§ 452.6 Incentive award terms and limitations.

(a) Amount of incentive. Subject to the availability of appropriated funds and the limitations in paragraph (c) of this section, an eligible cellulosic biofuels producer selected to receive an award shall receive the amount of the production incentive on the per gallon basis requested in the auction solicitation for each gallon produced and sold by the entity during the first six years of operation of its eligible cellulosic biofuels production facility.

(b) Failure to commence production. Except in the circumstance of a force majeure event, as solely determined by DOE, failure by an eligible cellulosic biofuels producer that made a successful bid to commence production of cellulosic biofuels, at the eligible cellulosic biofuels production facility that was the subject of the successful bid, by the end of the third year after the close of submission of the open window of bids for the reverse auction in which it submitted a successful bid, shall result in immediate revocation of DOE’s award to that producer.

(c) Failure of the successful bidder to meet annual production obligations. Except in the circumstance of a force majeure event, as solely determined by DOE, a successful bidder’s failure to produce at least 50 percent of the volumes specified in its production agreement by December 31 of any year covered by the bid shall result in immediate revocation of DOE’s award; if the successful bidder produces 50 percent or more of the volumes set forth in the production agreement on an annual basis by December 31 of any year covered by the agreement, any production shortfall will be carried forward and added to the successful bidder’s production obligations for next year covered by the agreement.

(d) Shortfalls remaining at the end of the production period. If, for any reason, by December 31 of the last year of the production agreement, the bidder has failed to produce the total production volumes for all years covered by the agreement, any such remaining shortfall shall be awarded to the bidder with the next lowest bid in the auction round for which the award was made. If, however, the next best bidder is unable to enter into a production agreement with DOE within 30 days after being notified of its award, the shortfall shall be allocated instead to the next reverse auction.

(e) Incentive award limitations. The following limits shall apply to awards of cellulosic biofuels production incentives under this part:

1. During the first four years after the commencement of the program, the incentive shall be limited to $1.00 per gallon. For purposes of this limitation, the program shall be deemed to have commenced on the date that the first solicitation for a reverse auction is issued.

2. A per gallon cap over the remaining lifetime of the program of $0.95 per gallon provided that—

   (1) This cap shall be lowered by $.05 each year commencing the first year...
after annual cellulosic biofuels production in the United States exceeds 1 billion gallons;
(ii) Not more than 25 percent of the funds committed within each reverse
auction shall be awarded to any single project;
(iii) Not more than $100 million in production incentives shall be awarded
in any one calendar year; and
(iv) Not more than $1 billion in production incentives shall be awarded
over the lifetime of the program.

(f) Participation in subsequent auctions. A successful bidder in a reverse auction
under this part may participate in subsequent reverse auctions if the incentives sought
will assist the addition of plant production capacity for the eligible cellulosic biofuels
production facility associated with its previously successful bid.

(g) Transferability of awards. A production incentive award under this part may be
transferred to a successor entity at the same production facility for which the award was made,
provided that the successor entity meets all eligibility requirements of this part, including execution of an agreement with DOE to commence production of cellulosic biofuels in commercially significant quantities not later than three years of the date that bidding closes on the reverse auction in which the predecessor entity submitted a successful bid.

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

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