



December 12, 2008

Mr. Lachlan Seward, Director, Advanced Technology
Vehicles Manufacturing Incentive Program
U.S. Department of Energy
1000 Independence Ave., S.W.
Department of Transportation, West Building
Washington, DC 20585

**Comments on Advanced Technology Vehicles Manufacturing Incentive Program, Interim
Final Rule, 73 FR 66721, November 12, 2008, Docket No. DOE-HQ-2008-0020**

Dear Mr. Seward:

Public Citizen respectfully submits the following comments regarding the interim final rule (IFR) promulgated for the advanced technology vehicles manufacturing incentive program authorized in Section 136 of the Energy Independence and Security Act (EISA).¹ The biggest concerns regarding this program are the choice of a static definition for the base year, and the establishment of “performance” categories for comparing vehicles with “substantially similar” attributes.

Public Citizen is a national non-profit public interest organization with over 80,000 members nationwide, representing consumer interests through regulatory oversight, research, public education, lobbying and litigation. The President of Public Citizen, Joan Claybrook, was Administrator of NHTSA from 1977 to 1981 and has been advocating for improvements in highway and auto safety for over forty years.

Context

Comment on this IFR comes in the midst of a complicated and rapidly-changing context regarding the state of the domestic auto industry. This context warrants some brief discussion. Specifically, due to rapidly deteriorating conditions in the domestic auto industry, the promulgation of these regulations was substantially expedited as a result of pressure from the domestic auto industry and others to quickly issue regulations to disperse funds from this program. As a result, DOE made the IFR public three weeks in advance of the deadline set by Congress in the continuing resolution, on November 5, instead of November 29, 2008.

However, before the IFR was published, the automakers had begun discussing the possibility of seeking a bailout, separate from the loan guarantees that would be provided through the advanced technology vehicles manufacturing incentive program.² Representatives

from General Motors, Ford and Chrysler approached the Congress on November 18, 2008 seeking emergency financial support. Without such support, General Motors and Chrysler indicate they are at risk of bankruptcy by the end of December 2008.³

As the form of the bailout was negotiated, one major issue was the source of funding, in particular, the Bush administration and Republican members of Congress supported using the money appropriated by Congress to fund the advanced technology vehicles manufacturing incentive program. The Democratic leadership supported using money from the Troubled Assets Relief Program (TARP) fund.⁴ There was disagreement about whether the TARP fund was intended to provide this kind of support, and the U.S. Department of Treasury and the Federal Reserve expressed the position that this money was not available to the auto industry to be used for this purpose.⁵ The House version of the bill, which was passed on December 10, 2008, would borrow money from the advanced technology vehicle manufacturing incentive program.⁶

While the auto bailout was ultimately tabled in the Senate, the fate of federal assistance to the auto industry remains unclear. Whether Congress will revisit this issue when it reconvenes in January is unclear. What is important to clarify is that the funds appropriated for the Section 136 program should go to fund retooling projects that will result in advanced technology vehicles.

Requirements of Section 136

Section 136 outlines some specific requirements for eligibility for loans. In particular, the section defines advanced technology vehicles:

- (1) **ADVANCED TECHNOLOGY VEHICLE.**—The term “advanced technology vehicle” means 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.

However, it is the responsibility of DOE to define “base year” and “substantially similar attributes.”

Also,

- (3) **SELECTION OF ELIGIBLE PROJECTS.**—The Secretary shall select eligible projects to receive loans under this subsection in cases in which, as determined by the Secretary, the award recipient—
- (A) is financially viable without the receipt of additional Federal funding associated with the proposed project;
 - (B) will provide sufficient information to the Secretary for the Secretary to ensure that the qualified investment is expended efficiently and effectively; and
 - (C) has met such other criteria as may be established and published by the Secretary.

We note that one of the statutory requirements for eligibility is that the recipient “is financially viable without the receipt of additional Federal funding associated with the proposed project.” On December 4, 2008, DOE announced that it was reviewing the first applications for retooling loans under the program, citing that the agency needed more information.⁷

DOE must select a moving target base year

Congress left the authority to DOE to determine how to define the base year from which fuel economy improvements are determined for establishing eligibility of certain projects for financing under Section 136. DOE has selected the “base year” to be model year 2005.⁸ We acknowledge the agency’s observation that the average fuel economy was greater in model year 2005 than subsequent years; however, since we do not know the timeline by which DOE will award loan guarantees under this program, it is important that the base year be adjusted. We recommend that the base year reflect the most recent model year with the highest fuel economy, at the time the loan guarantee is granted by DOE. Based on this definition, we acknowledge that model year 2005 meets this criterion; however, we ask that the regulation be amended to adjust the baseline for the most recent data available from NHTSA.

We acknowledge that the 2007 energy law only authorized \$25 billion in loan guarantees, and that the program will continue to parcel out the money until it has been exhausted. However, in consideration of the need for a moving base year it seems possible that the industry will attempt to get this program extended, given the financial state of the auto industry, and the potential for these difficulties to also affect the supplier companies. The program was initially created to encourage manufacturers to build advanced vehicles, and alleviate the pressure of moving forward with the capital-intensive process of retooling to build these vehicles, while still being able to meet their fuel economy obligations under the new standards set in EISA. The circumstances and financial health of the industry have deteriorated significantly since EISA was passed in December 2007.

The definition of “performance” vehicles is problematic

In defining “substantially similar attributes,” DOE started with the classifications of vehicles used by the Environmental Protection Agency (EPA), but added classifications for “performance” vehicles, which have a horsepower to weight ratio substantially greater than other vehicles that are otherwise similar. We acknowledge that defining and separating “performance” vehicles, whose fuel economy numbers are significantly lower than otherwise similar vehicles, potentially results in fuel economy improvements for vehicles with “substantially similar attributes” that are greater than the values that would result from averaging in the fuel economy of these vehicles. However, DOE does not make any attempt to exclude these vehicles from eligibility from the program, which potentially permits automakers to use these loan guarantees to retool facilities to build vehicles that would only meet the fuel economy standards set for the 1985 model year.⁹

A better approach to addressing the “performance” vehicle classification would be to require that vehicles with this classification make a 125 percent improvement over the fuel economy standard for the applicable model year. Until the 2011 model year, this would be a 125

percent improvement over the 27.5 mpg standard that has been in effect since 1985, or 34.7 mpg. Giving performance vehicles special treatment in a program meant to encourage the manufacture of advanced technology vehicles undermines the goals of the program, which are to encourage retooling facilities to build vehicles that will substantially improve fuel economy, and reduce oil consumption and greenhouse gas emissions.

Priority should be given to projects that will increase fleetwide fuel economy

DOE, in reviewing applications, should give priority to projects that have the potential to substantially affect a manufacturers' overall fleet fuel economy. Significantly improving the fuel economy of a single vehicle model is important. However, if the manufacturer still relies heavily on vehicles that are not fuel efficient, then the benefit of a single fuel-efficient vehicle can be eroded or overwhelmed. This kind of priority treatment would encourage broad application of fuel efficient components, which would do more to reduce oil consumption and improve overall fuel economy than applying technology to one vehicle in a manufacturer's fleet.

We support exclusion of dual fuel credit in determining improvement in fuel economy

The dual fuel credit that was established in 1988 as part of the Alternative Motor Fuels Act provides manufacturers of vehicles capable of running both on two or more fuels. This overwhelmingly refers to vehicles that run on gasoline or a mix of gasoline and ethanol (commonly E85, a blend of 15 percent gasoline and 85 percent ethanol). The program has failed to achieve its apparent goal of promoting expanded alternative fuels consumption, and has been a loophole for automakers to comply with their fuel economy burden.

For the purposes of financing projects under Section 136, DOE has expressed that the improvement in fuel economy will not be calculated including the dual fuel credit.¹⁰ This is appropriate since the credit does not reflect a gain in fuel economy, but rather is awarded as an incentive for the manufacture of these vehicles. This stipulation must be retained.

Consumer and environmentalists not involved in developing this program

Public Citizen acknowledges that there was significant pressure to issue the IFR quickly, both from the statutory requirement that an IFR be issued 60 days after the funds were appropriated, and from the ailing auto industry. However, DOE found time to meet with the auto industry and supplier companies. We are troubled that no meetings were held with any consumer or environmental interest groups. It is important that the agency meet with a broad range of stakeholders to get a complete picture of the issues and concerns regarding the development of such a program.

Conclusion

The DOE must structure this program to maximize its potential to encourage fuel economy gains that will result in reduced oil consumption and foreign oil imports, and reduce greenhouse gas emissions. This program was meant as a supplement to the improvements to be made by the mandated increases in fuel economy in EISA, and should be carried out with that in

mind. The final regulation should be amended to require that the base year changes to reflect the greatest level of fuel economy gains possible, and the agency should reconsider the definition of “performance” cars, to encourage that gains made in these vehicles are at least 125 percent of the applicable fuel economy standard for the model year that the vehicle is to be built..

Endnotes

¹ Section 136, Energy Independence and Security Act, P.L. 110-140. (December 19, 2007).

² See David Herzenhorne and Carl Hulse. "Democrats Seek Help for Carmakers." *The New York Times*. (December 11, 2008).

³ See Justin Hyde and Todd Spangler. "Deal reached for auto loans; GOP senators pledge to oppose plan." *Detroit Free Press*. (December 9, 2008).

⁴ Established as part of the Emergency Economic Stabilization Act. P.L. 110-343. (October 3, 2008).

⁵ See Margaret Carlson. "Bankers Smoke Auto CEOs in Bailout Grand Prix." *Bloomberg.com* (December 4, 2008).

⁶ See Harry Stoffer. "Congress nears accord on Detroit 3 bailout." *Automotive News*. (December 5, 2008).

⁷ David Shephardson. "Energy Department seeks more info on \$16 billion in auto retooling requests," *The Detroit News*. (December 4, 2008).

⁸ 73 *Fed. Reg.* 66723.

⁹ See 73 *Fed. Reg.* 66727. Fuel economy values for performance categories are 27.8 mpg, 28.0 mpg, 28.5 mpg and 29.5 mpg. The model year 1985 fuel economy standard is 27.5 mpg, and still stands today. A 125 percent improvement over 27.5 mpg is 34.4 mpg.

¹⁰ 73 *Fed. Reg.* 66725.