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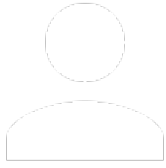


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## The ATVMIP

Discussion in 'News' started by just-an-allusion, Nov 30, 2008.



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#1

[Federal Register: November 12, 2008 (Volume 73, Number 219)]  
[Rules and Regulations]  
[Page 66721-66737]  
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DEPARTMENT OF ENERGY

10 CFR Part 611

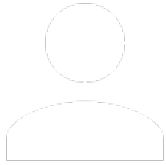
RIN 1901-AB25

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.

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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



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## 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)

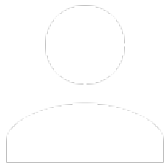
any new emission standard in effect for fine particulate matter prescribed by the Administrator under that Act (42 U.S.C. 7401 et seq.); and (C) at least 125 percent of the average base year combined

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



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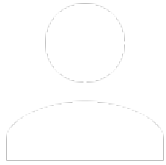
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The fuel economy improvement threshold for eligibility specified in section 136(e) requires that automobile manufacturers applying under either the loan or grant program demonstrate a history of maintaining or improving the fuel economy of its fleet. 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:

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

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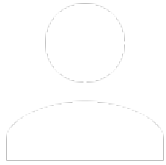
today's interim final rule requires applicants to submit this required assurance as part of any direct loan application.

#### 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

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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

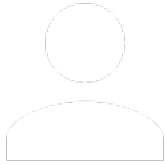
improvements. In order to qualify as an ``advanced technology vehicle"

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.

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\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).

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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 similar 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.

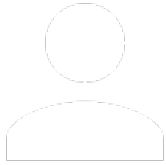
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\12\ [Frequently Asked Questions](#) (last visited October 30, 2008).

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Class Passenger & cargo volume (cu. ft.)

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Class of vehicles with substantially similar attributes Example of MY 2005 vehicles

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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.

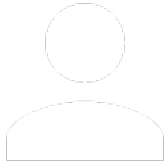
Large sedan..... Mercedes S Class, Cadillac Deville, Kia Amanti, Dodge 300 Base, Ford Five Hundred, General Motors Impala.

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





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#### 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.

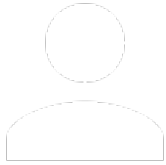
In addition to the minimum terms prescribed in section 136, today's

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



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### 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

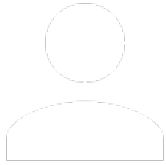
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applications until after the close of the particular tranche period.

### 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



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#### H. Executive Order 12988

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

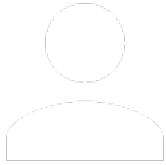
in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or

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

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### Subpart A--General

#### Sec. 611.1 Purpose.

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

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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.

#### Sec. 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.

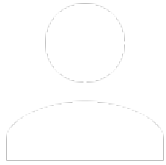
Advanced technology vehicle means a passenger automobile or light

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



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### Subpart B--Direct Loan Program

Sec. 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.

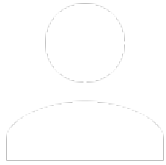
(2) If the applicant is an automobile manufacturer that did not manufacture in model year 2005, vehicles subject to the CAFE requirements, the applicant must demonstrate that the projected combined fuel economy for the relevant the advanced technology vehicle

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



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#### Sec. 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

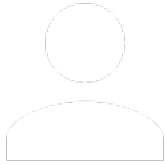
Accounting Principles and these costs may be considered by DOE in

determining the Borrower's contribution to total project costs.

#### Sec. 611.103 Application evaluation.

(a) Eligibility screening. Applications will be reviewed to determine whether the applicant is eligible, the information required under Sec. 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



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Sec. 611.106 Environmental requirements.

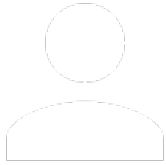
(a)(1) In general. Environmental review of the proposed projects under this part will be conducted in accordance with applicable statutes, regulations, and Executive Orders.

(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

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**Sec. 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,

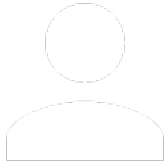
such Security as provided for within the terms and conditions of the Loan Documents.

(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.





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Sec. 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

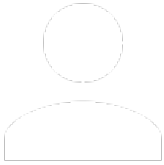
giving the Borrower written notice to such effect.

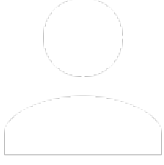
(c) In the event that the Borrower has defaulted as described in paragraphs (a) or (b) of this section and such default is not cured during the grace period provided in the Agreement, DOE shall notify the

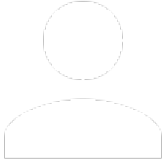
U.S. Attorney General. DOE, acting through the U.S. Attorney General,

may seek to foreclose on the collateral assets and/or take such other

legal action as necessary for the protection of the Government.

 <p><b>just-an-allusion</b> Banned</p> <hr/> <p>Joined: Nov 22, 2008 Messages: 197</p>	<p>just-an-allusion, Nov 30, 2008 Last edited: Nov 30, 2008 <span style="float: right;">#17</span></p> <hr/> <p>Whew!</p> <p>Finally...well, if politicians are not anything else, they <i>are</i> long winded, lol!</p> <p>Though it's worth noting that implementation of this type of legislation requires this degree of clarity/specification to prevent any misuse of the appropriated \$25,000,000,000.</p> <p>As is, the only way that any of the so called "Big 3" can get ahold of any of the money is to institute an "alternative vehicle manufacturing...program", and the only one of "the three" that are doing anything in this regard/have made any headway (as you all already know) is Chrysler.</p>
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 <p><b>Michael</b> Member</p> <hr/> <p>Joined: Aug 25, 2006 Messages: 135</p>	<p>Michael, Dec 1, 2008 <span style="float: right;">#18</span></p> <hr/> <p>I would be surprised if the Volt program wouldn't qualify, for GM.</p>
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**just-an-allusion**  
Banned

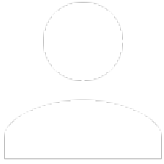
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Joined: Nov 22, 2008  
Messages: 197

just-an-allusion, Dec 1, 2008 Last edited: Dec 2, 2008 #19

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Yes, the Volt would allow GM to qualify...it's unfortunate that they're not intelligent enough to read market trends/demands, huh?



**just-an-allusion**  
Banned

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Joined: Nov 22, 2008  
Messages: 197

just-an-allusion, Dec 2, 2008 #20

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P.S.

I have posted the entirety of the **ATVMIP**, with associative links included, for what I hope are "obvious" reasons.

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