

Department of Energy

§ 420.19

buy-downs, performance contracting, rebates and grants.

(f) The following mechanisms are not allowed for funding the purchase and installation of materials and equipment under paragraph (e) of this section:

(1) Rebates for more than 50 percent of the total cost of purchasing and installing materials and equipment (States shall set appropriate restrictions and limits to insure the most efficient use of rebates); and

(2) Loan guarantees.

[61 FR 35895, July 8, 1996, as amended at 62 FR 26727, May 14, 1997; 64 FR 46114, Aug. 24, 1999]

§ 420.19 Administrative review.

(a) A State shall have 20 days from the date of receipt of a decision under § 420.14 to file a notice requesting administrative review in accordance with paragraph (b) of this section. If an applicant does not timely file such a notice, the decision under § 420.14 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the cognizant Regional Office Director and shall be accompanied by a written statement containing supporting arguments. If the cognizant Regional Office Director has disapproved an entire application for financial assistance, the State may request a public hearing.

(c) A notice or any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the cognizant Regional Office Director shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under § 420.14 as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

(e) If the State requests a public hearing on the disapproval of an entire application for financial assistance under this subpart, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and FEDERAL REGISTER notice of the date, place, time, and procedures which shall apply to the public hearing. Any public

hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the cognizant Regional Office Director.

(g) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants a review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination or suspension of a grant award for failure to implement an approved State plan in compliance with the requirements of this subpart, a grantee shall have the right to written notice of the basis for the enforcement action and of the opportunity for public hearing before the DOE Financial Assistance Appeals Board notwithstanding any provisions to the contrary of 10 CFR 600.22, 600.24, 600.25, and 600.243. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior FEDERAL REGISTER notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions to the contrary of Rule 2.

[61 FR 35895, July 8, 1996, as amended at 64 FR 46114, Aug. 24, 1999]