interest expenses) for the applicant's most recent fiscal year prior to the date of the loan application;

(5) The applicant's fixed charge coverage ratio (calculated as EBITDA plus fixed charges divided by fixed charges plus interest expenses) for the applicant's most recent fiscal year prior to the date of the loan application;

(6) The applicant's liquidity as of the date of the loan application;

(7) Statements from applicant's lenders that the applicant is current with all payments due under loans made by those lenders at the time of the loan application; and

(8) Financial projections demonstrating the applicant's solvency through the period of time that the loan is outstanding.

(d). For purposes of making a determination under paragraph (a)(2) of this section, additional Federal funding includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government, or any agency or instrumentality thereof, other than the proceeds of a loan approved under this Part, that is, or is expected to be made available with respect to, the project for which the loan is sought under this Part.

§ 611.101 Application.

An application must include, at a minimum, the following information and materials:

(a) A certification by the applicant that it meets each of the requirements of the program as set forth in statute, the regulations in this part, and any supplemental requirements issued by DOE;

(b) A description of the nature and scope of the proposed project for which a loan or award is sought under this part, including key milestones and location of the project;

(c) A detailed explanation of how the proposed project qualifies under applicable law to receive a loan or award under this part, including vehicle simulations using industry standard model (need to add name and location of this open source model) to show projected fuel economy;

(d) A detailed estimate of the total project costs together with a description of the methodology and assumptions used to produce that estimate;

(e) A detailed description of the overall financial plan for the proposed project, including all sources and uses of funding, equity, and debt, and the liability of parties associated with the project;

(f) Applicant's business plan on which the project is based and applicant's financial model presenting project *pro forma* statements for the proposed term of the obligations including income statements, balance sheets, and cash flows. All such information and data must include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;

(g) An analysis of projected market use for any product (vehicle or component) to be produced by or through the project, including relevant data and assumptions justifying the analysis, and copies of any contractual agreements for the sale of these products or assurance of the revenues to be generated from sale of these products;

(h) Financial statements for the past three years, or less if the applicant has been in operation less than three years, that have been audited by an independent certified public accountant, including all associated notes, as well as interim financial statements and notes for the current fiscal year, of the applicant and parties providing the applicant's financial backing, together with business and financial interests of controlling or commonly controlled organizations or persons, including parent, subsidiary and other affiliated corporations or partners of the applicant;

(i) A list showing the status of and estimated completion date of applicant's required project-related applications or approvals for Federal, state, and local permits and authorizations to site, construct, and operate the project, a period of 5 years preceding the submission of an application under this Part;

(j) Information sufficient to enable DOE to comply with the National Environmental Policy Act of 1969, as required by § 611.106 of this part;

(k) A listing and description of assets associated, or to be associated, with the project and any other asset that will serve as collateral for the Loan, including appropriate data as to the value of the assets and the useful life of any physical assets. With respect to real property assets listed, an appraisal that is consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers, is required;

(l) An analysis demonstrating that, at the time of the application, the applicant is financially viable without

(c) As appropriate, each specific report shall:

(1) Address conditions or resources that might be directly or indirectly affected by the project;

(2) Identify significant environmental effects expected to occur as a result of the project;

(3) Identify the effects of construction, operation (including maintenance and malfunctions), and termination of the project, as well as cumulative effects resulting from existing or reasonably foreseeable projects;

(4) Identify measures proposed to enhance the environment or to avoid, mitigate, or compensate for adverse effects of the project; and

(5) Provide a list of publications, reports, and other literature or communications that were cited or relied upon to prepare each report.

(d) Specific Report 1—Project impact and description. This report must describe the environmental impacts of the project, facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, compliance with regulations and codes, and permits that must be obtained.

(e) Specific Report 2—Socioeconomics. This report must identify and quantify the impacts of constructing and operating the proposed project on factors affecting towns and counties in the vicinity of the project. The report must:

(1) Describe the socioeconomic impact area;

(2) Evaluate the impact of any substantial immigration of people on governmental facilities and services and plans to reduce the impact on the local infrastructure;

(3) Describe on-site manpower requirements and payroll during construction and operation, including the number of construction personnel who currently reside within the impact area, would commute daily to the site from outside the impact area, or would relocate temporarily within the impact area;

(4) Determine whether existing housing within the impact area is sufficient to meet the needs of the additional population;

(5) Describe the number and types of residences and businesses that would be displaced by the project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments; and

(6) Conduct a fiscal impact analysis evaluating incremental local government expenditures in relation to incremental local government revenues that would result from construction of the project. Incremental expenditures include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs.

(f) Specific Report 3—Alternatives. This report must describe alternatives to the project and compare the environmental impacts of such alternatives to those of the proposal. The discussion must demonstrate how environmental benefits and costs were weighed against economic benefits and costs, and technological and procedural constraints. The potential for each alternative to meet project deadlines and the environmental consequences of each alternative shall be discussed. The report must discuss the "no action" alternative and the potential for accomplishing the proposed objectives through the use of other means. The report must provide an analysis of the relative environmental benefits and costs for each alternative.

§ 611.107 Loan terms.

(a) All loans provided under this part shall be due and payable in full at the earlier of:

(1) the projected life, in years, of the Eligible facility that is built or installed as a result of the Eligible Project carried out using funds from the loan, as determined by the Secretary; or

(2) Twenty-five (25) years after the date the loan is closed.

(b) Loans provided under the Part must bear a rate of interest that is equal to the rate determined by the Secretary of the Treasury, taking into consideration current market yields outstanding marketable obligations of the United States of comparable maturity. This rate will be determined separately for each drawdown of the loan.

(c) A loan provided under this part may be subject to a deferral in repayment of principal for not more than 5 years after the date on which the Eligible facility that is built or installed as a result of the Eligible Project first begins operations, as determined by the Secretary.

(d)(1) The performance of all of the Borrower's obligations under the Loan Documents shall be secured by, and shall have the priority in, such Security as provided for within the terms and conditions of the Loan Documents.

(2) Accordingly, the rule states that the Secretary must have a first lien or security interest in all property acquired with loan funds. This requirement may be waived only by the Secretary on a non-delegable basis. DOE must also have a lien on any other property of the applicant pledged to secure the loan.

(3) In the event of default, if recoveries from the property and revenues pledged to the repayment of the loan are insufficient to fully repay all principal and interest on the loan, then the Federal Government will have recourse to the assets and revenues of the Borrower to the same extent as senior unsecured general obligations of the Borrower.

(e) The Borrower will be required to pay at the time of the closing of the loan a fee equal to 10 basis points of the principal amount of the loan.

§ 611.108 Perfection of liens and preservation of collateral.

(a) The Agreement and other documents related thereto shall provide that:

(1) DOE and the Applicant, in conjunction with the Federal Financing Bank if necessary, will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the loan; and

(2) Upon default by the Borrower, the holder of pledged collateral shall take such actions as DOE 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 assets. DOE shall reimburse the holder of collateral for reasonable and appropriate expenses incurred in taking actions required by DOE.

(b) In the event of a default, DOE may enter into such contracts as the Secretary determines are required to preserve the collateral. The cost of such contracts may be charged to the Borrower.

§ 611.109 Audit and access to records.

(a) The Agreement and related documents shall provide that:

(1) DOE in conjunction with the Federal Financing Bank, as applicable, and the Borrower, shall keep such records concerning the project as are necessary, including the Application, Term Sheet, Conditional Commitment, Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all project assets and non-project assets pledged as security for the loan, all off-take and other revenue producing agreements, documentation for all project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other

(b) Engineering integration costs incurred during the period beginning on December 19, 2007 and ending on December 30, 2020.

§ 611.206 Existing facilities.

The Secretary shall, in making awards to those manufacturers that have existing facilities, 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.

§ 611.207 Small automobile and component manufacturers.

(a) In this section, the term "covered firm" means a firm that—

(1) Employs less than 500 individuals; and

(2) Manufactures automobiles or components of automobiles.

(b) *Set Aside.*—Of the amount of funds that are used to provide awards for each fiscal year under this subpart, not less than 10 percent shall be used to provide awards to covered firms or consortia led by a covered firm.

§ 611.208 [Reserved]

§ 611.209 [Reserved]

[FR Doc. E8–26832 Filed 11–6–08; 4:15 pm]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0585; Directorate Identifier 2008–NM–027–AD; Amendment 39–15704; AD 2008–22–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 747SP series airplanes. This AD requires repetitive lubrication of the rudder tab hinges and repetitive replacement of the rudder tab control rods. This AD results from reports of freeplay-induced vibration on the control surfaces on Boeing Model 727, 737, 757, and 767 airplanes. We are issuing this AD to prevent damage to the control surface structure during flight, which could result in loss of control of the airplane.

DATES: This AD is effective December 17, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 17, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com*.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6426; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 747SP series airplanes. That NPRM was published in the **Federal Register** on May 23, 2008 (73 FR 30007). That NPRM proposed to require repetitive lubrication of the rudder tab hinges and repetitive replacement of the rudder tab control rods.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received from the one commenter.

Request To Revise Discussion Section of NPRM

Boeing requests that we revise the Discussion section of the NPRM to remove the statement that the affected control surfaces on Boeing Model 727, 737, 757, and 767 airplanes and Boeing Model 747SP airplanes are similar in design. Boeing states that the only similarity between Model 727, 737, 757, and 767 airplanes and Model 747SP airplanes pertains to flutter-critical unbalanced control surfaces of the identified unsafe condition. Boeing requests that we revise that section of the NPRM to state: "There have been no reports of freeplay-induced vibration of the 747SP rudder tabs. However, there have been reports pertaining to flutter-critical unbalanced control surfaces on 727, 737, 757 and 767 airplanes. This lubrication and replacement will help prevent conditions which allow excessive freeplay of control surfaces."

We agree with Boeing that the Discussion section could be clarified as Boeing specified. However, since that section of the preamble does not reappear in the final rule, no change to the final rule is necessary.

Conclusion

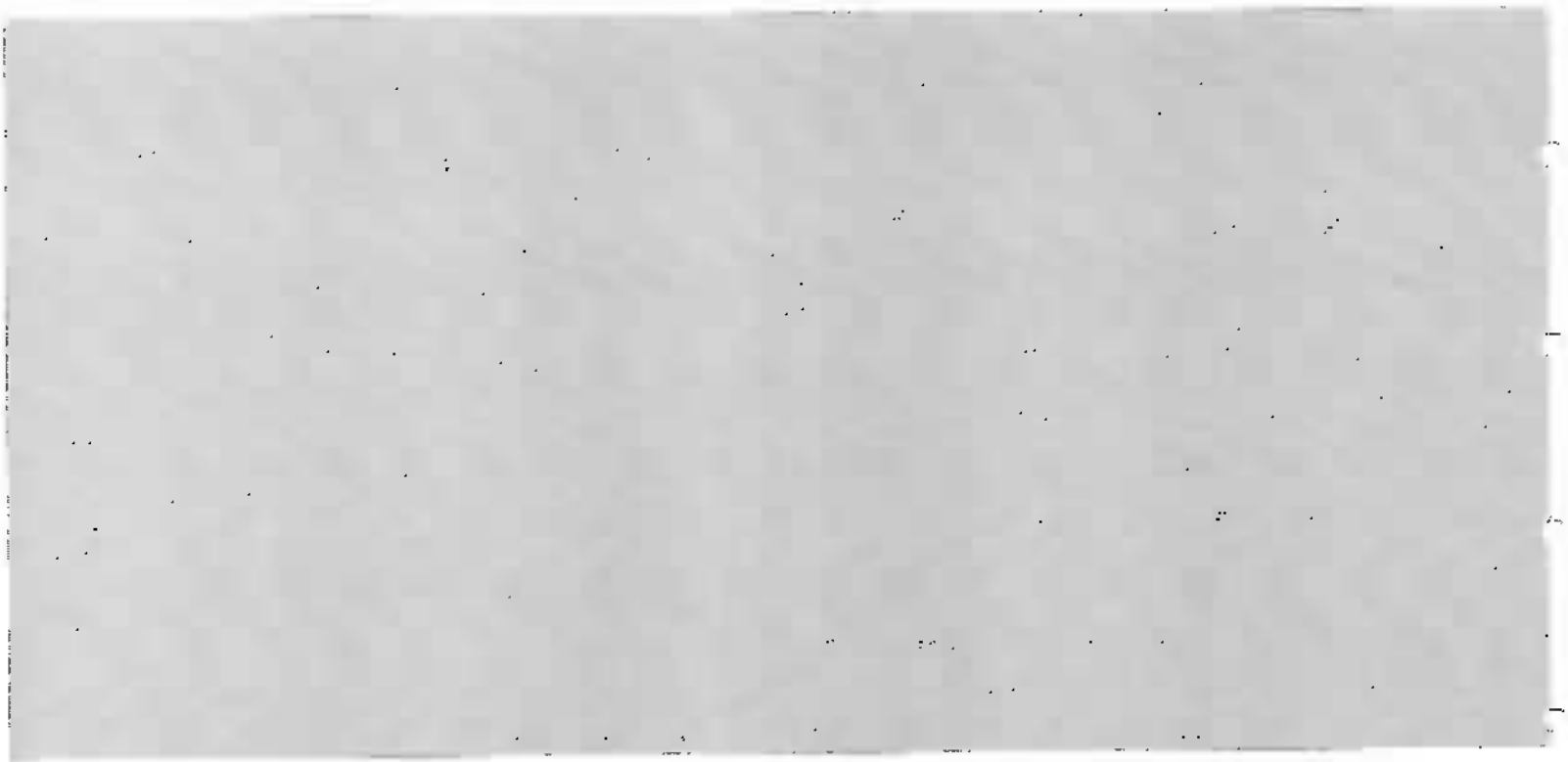
We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 7 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per product	Fleet cost
Lubrication	2	None	$160, per cycle	$1,120, per cycle.
Replacement	16	$39,511	40,791, per cycle	285,537, per cycle.



U.S. DEPARTMENT OF
ENERGY

documents and records relating to the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the project; and

(2) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower or DOE, as applicable. Such inspection may be made during regular office hours of the Borrower or DOE, as applicable, or at any other time mutually convenient.

(b) The Secretary may from time to time audit any or all statements or certificates submitted to the Secretary. The Borrower will make available to the Secretary all books and records and other data available to the Borrower in order to permit the Secretary to carry out such audits. The Borrower should represent that it has within its rights access to all financial and operational records and data relating to the project financed by the loan, and agrees that it will, upon request by the Secretary, exercise such rights in order to make such financial and operational records and data available to the Secretary. In exercising its rights hereunder, the Secretary may utilize employees of other Federal agencies, independent accountants, or other persons.

(c) Loan funds are being expended efficiently and effectively if documentation submitted and audits conducted under this section demonstrate that the borrower is making appropriate progress toward achieving the purpose for which the loan was originally made.

§ 611.110 Assignment or transfer of loans.

(a) The Loan Documents may not be modified, in whole or in part, without the prior written approval of DOE.

(b) Upon prior written approval by DOE and the Federal Financing Bank, a certification by the assignor that the assignee is an Eligible Applicant as described in § 611.100 of this part, and subject to paragraph (c) of this section and other provisions of this part, a Borrower may assign or transfer its interest in a loan provided under this part, including the loan documents, to a party that qualifies as an Eligible Applicant.

(c) The provisions of paragraph (b) of this section shall not apply to transfers which occur by operation of law.

§ 611.111 Default, demand, payment, and collateral liquidation.

(a) In the event that the Borrower has defaulted in the making of required payments of principal or interest, and such default has not been cured within the period of grace provided in the Agreement, DOE may cause the principal amount of the loan, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Agreement, to become immediately due and payable by giving the Borrower written notice to such effect.

(b) In the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Agreement, note, mortgage, or other contractual obligations related to the transaction, other than the Borrower's obligation to pay principal or interest on the loan, and DOE determines, in writing, that such a default has materially affected the rights of the parties, the Borrower shall be given the period of grace provided in the Agreement to cure such default. If the default is not cured during the period of grace, DOE may cause the principal amount of the loan, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Agreement, to become immediately due and payable by giving the Borrower written notice to such effect.

(c) In the event that the Borrower has defaulted as described in paragraphs (a) or (b) of this section and such default is not cured during the grace period provided in the Agreement, DOE shall notify the U.S. Attorney General. DOE, acting through the U.S. Attorney General, may seek to foreclose on the collateral assets and/or take such other legal action as necessary for the protection of the Government.

(d) If DOE is awarded title to collateral assets pursuant to a foreclosure proceeding, DOE may take action to complete, maintain, operate, or lease the Eligible Facilities, or otherwise dispose of any property acquired pursuant to the Agreement or take any other necessary action which DOE deems appropriate.

(e) In addition to foreclosure and sale of collateral pursuant thereto, the U.S. Attorney General shall take appropriate action in accordance with rights contained in the Agreement to recover costs incurred by the Government as a result of the defaulted loan or other defaulted obligation. Any recovery so received by the U.S. Attorney General on behalf of the Government shall be applied in the following manner: First to the expenses incurred by the U.S. Attorney General and DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE as a result of the defaulted obligation; third, to any amounts owed to DOE under related principal and interest assistance contracts; and fourth, to any other lawful claims held by the Government on such process. Any sums remaining after full payment of the foregoing shall be available for the benefit of other parties lawfully entitled to claim them.

(f) In the event that DOE considers it necessary or desirable to protect or further the interest of the United States in connection with the liquidation of collateral or recovery of deficiencies due under the loan, DOE will take such action as may be appropriate under the circumstances.

§ 611.112 Termination of obligations.

DOE, the Federal Financing Bank, and the Borrower shall have such rights to terminate the Agreement as are set forth in the loan documents.

Subpart C—Facility/Funding Awards

§ 611.200 Purpose and scope.

This subpart sets forth the policies and procedures applicable to the award and administration of grants by DOE for advanced technology vehicle manufacturing facilities as authorized by section 136(b) of the Energy Independence and Security Act (Pub. L. 110–140).

§ 611.201 Applicability.

Except as otherwise provided by this subpart, the award and administration of grants shall be governed by 10 CFR part 600 (DOE Financial Assistance Rules).

§ 611.202 Advanced Technology Vehicle Manufacturing Facility Award Program.

DOE may issue, under the Advanced Technology Vehicle Manufacturing Facility Award Program, 10 CFR part 611, subpart C, awards for eligible projects.

§ 611.203 Eligibility.

In order to be eligible for an award, an applicant must be either—

(a) An automobile manufacturer that can demonstrate an improved fuel economy as specified in paragraph (b) of section 611.3, or

(b) A manufacturer of a qualifying component.

§ 611.204 Awards.

Awards issued for eligible projects shall be for an amount of no more than 30 percent of the eligible project costs.

§ 611.205 Period of award availability.

An award under section 611.204 shall apply to—

(a) Facilities and equipment placed in service before December 30, 2020; and

receipt of additional Federal funding associated with the proposed project, and that there is a reasonable prospect that the Applicant will be able to make payments of principal and interest on the loan as and when such payments become due under the terms of the loan documents, and that the applicant has a net present value which is positive, taking all costs, existing and future, into account. This information must include, from publicly traded companies, relevant filings with the Securities and Exchange Commission;

(m) 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 this Part 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 40 U.S.C. sections 3141–3144, 3146, and 3147;

(n) Completed Form SF–LLL, as required by 10 CFR Part 601; and

(o) Other information, as determined necessary by DOE.

§ 611.102 Eligible project costs.

(a) Eligible costs are:

(1) Those costs that are reasonably related to the reequipping, expanding, or establishing a manufacturing facility in the United States to produce qualifying advanced technology vehicles or qualifying components;

(2) Costs of engineering integration performed in the United States for qualifying vehicles or qualifying components;

(3) Costs for payment with loan proceeds that are incurred, but not yet paid by the borrower, after a substantially complete application has been submitted to DOE; and

(4) Costs incurred after closing of the loan.

(b) In determining the overall total cost of an Eligible Project, DOE and the applicant may include significant costs already incurred and capitalized by the applicant in accordance with Generally Accepted Accounting Principles and these costs may be considered by DOE in determining the Borrower's contribution to total project costs.

§ 611.103 Application evaluation.

(a) *Eligibility screening.* Applications will be reviewed to determine whether the applicant is eligible, the information required under § 611.101 is complete, and the proposed loan complies with applicable statutes and regulations. DOE can at any time reject an application, in whole or in part, that does not meet these requirements.

(b) *Evaluation criteria.* Applications that are determined to be eligible pursuant to paragraph (a) of this section shall be subject to a substantive review by DOE based upon factors that include, but are not limited to, the following:

(1) The technical merit of the proposed advanced technology vehicles or qualifying components, with greater weight given for factors including, but not limited to:

(i) Improved vehicle fuel economy above that required for an advanced technology vehicle;

(ii) Potential contributions to improved fuel economy of the U.S. light-duty vehicle fleet;

(iii) Likely reductions in petroleum use by the U.S. light-duty fleet; and

(iv) Promotion of use of advanced fuel (e.g., E85, ultra-low sulfur diesel).

(2) Technical Program Factors such as economic development and diversity in technology, company, risk, and geographic location.

(3) The adequacy of the proposed provisions to protect the Government, including sufficiency of Security, the priority of the lien position in the Security, and the percentage of the project to be financed with the loan.

(4) In making loans to those manufacturers that have existing facilities, priority will be given to those facilities that are oldest or have been in existence for at least 20 years even if such facilities are idle at the time of application.

§ 611.104 [Reserved]

§ 611.105 Agreement.

(a) Only an Agreement executed by a duly authorized DOE Contracting Officer can contractually obligate the government to make a loan made by and through the Federal Financing Bank with the full faith and credit of the United States government on the principal and interest.

(b) DOE is not bound by oral representations made during the Application stage, or during any negotiation process.

(c) No funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay administrative fees, or other fees charged by or paid to DOE relating to the section 136 loan program.

(d) Prior to the execution by DOE of an Agreement, DOE must ensure that the following requirements and conditions, which must be specified in the Agreement, are satisfied:

(1) The Borrower is a Eligible Applicant as defined in this Part;

(2) The Agreement is for an Eligible Project as defined in this Part;

(3) The principal amount of the loan is limited to no more than 80 percent of reasonably anticipated total Project Costs;

(4) Loan funds will be disbursed only to meet immediate cash disbursement needs of the Borrower and not for investment purposes, and any investment earnings obtained in excess of accrued interest expense will be returned to United States Government; and

(5) Such documents, representations, warrants and covenants as DOE may require.

§ 611.106 Environmental requirements.

(a)(1) *In general.* Environmental review of the proposed projects under this part will be conducted in accordance with applicable statutes, regulations, and Executive Orders.

(2) The applicant must submit a comprehensive environmental report. The comprehensive environmental report shall consist of the specific reports and related material set forth in paragraphs (d) through (f) of this section.

(3) The regulations of the Council on Environmental Quality implementing NEPA require DOE to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public. See 40 CFR 1506.6(b). The comprehensive environmental report will provide substantial basis for any required environmental impact statement or environmental assessment and findings of no significant impact, pursuant to the procedures set forth in 10 CFR 1021.215. DOE may also make a determination as to whether a categorical exclusion is available with regard to an Application.

(b) The detail of each specific report must be commensurate with the complexity of the proposal and its potential for environmental impact. Each topic in each specific report shall be addressed or its omission justified, unless the specific report description indicates that the data is not required for that type of project. If material required for one specific report is provided in another specific report or in another exhibit, it may be incorporated by reference. If any specific report topic is required for a particular project but is not provided at the time the application is filed, the comprehensive environmental report shall explain why it is missing and when the applicant anticipates it will be filed.

of the Energy Independence and Security Act of 2007, Public Law 110–140, as amended by section 129 of Public Law 110–329. Specifically, section 136(e) directs DOE to promulgate an interim final rule establishing regulations that specify eligibility criteria and that contain other provisions that the Secretary deems necessary to administer this section and any loans made by the Secretary pursuant to this section.

§ 611.2 Definitions.

The definitions contained in this section apply to provisions contained in both Subpart A and Subpart B.

Adjusted average fuel economy means a harmonic production weighted average of the combined fuel economy of all vehicles in a fleet, which were subject to CAFE.

Advanced technology vehicle means a passenger automobile or light truck 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)), as of the date of application, 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.*), as of the date of application; and

(3) At least 125 percent of the harmonic production weighted average combined fuel economy, for vehicles with substantially similar attributes in model year 2005.

Agreement means the contractual loan arrangement between DOE and a Borrower for a loan made by and through the Federal Financing Bank with the full faith and credit of the United States government on the principal and interest.

Applicant means a party that submits a substantially complete application pursuant to this Part.

Application means the compilation of the materials required by this Part to be submitted to DOE by an Applicant. One Application can include requests for one or more loans and one or more projects. However, an Application covering more than one project must contain complete and separable information with respect to each project.

Automobile is used as that term is defined in 49 CFR Part 523.

Borrower means an Applicant that receives a loan under this Program.

CAFE means the Corporate Average Fuel Economy program of the Energy Policy and Conservation Act, 49 U.S.C. 32901 *et seq.*

Combined fuel economy means the combined city/highway miles per gallon values, as are reported in accordance with section 32904 of title 49, United States Code. If CAFE compliance data is not available, the combined average fuel economy of a vehicle must be demonstrated through the use of a peer-reviewed model.

DOE or *Department* means the United States Department of Energy.

Eligible Facility means a manufacturing facility in the United States that produces qualifying advanced technology vehicles, or qualifying components.

Eligible Project means:

(1) Reequipping, expanding, or establishing a manufacturing facility in the United States to produce qualifying advanced technology vehicles, or qualifying components; or

(2) Engineering integration performed in the United States for qualifying advanced technology vehicles and qualifying components.

Engineering integration costs are the costs of engineering tasks relating to—

(1) Incorporating qualifying components into the design of advanced technology vehicles; and

(2) Designing tooling and equipment and developing manufacturing processes and material suppliers for production facilities that produce qualifying components or advanced technology vehicles.

Equivalent vehicle means a light-duty vehicle of the same vehicle classification as specified in 10 CFR Part 523.

Financially viable means a reasonable prospect that the Applicant will be able to make payments of principal and interest on the loan as and when such payments become due under the terms of the loan documents, and that the applicant has a net present value that is positive, taking all costs, existing and future, into account.

Grantee means an entity awarded a grant made pursuant to section 136 and this Part.

Light-duty vehicle means passenger automobiles and light trucks.

Light truck is used as that term is defined in 49 CFR Part 523.

Loan Documents mean the Agreement and all other instruments, and all documentation among DOE, the borrower, and the Federal Financing Bank evidencing the making, disbursing, securing, collecting, or otherwise administering the loan [references to loan documents also include comparable agreements, instruments, and documentation for other financial obligations for which a loan is requested or issued].

Model year is defined as that term is defined in 49 U.S.C. 32901.

Passenger automobile is used as that term is defined in 49 CFR Part 523.

Qualifying components means components that the DOE determines are

(1) Designed for advanced technology vehicles; and

(2) Installed for the purpose of meeting the performance requirements of advanced technology vehicles.

Secretary means the United States Secretary of Energy.

Security means all property, real or personal, tangible or intangible, required by the provisions of the Loan Documents to secure repayment of any indebtedness of the Borrower under the Loan Documents.

§ 611.3 Advanced technology vehicle.

In order to demonstrate that a vehicle is an "advanced technology vehicle", an automobile manufacturer must provide the following:

(a) Emissions certification. An automobile manufacturer must written certify that the vehicle meets, or will meet, the emissions requirements specified in the definition of "advanced technology vehicle"; and

(b) Demonstration of fuel economy performance. An automobile manufacturer must demonstrate that the vehicle has a combined average fuel economy of at least 125 percent of the average combined fuel economy for vehicles with substantially similar attributes for model year 2005.

(1) A combined average fuel economy calculation required under this paragraph for a vehicle that is a dual fueled automobile for the purpose of CAFE is calculated as if the vehicle were not a dual fueled automobile.

(2) The average combined fuel economy for vehicles with substantially similar attributes is a harmonic production weighted average of the combined average fuel economy of all vehicles with substantially similar attributes in model year 2005, as published by DOE.

(3) In the case of an electric drive vehicle with the ability to recharge from an off-board source, an automobile manufacturer must provide DOE with a test procedure and sufficient data to demonstrate that the vehicle meets or exceeds the applicable average combined fuel economy of vehicles with substantially similar attributes.

applications until after the close of the particular tranche period.

IV. Regulatory Review

A. Executive Order 12866

Today's interim final rule has been determined to be an economically significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB).

B. National Environmental Policy Act

Through the issuance of this rule, DOE is making no decision relative to the approval of a loan or grant for a particular project. DOE has, therefore, determined that publication of this rule is covered under the Categorical Exclusion found at paragraph A.6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required at this time. However, appropriate NEPA project review will be conducted in connection with a section 136 loan or grant.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

Because a notice of proposed rulemaking is not required pursuant to 5 U.S.C. 553, EISA section 136, as amended, or any other law, prior to issuance of this interim final rule, the analytical requirements of the Regulatory Flexibility Act are inapplicable. As such, DOE is not obliged to prepare a regulatory flexibility analysis for this rulemaking.

D. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been submitted to OMB with a request for emergency processing. DOE will publish a notice of approval once received from OMB.

Public reporting burden for this collection of information is estimated to average 256.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of the data collection, including suggestions for reducing the burden, to DOE (see Postal Mail in ADDRESSES) or to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Act) (2 U.S.C. 1531 *et seq.*) requires each federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any federal mandate in an agency rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments.

The term "federal mandate" is defined in the Act to mean a federal intergovernmental mandate or a federal private sector mandate (2 U.S.C. 658(6)). Although the rule will impose certain requirements on non-federal governmental and private sector applicants for loans, the Act's definitions of the terms "federal intergovernmental mandate" and "federal private sector mandate" exclude, among other things, any provision in legislation, statute, or regulation that is a condition of federal assistance or a duty arising from participation in a voluntary program (2 U.S.C. 658(5) and (7), respectively). Today's interim final rule establishes requirements that persons voluntarily seeking loans for projects that would use certain advanced vehicle technologies must satisfy as a condition of a federal loan. Thus, the interim final rule falls under the exceptions in the definitions of "federal intergovernmental mandate" and "federal private sector mandate" for requirements that are a condition of federal assistance or a duty arising from participation in a voluntary program. Accordingly, the Unfunded Mandates Reform Act of 1995 does not apply to this rulemaking.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this interim final rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, no further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of

Vehicle class	Power[1]/ weight[2]	2005 Fuel economy average[3]	2005 mpg × 125%
Large Sedan	n/a	26.2	32.7
Small Wagon	n/a	32.7	40.8
Mid-Size and Large Wagons	n/a	26.7	33.4
Small and Standard Pickup	n/a	19.7	24.6
Minivan	n/a	24.3	30.4
Passenger Van	n/a	19.0	23.8
Cargo Van	n/a	24.2	30.2
Sport Utility Vehicle	n/a	21.8	27.2

[1] Peak horsepower (hp).
[2] Curb weight (lbs).
[3] Harmonic production weighted average of combined fuel economy.

A project eligible for a grant or loan under section 136 may include a project for "reequipping, expanding, or establishing a manufacturing facility in the United States to produce" a "qualifying component." (42 U.S.C. 17031(b)(1)) Section 136 defines "qualifying component" as a component that

> [T]he 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.

(42 U.S.C. 17013(a)(4))

Although a component needs to be designed for an advanced technology vehicle and installed to assist meeting performance requirements of an advanced technology vehicle, DOE does not interpret the statutory definition to mean that the use of these components in either other conventional vehicles or in aftermarket sales is precluded. In making a determination on component eligibility, the Secretary will consider factors such as the overall impact of the component and extent to which the component contributes to the efficiency of advanced technology vehicles.

Eligible costs for facilities that manufacture qualified components may include the costs of "engineering integration performed in the United States of qualifying vehicles and qualifying components." (42 U.S.C. 17013(b)(2)) "Engineering integration" is defined to include—

> [T]he cost of engineering tasks relating to—
> (A) incorporating qualifying components into the design of advanced technology vehicles; and
> (B) designing tooling and equipment and developing manufacturing processes and material suppliers for production facilities that produce qualifying components or advanced technology vehicles.

(49 U.S.C. 17013(a)(3))

In both the specification of eligible activities and the definition of "engineering integration," eligible engineering integration costs relate to those costs associated with advanced technology vehicles and qualifying components. Subsection (b) of section 136 states that facility funding awards are for the cost of engineering integration performed in the United States for qualifying vehicles and qualifying components. (42 U.S.C. 17013(b)(2)) "Engineering integration" is statutorily defined to include the cost of incorporating qualifying components into the design of an advanced technology vehicle and the costs of design and development for production facilities producing qualifying components or advanced technology vehicles. Engineering costs not associated with the production of an advanced technology vehicle or the production of a qualifying component, are not eligible costs under section 136.

D. Terms for Direct Loans

Section 136 prescribes certain specific terms for loan documents. First, the statute establishes that the loans will have an interest rate that, "as of the date on which the loan is made, is equal to the cost of funds to the Department of the Treasury for obligations of comparable maturity[.]" In determining the date upon which the interest rate will be calculated, the Department of the Treasury will set the loan rate at the time the loan funds are disbursed. Additionally, the statute prescribes that the loans shall have a term "equal to the lesser of—(i) the projected life, in years, of the eligible project to be carried out using funds from the loan, as determined by the Secretary; and (ii) 25 years[.]"

The statute also states that loans may be subject to a deferral in repayment for "not more than 5 years after the date on which the eligible project carried out using funds from the loan first begins operations, as determined by the Secretary[.]" Section 136 is silent as to whether a deferral is available for interest on the loan. In today's interim final rule, the Department interprets the deferral of repayment option to apply to only loan principal, not interest. Allowing a deferral of interest would have the effect of increasing the principal amount of the loan, perhaps beyond the authority provided by Congress for this program. Moreover, the statute allows only for deferral of "repayment" of a loan. The principal amount of a loan is the amount that is actually being "repaid" to the Government. Finally, the statute requires that all loans be made by the Federal Financing Bank.

In addition to the minimum terms prescribed in section 136, today's interim final rule sets forth other parameters for loan terms intended to protect the significant taxpayer costs for this program. Accordingly, the rule states that the Secretary must have a first lien or security interest in all property acquired with loan funds. This requirement may be waived only by the Secretary on a non-delegable basis. Additionally, DOE must also have a lien on any other property of the applicant pledged to secure the loan.

E. Application Process for Direct Loan Program

Section 136 states that applicants for direct loans shall submit applications "at such time, in such manner, and containing such information as the Secretary may require[.]" To further the statutory purpose of providing funding to assist in the development and production of advanced technology vehicles and qualifying components, applications for the first tranche of direct loans will be due on the date the interim final rule becomes effective. The deadline for loan applications for subsequent tranches of loans will be every 90 days thereafter as funds and available loan authority permit. The Department will evaluate and make decisions on a tranche of loan applications before proceeding to evaluate and make decisions on a subsequent tranche of loan applications. Application requirements are set forth in section 611.101. These application

are identical except that they are not dual fueled.[9] 49 U.S.C. 32905(b). The incentive provided to dual fueled vehicles was enacted to encourage the production of vehicles that would promote consumer acceptance and ultimately lead to the development of infrastructure to distribute and make alternative fuel available. (See 69 FR 7689, 7691; February 19, 2004.) While DOE supports the development and increased distribution of dual fueled vehicles, we have determined not to consider dual fueled capabilities under the criteria for identifying an advanced technology vehicle. For the purpose of determining whether a vehicle achieves a fuel economy performance of at least 125 percent of the average base year combined fuel economy for vehicles with substantially similar attributes, DOE will consider the fuel economy performance of vehicles as calculated for non-dual fueled vehicles.

Section 136 does not define the term "base year" and therefore DOE may exercise its sound policy discretion in defining that term. DOE is defining "base year" as MY 2005.

DOE recognizes that the fuel economy standard for light trucks increases in stringency through MY 2010, and that NHTSA has proposed to increase the stringency of both the passenger car and further increase the light truck fuel economy standard beginning MY 2011. See 49 CFR 533.5 and 73 FR 24352, respectively. Given the potential for a vehicle that is the subject of an application to begin being manufactured in a future MY, DOE considered using a future MY for the base year. However, the definition of "advanced technology vehicle" requires a fuel economy performance comparison to be in terms of vehicles with "substantially similar attributes."

At present, DOE does not have sufficient data on the types of vehicles to be manufactured in future MYs, including the fuel economy performance of vehicles yet to be manufactured. Although manufacturers have product plans for future years, that information is subject to change. DOE considered relying on fuel economy targets established for specific vehicle footprint values (i.e., area calculated by multiplying vehicle width by vehicle length). In the MYs 2008–2010, standards for light trucks, NHTSA assigns a fuel economy target for each light truck based on vehicle footprint. 49 CFR 533.5. There are currently no similar targets established for passenger automobiles.

As a result of the lack of sufficient data for future MYs and the lack of attribute-based fuel economy targets for passenger cars, DOE has decided that the "base year" should be a year for which CAFE compliance data are available. To date, NHTSA has not received all of the approved compliance data from EPA for MY 2007.[10] DOE notes that the total fleet fuel economy for MY 2006 is higher than in MY 2005 (25.8 mpg as compared to 25.4 mpg), the industry average for passenger automobile fuel economy is higher in MY 2005 than in MY 2006 (30.3 mpg as compared to 30.1 mpg).[11] However, relying on MY 2006 as a base year would not necessarily result in a more stringent fuel economy comparison for determining whether a particular vehicle is an advanced technology vehicle. Furthermore, MY 2005 CAFE data are fully available and known at the present time, and using MY 2005 would promote efficient and effective administration of the section 136 program. Thus, and consistent with the model year for which Congress established automobile manufacturer eligibility under section 136(e), DOE has interpreted base year for the purpose of defining an "advanced technology vehicle" to mean MY 2005.

A determination of whether a vehicle has sufficiently improved fuel economy to qualify as an advanced technology vehicle is further refined by section 136's reference to vehicles with "substantially similarly attributes." To identify those vehicles with substantially similar attributes, DOE first relied on the vehicle classes used for EPA's fuel economy guidelines. EPA, in conjunction with DOE, publishes information on the fuel economy performance of the vehicle fleet for each model year.[12] EPA segments the vehicle fleet by size classes to permit more practicable comparisons of fuel economy performance between vehicles. The size class for cars is based on interior passenger and cargo volumes as described below. The size class for trucks is defined by GVWR, which is the weight of the vehicle and its carrying capacity. For MY 2005, EPA has identified the various classes as follows.

Class	Passenger & cargo volume (cu. ft.)
Cars	
Two-Seaters	Any (cars designed to seat only two adults).
Sedans	
Minicompact	< 85.
Subcompact	85–99.
Compact	100–109.
Mid-Size	110–119.
Large	120 or more.
Station Wagons	
Small	<130.
Mid-Size	130–159.
Large	160 or more.
Class	Gross Vehicle Weight Rating (GVWR)
Trucks	
Pickup Trucks	
Small	< 4,500 pounds.

[9] Through MY 2014, manufacturers may use this "dual-fuel" incentive to raise their average fuel economy up to 1.2 miles a gallon higher than it would otherwise be; after MY 2014, Congress has set a schedule by which the dual-fuel incentive diminishes ratably until it is extinguished after MY 2019. 49 U.S.C. 32906(a).

[10] For CAFE compliance purposes the average fuel economy of passenger automobiles and light trucks is determined in accordance with procedures established by EPA. 49 CFR 531.6(a) and 533.6(b), respectively. To date, EPA has not approved the data for Ford's domestic passenger automobile fleet.

[11] Summary of Fuel Economy Performance, NHTSA (March 2008).

[12] *http://www.fueleconomy.gov/feg/info.shtml* (last visited October 30, 2008).

If an automobile manufacturer is a new manufacturer, or has not previously produced "equivalent vehicles" (new automobile manufacturer), section 136 permits the Secretary to base the fuel economy improvement comparison on "industry averages." Section 136 does not define "new manufacturer" nor does it define "equivalent vehicles." Based on the statute's specification of MY 2005 as the MY against which the fuel economy is compared, DOE interprets "new manufacturer" to mean a manufacturer that did not manufacture vehicles in MY 2005 that were subject to the CAFE standards.

Further, section 136 does not define the term "equivalent vehicles." The comparison for new automobile manufacturers is in terms of "equivalent vehicles," which indicates a comparison at a level other than the fleet wide comparison required for existing manufacturers, i.e., a comparison of "light duty vehicles produced by the manufacturer." However, use of "equivalent vehicles" in section 136(e) does not indicate that the fuel economy comparison should be at a level as narrow as the comparison between vehicles with "substantially similar attributes" as the statute specifies for criteria in determining whether a vehicle is an "advanced technology vehicle." DOE interprets "equivalent vehicle" to mean a vehicle within the same class as is defined for the purpose of CAFE compliance, i.e., a passenger automobile or a light truck.

For a new automobile manufacturer, eligibility under subsection (e) of section 136 is based on the fuel economy of the vehicle or vehicles that are the subject of the application. The projected combined fuel economy of the vehicles that are the subject of the application must be at least equal to the adjusted average fuel economy for all vehicles that were in the same vehicle class as the subject vehicles in MY 2005. It is likely that a new manufacturer will not have CAFE compliance data for a vehicle that is the subject of an application. In demonstrating the projected combined fuel economy of a vehicle for CAFE compliance data are not available, a new manufacturer must rely on a peer reviewed model (e.g., the Powertrain System Analysis Toolkit© (PSAT) [4]). A new automobile manufacturer is eligible if the demonstrated combined fuel economy of the subject vehicle is at least as efficient as the industry average for that vehicle class in MY 2005.

[4] See, *http://www.transportation.anl.gov/modeling_simulation/PSAT/index.html.*

As noted above, an applicant that is a manufacturer of a qualifying component does not need to make a showing of improved fuel economy for the purpose of threshold applicant eligibility for a section 136 grant or loan. However, a component manufacturer will be required to demonstrate the contributions to fuel economy improvements of the qualifying component that is the subject of the grant or loan application. The necessary demonstration of a qualifying component's improvement to fuel economy is discussed later in this document.

B. Applicant Eligibility for Direct Loan Program—Secretarial Determinations

Section 136 directs the Secretary to make certain determinations with regard to applicants for direct loans. First, the Secretary must determine that the applicant is "financially viable without the receipt of additional Federal funding associated with the proposed project [.]" In today's interim final rule, the Department interprets the term "financially viable" to mean that an applicant must demonstrate a reasonable prospect that the Applicant will be able to make payments of principal and interest on the loan as and when such payments become due under the terms of the loan documents, and that the applicant has a net present value which is positive, taking all costs, existing and future, into account. Determining whether an applicant has met this criterion is a decision committed by law to the Secretary. In making that determination, today's regulations provide that the Secretary will consider a number of factors, including, but not limited to:

(1) The applicant's debt-to-equity ratio as of the date of the loan application;

(2) The applicant's earnings before interest, taxes, depreciation, and amortization (EBITDA) for the applicant's most recent fiscal year prior to the date of the loan application;

(3) The applicant's debt to EBITDA ratio as of the date of the loan application;

(4) the applicant's interest coverage ratio (calculated as EBITDA divided by interest expenses) for the applicant's most recent fiscal year prior to the date of the loan application;

(5) the applicant's fixed charge coverage ratio (calculated as EBITDA plus fixed charges divided by fixed charges plus interest expenses) for the applicant's most recent fiscal year prior to the date of the loan application;

(6) the applicant's liquidity as of the date of the loan application;

(7) statements from applicant's lenders that the applicant is current with all payments due under loans made by those lenders at the time of the loan application; and

(8) financial projections demonstrating the applicant's solvency through the period of time that the loan is outstanding.

As stated in section 136, the Secretary must find that the loan recipient is financially viable without "additional Federal funding associated with the proposed project." In today's interim final rule, the Department interprets the term "additional Federal funding" to mean any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government, or any agency or instrumentality thereof, other than the proceeds of a loan approved under section 136, that is, or is expected to be made available with respect to, the project or activities for which the loan is sought under section 136, and is to be received by the applicant after entering into an Agreement with DOE.

Section 136 also requires the Secretary to ensure that the proceeds of the direct loan are expended "efficiently and effectively." The Secretary will carry out this obligation by reviewing documents required in 611.109 for purposes of loan monitoring and audit. Loan funds will be considered as being expended "efficiently and effectively" if that documentation demonstrates, in the sole judgment of the Secretary, that the borrower is making appropriate progress toward achieving the purpose for which the loan was originally made. The Department anticipates that in order to meet this requirement, loan proceeds will be disbursed through periodic drawdowns that correspond to actual project expenses.

Section 136 also requires applicants to submit to the Secretary written assurance that "(A) 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 this section 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; and (B) the Secretary of Labor shall, with respect to the labor standards described in this paragraph, have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code." Accordingly, section 611.101(m) of

engineering integration costs associated with such projects.

On September 30, 2008, President Bush signed into law the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. (Pub. L. 110–329; "Continuing Resolution, 2009"). Section 129(a) of the Continuing Resolution, 2009, appropriated $7,500,000,000 for the "Advanced Technology Vehicles Manufacturing Loan Program Account" for the cost of direct loans as authorized by EISA section 136(d) and states that commitments for direct loans using such amount shall not exceed $25,000,000,000 in total loan principal, and $10 million for DOE's administrative expenses for implementing the program.

Further, section 129(c) of the Continuing Resolution, 2009, also made several substantive amendments to section 136. Specifically, section 136 was amended to provide:

1. That the Department will pay the full credit subsidy cost of the loans;

2. The Department with limited flexibility from the general rules applicable to the hiring of Federal staff and consultants necessary to administer the program; and

3. That, not later than 60 days after enactment of the Continuing Resolution, 2009, the Secretary shall promulgate an interim final rule establishing regulations that the Secretary deems necessary to administer section 136 and any loans made by the Secretary pursuant thereto.

By directing the Department to issue an interim final rule, Congress required the Department to issue a rule without having first issued a proposed rule for public comment. Though under no obligation to accept public comment prior to issuance, the Department received comments at a series of meetings it held with a variety of stakeholders. The comments received at those meetings were considered in the development of this interim final rule. A list of the meetings held and the written comments that were received can be viewed at: *http://www.atvmloan.energy.gov*. Through publication of this interim final rule, the Department is also providing a comment period until December 12, 2008. Comments submitted during this period will be reviewed and a final rule, responding to those comments as well as reflecting the experience the Department gains in implementing this interim final rule, will be issued at a later date.

Today's interim final rule establishes regulations necessary to implement the loan and grant programs authorized by section 136 of EISA, as amended by the Continuing Resolution, 2009 (hereinafter referred to as "section 136"). Additionally, concurrent with the release of today's interim final rule, the Department is announcing that applications for the first tranche of loans must be submitted to the Department on or before the effective date of today's interim final rule. The deadline for loan applications for subsequent tranches of loans will be every 90 days thereafter as funds and available loan authority permit.

II. Discussion of the Interim Final Rule

Section 136 authorizes the Secretary to issue grants and direct loans to applicants for the costs of reequipping, expanding, or establishing manufacturing facilities in the United States to produce qualified advanced technology vehicles, or qualifying components. Section 136 also authorizes the Secretary to issue grants and direct loans for the costs of engineering integration performed in the United States of qualifying advanced technology vehicles and qualifying components. Section 136 sets forth certain specific conditions pertaining to the grant and direct loan programs, but also leaves to the Secretary's discretion the interpretation of other criteria. This interim final rule sets forth eligibility criteria, application procedures, outlines specific terms and conditions for the receipt of grants and direct loans, and sets forth interpretations of other provisions that section 136 requires the Department to address.

Section 136 defines "advanced technology vehicle" as 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."

Section 136 defines the term "qualifying components" to mean "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."

Section 136 defines "engineering integration costs" to include the cost of engineering tasks relating to "(A) incorporating qualifying components into the design of advanced technology vehicles; and (B) designing tooling and equipment and developing manufacturing processes and material suppliers for production facilities that produce qualifying components or advanced technology vehicles."

In today's interim final rule DOE adopts several definitions and provisions contained in the corporate average fuel economy (CAFE) regulations established by the National Highway Traffic Safety Administration (NHTSA) (codified at 49 CFR Parts 523–538). DOE recognizes that NHTSA has proposed to amend some of these definitions and provisions, in part, in response to EISA. *See*, 73 FR 24352; May 2, 2008. It is anticipated that any amendments to the CAFE definitions that may result from NHTSA issuing a final rule will not impact the regulations established in today's interim final rule. However, if necessary, DOE may amend, in a future rulemaking document, today's interim final rule in response to future amendments to the CAFE regulations.

A. Applicant Eligibility for Grant and Direct Loan Programs—Statutory Criteria

Section 136, as amended, directs the Secretary to establish "regulations that the Secretary deems necessary to administer this section and any loans made by the Secretary pursuant to this section." The statute requires the Department's regulations to establish eligibility requirements for both the grant and direct loan programs. To that end, section 136 lays out specific criteria for the Secretary to use to determine an applicant's eligibility, and directs the Secretary to make other determinations relating to eligibility prior to issuance of any loan or award of any grant.

Section 136 contains a requirement that the Department promulgate regulations regarding eligibility of automobile manufacturers. There is no similar statutory eligibility requirement for component manufacturers. With regard to automobile manufacturers, section 136 requires the Department's regulations to establish that

> [I]n order for an automobile manufacturer to be eligible for an award or loan under this section 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.
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> (42 U.S.C. 17013(e))