

(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.

**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

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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.

The information and materials submitted in or in connection with applications will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b). 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 descrip-

tion 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

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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 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.

[73 FR 66731, Nov. 12, 2008, as amended at 76 FR 26583, May 9, 2011]

### § 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. Any additional information submitted to DOE will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b).

(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.

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(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.

[73 FR 66731, Nov. 12, 2008, as amended at 76 FR 26583, May 9, 2011]

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## § 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

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(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.

(c) As appropriate, each specific report shall:

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(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

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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.

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(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 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

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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 deter-

mines, 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

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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

(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.

**§§611.208–611.209 [Reserved]**