

Department of Energy

§ 452.1

section do not exceed available funding, allocate 60% of remaining funds to paragraph (e)(1) recipients and 40% to paragraph (e)(2) recipients and calculate additional incentive payments, if necessary on a *pro rata* basis, to owners or operators based on accrued energy;

(5) If the amounts calculated in paragraph (e)(4) of this section result in one owner group with insufficient funds and one with excess funds, allocate excess funds to the owner group with insufficient funds and calculate additional incentive payments, on a *pro rata* basis if necessary, to such owners or operators based on accrued energy.

(6) Notify Congress if potential payments resulting from paragraphs (e)(3) or (5) of this section above will result in alteration of the 60:40 payment ratio;

(7) Make incentive payments based on the sum of the amounts determined in paragraphs (e)(1) through (5) of this section for each applicant;

(8) Treat the number of kilowatt-hours for which an incentive payment is not made as a result of insufficient funds as accrued energy for which future incentive payment may be made; and

(9) Maintain a record of each applicant's accrued energy.

(f) *Notice to applicant.* After calculating the amount of the incentive payment under paragraphs (e) through (g) of this section, the DOE Deciding Official shall then issue a written notice of the determination to the applicant—

(1) Approving the application as eligible for payment and forwarding a copy to the DOE Finance Office with a request to pay;

(2) Setting forth the calculation of the approved amount of the incentive payment; and

(3) Stating the amount of accrued energy, measured in kilowatt-hours, for each qualified renewable energy facility, if any, and the energy source for same.

(g) *Disqualification.* If the application does not meet the requirements of this part or some of the kilowatt-hours claimed in the application are disallowed as unqualified, the Deciding Official shall issue a written notice denying the application in whole or in

part with an explanation of the basis for denial.

[60 FR 36964, July 19, 1995, as amended at 71 FR 46387, Aug. 14, 2006]

§ 451.10 Administrative appeals.

(a) In order to exhaust administrative remedies, an applicant who receives a notice denying an application in whole or in part shall appeal, on or before 45 days from date of the notice issued by the DOE Deciding Official, to the Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with the procedures set forth in subpart C of 10 CFR part 1003.

(b) If an applicant does not appeal under paragraph (a) of this section, the determination of the DOE Deciding Official shall become final for DOE and judicially unreviewable.

(c) If an applicant appeals on a timely basis under paragraph (a) of this section, the decision and order of the Office of Hearings and Appeals shall be final for DOE.

(d) If the Office of Hearings and Appeals orders an incentive payment, the DOE Deciding Official shall send a copy of such order to the DOE Finance Office with a request to pay.

PART 452—PRODUCTION INCENTIVES FOR CELLULOSIC BIOFUELS

Sec.

452.1 Purpose and scope.

452.2 Definitions.

452.3 Solicitations.

452.4 Eligibility requirements.

452.5 Bidding procedures.

452.6 Incentive award terms and limitations.

AUTHORITY: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 16251.

SOURCE: 74 FR 52871, Oct. 15, 2009, unless otherwise noted.

§ 452.1 Purpose and scope.

(a) This part sets forth the standards, policies, and procedures that the Department of Energy uses for receiving, evaluating, and awarding bids in reverse auctions of production incentive payments for cellulosic biofuels under section 942 of the Energy Policy Act of 2005 (42 U.S.C. 16251).