

care for, preserve, protect or maintain the collateral. The cost of such contracts may be charged to the Borrower.

**§ 609.17 Audit and access to records.**

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

(1) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where loans are funded by the Federal Financing Bank or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the project as is necessary, including the Pre-Application, Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit 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 Guaranteed Obligations, 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, Eligible Lender or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender or DOE or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

(b) The Secretary may from time to time audit any or all items of costs included as Project Costs in statements or certificates submitted to the Secretary or the servicer or otherwise, and may exclude or reduce the amount of

any item which the Secretary determines to be unnecessary or excessive, or otherwise not to be an item of Project Costs. 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 will represent that it has within its rights access to all financial and operational records and data relating to Project Costs, 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.

**§ 609.18 Deviations.**

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

**PART 611—ADVANCED TECHNOLOGY VEHICLES MANUFACTURER ASSISTANCE PROGRAM**

**Subpart A—General**

Sec.

611.1 Purpose.

611.2 Definitions.

## § 611.1

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- 611.201 Applicability.
- 611.202 Advanced Technology Vehicle Manufacturing Facility Award Program.
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### Subpart A—General

#### § 611.1 Purpose.

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

hicles 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.