publication of this rule. For clarification purposes, paragraph (b)(3) provides that if an applicant fails to file an application for payment for electric energy generated in any fiscal year, energy generated in that year cannot be subsequently claimed as eligible for an incentive payment.

Seventeen commenters requested that DOE provide a prequalification mechanism in the application process to reduce payment uncertainty. While DOE cannot guarantee an incentive payment, it is adding a provision, subparagraph (a)(1), for applicants to obtain a preliminary and conditional determination of eligibility for incentive payment. In addition, to assist the Department in preparing its annual budget requests, DOE is adding a provision, subparagraph (a)(2), requesting that the owner or operator of a qualifying renewable energy facility provide notification at least 6 months in advance of when the facility is first expected to be placed into service.

Section 451.6 Duration of Incentive Payments

A statement has been added to this section in the final rule to give notice of the sunset provision of Section 1212(f) of the statute.

Section 451.8 Application Content Requirements

DOE proposed in paragraph (f) that domestic components and equipment represent at least 50% of the capital cost of the qualified energy facility. Five commenters requested that the domestic content provision either be lowered or eliminated. In consideration of these comments and in recognition of U.S. international trade policies and tariff and trade agreements, DOE eliminated this proposed requirement.

DOE proposed in paragraphs (g) and (h) a requirement for an independently audited and certified statement of the annual and monthly metered number of kilowatt-hours generated and sold. Six commenters expressed concern about the cost and time requirements of this proposal. In response to these concerns, the Department is removing the ''independently audited'' provision, as well as the terms ''certified statement'' and ''class of customer.'' The Department is instead requiring that an authorized executive official of the applicant organization sign the application for the incentive payment which is to include a statement attesting to the accuracy of the information upon which the requested payment is based. A commenter proposed adding a statement in the rule regarding the consequences of falsifying parts of the application. DOE elected not to include a penalties provision because of the many remedies that are available for the falsification of an incentive payment application. For example, 18 U.S.C. § 1001 provides for criminal penalties where an applicant knowingly and willfully falsifies statements or makes fraudulent statements or representations. Also, DOE may under certain circumstances conduct an audit or require an independent audit as provided in § 451.9.

DOE proposed using kilowatt-hours as the unit of measurement for electric energy generated and sold, cents per kilowatt-hour as the unit of measurement for the amount of the incentive payment, the British thermal unit as the unit of measurement for heat, and British thermal units per pound as the measure for enthalpy. DOE received one comment which requested that DOE amend the proposed rule to comply with public laws and Executive Order 12770 directing preferential use of the International Systems of Units (SI). The commenter recommend the use of joules, cents per megajoule, and joules per kilogram as the units of measure in this rule. In response the Department revised all sections referring to British thermal units or British thermal units per pound by substituting joules or joules per kilogram as the primary text and including the English unit equivalent parenthetically. The principal text now conforms to SI standards for heat energy while the parenthetic citation allows direct comparison with legislative sources in those instances where the original legislation contains English unit citations. Where 2 heat measurements are required to calculate a dimensionless ratio or fraction, the rule does not specify the measuring units except to state that both measurements must be made in the same units. In the case of electric power and energy, DOE recognizes that the SI unit for energy is the joule; however, a joule per second is a watt and both watt and watt-hour (and kilowatt-hour) are considered derivatives of SI units and their use is considered to conform to the intent of Executive Order 12770. DOE has continued to use watt and watt-hour since the required electrical measurements will be made using these units and their non-use promotes increased opportunities for error on the part of the personnel involved in electric energy measurement, recording, compilation, and summation, and in application preparation.

DOE is adding a provision, § 451.8(i), to clarify that the total electrical energy claimed as eligible for incentive payments is the sum of net electric energy newly generated and accrued energy. Note that accrued energy is eligible for reimbursement at the same payment rate as the newly generated net electric energy.

DOE proposed that applicants provide wire transfer payment instructions. One commenter requested that this provision be broadened to include ''other payment instructions.'' DOE has incorporated this suggestion in this provision. To reflect the changes and modifications made to this section, some paragraph designations under this section have been changed.

Section 451.9 Procedures for Processing Applications

In order to meet its responsibility to ensure the accuracy of the metered energy claimed for incentive payments under this rule, DOE is reserving the right to require an independent audit, the cost of which is to be paid for by the applicant. This is in addition to any audit DOE may perform.

DOE has simplified the payment calculations proposed in paragraph (e), (redesignated in the final rule as paragraph (d)), to assist qualified renewable energy facilities in the application process. Paragraph (d) of the final rule provides that incentive payments under this part are determined by multiplying the number of kilowatt-hours calculated under § 451.9(c)(2) by 1.5 cents per kilowatt-hours, adjusted for inflation.

DOE proposed under paragraph (g), (redesignated in the final rule as paragraph (e)), a procedure to deal with the possibility that there could be insufficient appropriations to make the full incentive payments. In the event that the funds available to be obligated under this program are less than the amount required to make full payments to all qualifed applicants, the proposed procedure provided payment first (and, if necessary, pro rata payment) to all owners and operators of solar, wind, geothermal, and closed-loop biomass facilities, and payment second (and, if necessary, pro rata payment) to owners and operators of all other qualified facilities. DOE received both comments favoring retention of this priority payout approach and comments suggesting elimination of this approach. Those favoring its retention cited the limited market penetration of many of the technologies designated for priority payment. They also cited the preferential treatment accorded emerging rather than commercial renewable technologies in other portions of the Energy Policy Act and asserted that the legislation's authors