

and into all parts of the mine for inspection and other purposes. DOE also reserves the right to grant to other persons easements or rights of way upon, through, or in the leased premises. DOE and the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after termination or expiration of lease, have access to and the right to examine any directly pertinent books, papers, and records of the lessee involving transactions related to the lease.

(q) *Relinquishment of leases.* A lease may be surrendered by the lessee upon filing with and approval by DOE of a written application for relinquishment. Approval of the application shall be contingent upon the delivery of the leased premises to DOE in a condition determined to be satisfactory to DOE. The lessee shall continue to be liable for the payment of all royalty and other debts due DOE.

(r) *Assignment of leases.* Any transfer of a lease or any interest therein or claim thereunder, will not be recognized unless and until approved by DOE in writing. Ordinarily, DOE will not approve any transfer of a lease which involves overriding royalties or deferred payments of any kind to the transferor.

(s) *Cancellation.* Any lease may be cancelled by DOE whenever the lessee fails to comply with the provisions of the lease. Failure of DOE to exercise its right to cancel shall not be deemed a waiver thereof.

(t) *Form of lease.* Leases will be issued on forms prescribed by DOE.

(u) *Noncompetitive leases.* Under special circumstances, where DOE believes it to be in the best interest of the Government, DOE at its discretion may award or extend leases on the basis of negotiation.

(v) *DOE decisions.* All matters connected with the issuance and administration of leases will be determined by DOE whose decisions shall be final and conclusive.

(w) *Definitions.* DOE as used in this section means the United States Department of Energy or its duly authorized representative or representatives.

(x) *Multiple use of land.* Leases issued under this section shall provide that operations under them will be conducted so as not to interfere with the lawful operations of any third party having a lease, permit, easement, or other right or interest in the premises.

(y) *Compliance with State and Federal regulations.* Every lease shall provide that the lessee is required to comply with all applicable State and Federal statutes and regulations.

(Secs. 66, 161, 68 Stat. 933, 948, as amended; 42 U.S.C. 2096, 2201)

[41 FR 56783, Dec. 30, 1976]

PART 765—REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES

Subpart A—General

Sec.

- 765.1 Purpose.
- 765.2 Scope and applicability.
- 765.3 Definitions.

Subpart B—Reimbursement Criteria

- 765.10 Eligibility for reimbursement.
- 765.11 Reimbursable costs.
- 765.12 Inflation index adjustment procedures.

Subpart C—Procedures for Submitting and Processing Reimbursement Claims

- 765.20 Procedures for submitting reimbursement claims.
- 765.21 Procedures for processing reimbursement claims.
- 765.22 Appeals procedures.
- 765.23 Annual report.

Subpart D—Additional Reimbursement Procedures

- 765.30 Reimbursement of costs incurred in accordance with a plan for subsequent remedial action.
- 765.31 Designation of funds available for subsequent remedial action.
- 765.32 Reimbursement of excess funds.

AUTHORITY: Sections 1001–1004 of Pub. L. No. 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

SOURCE: 59 FR 26726, May 23, 1994, unless otherwise noted.

Subpart A—General**§ 765.1 Purpose.**

The provisions of this part establish regulatory requirements governing reimbursement for certain costs of remedial action at active uranium or thorium processing sites as specified by Subtitle A of Title X of the Energy Policy Act of 1992. These regulations are authorized by section 1002 of the Act (42 U.S.C. 2296a–1), which requires the Secretary to issue regulations governing the reimbursements.

§ 765.2 Scope and applicability.

(a) This part establishes policies, criteria, and procedures governing reimbursement of certain costs of remedial action incurred by licensees at active uranium or thorium processing sites as a result of byproduct material generated as an incident of sales to the United States.

(b) Costs of remedial action at active uranium or thorium processing sites are borne by persons licensed under section 62 or 81 of the Atomic Energy Act (42 U.S.C. 2092, 2111), either by NRC or an Agreement State pursuant to a counterpart to section 62 or 81 of the Atomic Energy Act, under State law, subject to the exceptions and limitations specified in this part.

(c) The Department shall, subject to the provisions specified in this part, reimburse a licensee, of an active uranium or thorium processing site for the portion of the costs of remedial action as are determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States and either incurred by the licensee not later than December 31, 2002, or incurred by the licensee in accordance with a plan for subsequent remedial action approved by the Department.

(d) Costs of remedial action are reimbursable under Title X for decontamination, decommissioning, reclamation, and other remedial action, provided that claims for reimbursement are supported by reasonable documentation as specified in subpart C of this part.

(e) Except as authorized by § 765.32, the total amount of reimbursement paid to any licensee of an active ura-

nium processing site shall not exceed \$5.50 multiplied by the number of Federal-related dry short tons of byproduct material. This total amount shall be adjusted for inflation pursuant to section 765.12.

(f) The total amount of reimbursement paid to all active uranium processing site licensees shall not exceed \$270 million. This total amount shall be adjusted for inflation by applying the CPI-U, as provided by § 765.12.

(g) The total amount of reimbursement paid to the licensee of the active thorium processing site shall not exceed \$40 million, as adjusted for inflation by applying the CPI-U as provided by § 765.12.

(h) Reimbursement of licensees for costs of remedial action will only be made for costs that are supported by reasonable documentation as required by § 765.20 and claimed for reimbursement by a licensee in accordance with the procedures established by subpart C of this part.

(i) The \$310 million aggregate amount authorized to be appropriated under section 1003(a) of the Act (42 U.S.C. 2296a-2(a)) shall be adjusted for inflation by applying the CPI-U as provided by § 765.12, and shall be provided from the Fund.

§ 765.3 Definitions.

For the purposes of this part, the following terms are defined as follows:

Active uranium or thorium processing site or active processing site means:

(1) any uranium or thorium processing site, including the mill, containing byproduct material for which a license, issued either by NRC or by an Agreement State, for the production at a site of any uranium or thorium derived from ore—

(i) Was in effect on January 1, 1978;

(ii) Was issued or renewed after January 1, 1978; or

(iii) For which an application for renewal or issuance was pending on, or after January 1, 1978; and

(2) Any other real property or improvement on such real property that is determined by the Secretary or by an Agreement State to be:

(i) In the vicinity of such site; and

(ii) Contaminated with residual byproduct material.

Agreement State means a State that is or has been a party to a discontinuance agreement with NRC under section 274 of the Atomic Energy Act (42 U.S.C. 2021) and thereafter issues licenses and establishes remedial action requirements pursuant to a counterpart to section 62 or 81 of the Atomic Energy Act under state law.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011 *et seq.*).

Byproduct material means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Claim for reimbursement means the submission of an application for reimbursement in accordance with the requirements established in subpart C of this part.

Costs of remedial action means costs incurred by a licensee prior to or after enactment of UMTRCA to perform decontamination, decommissioning, reclamation, and other remedial action. These costs may include but are not necessarily limited to expenditures for work necessary to comply with applicable requirements to conduct groundwater remediation, treatment or containment of contaminated soil, disposal of process wastes, removal actions, air pollution abatement measures, mill and equipment decommissioning, site monitoring, administrative activities, expenditures required to meet necessary regulatory standards, or other requirements established by NRC, or an Agreement State. Costs of remedial action must be supported by reasonable documentation in accordance with the requirements of subpart C of this part.

Decontamination, decommissioning, reclamation, and other remedial action means work performed which is necessary to comply with all applicable requirements of UMTRCA or, where appropriate, with applicable requirements established by an Agreement State.

Department means the United States Department of Energy or its authorized agents.

Dry short tons of byproduct material means the quantity of tailings generated from the extraction and proc-

essing of 2,000 pounds of uranium or thorium ore-bearing rock.

Federal reimbursement ratio means the ratio of Federal-related dry short tons of byproduct material to total dry short tons of byproduct material present at an active uranium or thorium processing site on October 24, 1992. The ratio shall be established by comparing Federal-related dry short tons of byproduct material to total dry short tons of byproduct material present at the site on October 24, 1992, or by another means of attributing costs of remedial action to byproduct material generated as an incident of sales to the United States which the Department determines is more accurate than a ratio established using dry short tons of byproduct material.

Federal-related dry short tons of byproduct material means dry short tons of byproduct material that was present at an active uranium or thorium processing site on October 24, 1992, and was generated as an incident of uranium or thorium sales to the United States.

Generally accepted accounting principles means those principles established by the Financial Accounting Standards Board which encompass the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time.

Inflation index means the consumer price index for all urban consumers (CPI-U) as published by the Department of Commerce's Bureau of Labor Statistics.

Licensee means a site owner licensed under section 62 or 81 of the Atomic Energy Act (42 U.S.C. 2092, 2111) by NRC, or an Agreement State, for any activity at an active uranium or thorium processing site which results, or has resulted, in the production of byproduct material.

Maximum reimbursement amount or maximum reimbursement ceiling means the smaller of the following two quantities:

(1) The amount obtained by multiplying the total cost of remedial action at the site, as determined in the approved plan for subsequent remedial action, by the Federal reimbursement ratio established for the site; or

(2) \$5.50, as adjusted for inflation, multiplied by the number of Federal-

related dry short tons of byproduct material.

NRC means the United States Nuclear Regulatory Commission or its predecessor agency.

Offsite disposal means the disposal, and activities that contribute to the disposal, of byproduct material in a location that is not contiguous to the West Chicago Thorium Mill Site located in West Chicago, Illinois, in accordance with a plan approved by, or other written authorization from, the State of Illinois or NRC provided the activities are consistent with the ultimate removal of byproduct material from the West Chicago Thorium Mill Site.

Plan for subsequent remedial action means a plan approved by the Department which includes an estimated total cost and schedule for remedial action, and all applicable requirements of remedial action established by NRC or an Agreement State to be performed after December 31, 2002 at an active uranium or thorium processing site.

Reclamation plan or site reclamation plan means a plan, which has been approved by NRC or an Agreement State, for remedial action at an active processing site that establishes the work necessary to comply with applicable requirements of UMTRCA, or where appropriate with requirements established by an Agreement State.

Remedial action means decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site.

Secretary means the Secretary of Energy or her designees.

Site owner means a person that presently holds, or held in the past, any interest in land, including but not limited to a fee simple absolute, surface or subsurface ownership of mining claims, easements, and a right of access for the purposes of cleanup, or any other legal or equitable interest.

Tailings means the remaining portion of a metal-bearing ore after some or all of the metal, such as uranium, has been extracted.

The Fund means the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursu-

ant to section 1801 of the Atomic Energy Act (42 U.S.C. 2297g).

Title X or “the Act” means Subtitle A of Title X of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a–1 *et seq.*).

UMTRCA means the Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901 *et seq.*).

United States means any executive department, commission, or agency, or other establishment in the executive branch of the Federal Government.

Written Authorization means a written statement from either the NRC or an Agreement State that a licensee has performed in the past, or is authorized to perform in the future, a remedial action that is necessary to comply with the requirements of UMTRCA or, where appropriate, the requirements of an Agreement State.

Subpart B—Reimbursement Criteria

§ 765.10 Eligibility for reimbursement.

(a) Any licensee of an active uranium or thorium processing site that has incurred costs of remedial action for the site that are attributable to byproduct material generated as an incident of sales to the United States shall be eligible for reimbursement of these costs, subject to the procedures and limitations specified in this part.

(b) Prior to reimbursement of costs of remedial action incurred by a licensee, the Department shall make a determination regarding the total quantity of dry short tons of byproduct material, and the quantity of Federal-related dry short tons of byproduct material present on October 24, 1992 at the licensee’s active processing site. A claim for reimbursement from a site for which a determination is made will be evaluated individually. If a licensee does not concur with the Department’s determination regarding the quantity of dry short tons of byproduct material present at the site, the licensee may appeal the Department’s determination in accordance with § 765.22 of this part. The Department’s determination shall be used to determine that portion of an approved claim for reimbursement submitted by the licensee which shall be

Department of Energy

§ 765.20

reimbursed, unless or until the determination is overturned on appeal. If the outcome of an appeal requires a change in the Department's initial determination, the Department will adjust any payment previously made to the licensee to reflect the change.

§ 765.11 Reimbursable costs.

(a) Costs for which a licensee may be reimbursed must be for remedial action that a licensee demonstrates is attributable to byproduct material generated as an incident of sales to the United States, as determined by the Department. These costs are equal to the total costs of remedial action at a site multiplied by the Federal reimbursement ratio established for the site. These costs must be incurred in the performance of activities, prior to or after enactment of UMTRCA, and required by a plan, portion thereof, or other written authorization, approved by NRC or by an Agreement State. Costs of remedial action shall be reimbursable only if approved by the Department in accordance with the provisions of this part.

(b) In addition, costs of remedial action incurred by a licensee after December 31, 2002 must be in accordance with a plan for subsequent remedial action approved by the Department as specified in § 765.30.

(c) Total reimbursement of costs of remedial action incurred at an active processing site that are otherwise reimbursable pursuant to the provisions of this part shall be limited as follows:

(1) Reimbursement of costs of remedial action to active uranium processing site licensees shall not exceed \$5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material.

(2) Aggregate reimbursement of costs of remedial action incurred at all active uranium processing sites shall not exceed \$270 million. This aggregate amount shall be adjusted for inflation pursuant to § 765.12; and

(3) Reimbursement of costs of remedial action at the active thorium processing site shall be limited to costs incurred for offsite disposal and shall not exceed \$40 million. This amount shall be adjusted for inflation pursuant to § 765.12.

(d) Notwithstanding the Title X requirement that byproduct material must be located at an active processing site on October 24, 1992, byproduct material moved from the Edgemont Mill in Edgemont, South Dakota, to a disposal site as a result of remedial action, shall be eligible for reimbursement in accordance with all applicable requirements of this part.

§ 765.12 Inflation index adjustment procedures.

(a) The amounts of \$5.50 (as specified in § 765.2(e) of this rule) \$270 million (as specified in § 765.2(f) of this rule), \$40 million (as specified in § 765.2(g) of this rule) and \$310 million (as specified in § 765.2(i) of this rule) shall be adjusted for inflation as provided by this section.

(b) To make adjustments for inflation to the amounts specified in paragraph (a) of this section, the Department shall apply the CPI-U to these amounts annually, beginning in 1994, using the CPI-U as published by the Bureau of Labor Statistics within the Department of Commerce for the preceding calendar year.

(c) The Department shall adjust annually, using the CPI-U as defined in this part, amounts paid to an active uranium processing site licensee for purposes of comparison with the \$5.50 per dry short ton limit on reimbursement as adjusted for inflation.

Subpart C—Procedures for Submitting and Processing Reimbursement Claims

§ 765.20 Procedures for submitting reimbursement claims.

(a) All costs of remedial action for which reimbursement is claimed must be supported by reasonable documentation as specified in this subpart. The Department reserves the right to deny any claim for reimbursement, in whole or in part, that is not submitted in accordance with the requirements of this subpart.

(b) The licensee shall provide a copy of the approved site reclamation plan or other written authorization from NRC or an Agreement State upon which claims for reimbursement are

based, with the initial claim submitted. Any revision or modification made to the plan or other written authorization, which is approved by NRC or an Agreement State, shall be included by the licensee in the next claim submitted to the Department following that revision or modification. This reclamation plan or other written authorization, as modified or revised, shall serve as the basis for the Department's evaluation of all claims for reimbursement submitted by a licensee.

(c) Each submitted claim shall provide a summary of all costs of remedial action for which reimbursement is claimed. This summary shall identify the costs of remedial action associated with each major activity or requirement established by the site's reclamation plan or other written authorization. In addition, each claim shall provide a summary of the documentation relied upon by the licensee in support of each cost category for which reimbursement is claimed.

(d) Documentation used to support a reimbursement claim must demonstrate that the costs of remedial action for which reimbursement is claimed were incurred specifically for activities specified in the site's reclamation plan, or otherwise authorized by NRC or an Agreement State. Summary documentation used in support of a claim must be cross-referenced to the relevant page and activity of the licensee's reclamation plan, or other written authorization approved by NRC or an Agreement State.

(1) Documentation prepared contemporaneous to the time the cost was incurred should be used when available. The documentation should identify the date or time period for which the cost was incurred, the activity for which the cost was incurred, and the reclamation plan provision or other written authorization to which the cost relates. Where available, each claim should be supported by receipts, invoices, pay records, or other documents that substantiate that each specific cost for which reimbursement is claimed was incurred for work that was necessary to comply with UMTRCA or applicable Agreement State requirements.

(2) Documentation not prepared contemporaneous to the time the cost was incurred, or not directly related to activities specified in the reclamation plan or other written authorization, may be used in support of a claim for reimbursement provided that the licensee determines the documentation is the only means available to document costs for which reimbursement is sought.

(e) The Department may audit, or require the licensee to audit, any documentation used to support a claim on a case-by-case basis and may approve, approve in part, or deny reimbursement of any claim in accordance with the requirements of this part. Documentation relied upon by a licensee in support of a claim for reimbursement shall be made available to the Department and retained by the licensee until 4 years after final payment of a claim is made by the Department.

(f) Each licensee should utilize generally accepted accounting principles consistently throughout the claim. These accounting principles, underlying assumptions, and any other information necessary for the Department to evaluate the claim shall be set forth in each claim.

(g) Following each annual appropriation by Congress, the Department will issue a Federal Register Notice announcing:

- (1) A claim submission deadline for that fiscal year;
- (2) Availability of funds for reimbursement of costs of remedial action;
- (3) Whether the Department anticipates that approved claims for that fiscal year may be subject to prorated payment;
- (4) Any changes in the Federal reimbursement ratio or maximum reimbursement ceiling for any active uranium or thorium processing site;
- (5) Any revision in the per dry short ton limit on reimbursement for all active uranium processing sites; and
- (6) Any other relevant information.

(h) A licensee shall certify, with respect to any claim submitted by it for reimbursement, that the work was completed as described in an approved

Department of Energy

§ 765.21

reclamation plan or other authorization. In addition, the licensee shall certify that all costs for which reimbursement is claimed, all documentation relied upon in support of its costs, and all statements or representations made in the claim are complete, accurate, and true. The certification shall be signed by an officer or other official of the licensee with knowledge of the contents of the claim and authority to represent the licensee in making the certification. Any knowingly false or frivolous statements or representations may subject the individual to penalties under the False Claims Act, sections 3729 through 3731 of title 31 United States Code, or any other applicable statutory authority; and criminal penalties under sections 286, 287, 1001 and 1002 of title 18, United States Code, or any other applicable statutory authority.

(i) All claims for reimbursement submitted to the Department shall be sent by registered or certified mail, return receipt requested. The Department reserves all rights under applicable law to recover any funds paid to licensees which an audit finds to not meet the requirements of this part.

§ 765.21 Procedures for processing reimbursement claims.

(a) The Department will conduct a preliminary review of each claim within 60 days after the claim submission deadline announced in the FEDERAL REGISTER Notice specified in § 765.20(g) to determine the completeness of each claim. Payments from the Fund to active uranium or thorium processing site licensees for approved costs of remedial action will be made simultaneously by the Department within 1 year of the claim submission deadline.

(b) After completing the preliminary review specified in paragraph (a) of this section, the Department may audit, or require the licensee to audit, any documentation used in support of such claim, request the licensee to provide additional information, or request the licensee to provide other clarification determined by the Department to be necessary to complete its evaluation of the claim. In addition, the Department reserves the right to conduct an inspection of the site to verify any informa-

tion provided by the licensee in a claim for reimbursement, or in support thereof. Any information requested by the Department, if provided, must be submitted by the claimant within 60 days of receipt of the request unless the Department specifies in writing that additional time is provided.

(c) At any time during the review of a claim, the Department may request an informal conference with a licensee to obtain further information or clarification on any unresolved issue pertaining to the claim. While the licensee is not required to provide additional clarification requested by the Department, a failure to do so may result in the denial of that portion of the claim for which information is requested.

(d) Based upon the claim submitted and any additional information received by the Department, including any audit or site inspection if conducted, the Department shall complete a final review of all relevant information prior to making a reimbursement decision. When the Department determines it is not clear that an activity for which reimbursement is claimed was necessary to comply with UMTRCA or where appropriate, with applicable Agreement State requirements, the Department may consult with the appropriate regulatory authorities.

(e) A written decision regarding the Department's determination to approve, approve in part, or deny a claim will be provided to the licensee within 10 days of completion of the final review.

(f) If the Department determines that insufficient funds are available at any time to provide for complete payment of all outstanding approved claims, reimbursements of approved claims will be made on a prorated basis. A prorated payment of all outstanding approved claims for reimbursement, or any unpaid portion thereof, shall be made on the basis of the total amount of all outstanding approved claims, regardless of when the claims were submitted or approved.

(g) Notwithstanding the provisions of paragraph (f) of this section, or any

§ 765.22

other provisions of this part, any requirement for the payment or obligation of funds by the Department established by this part shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

§ 765.22 Appeals procedures.

(a) Any appeal by a licensee of any Department determination subject to the requirements of this part, shall invoke the appeals process specified in paragraph (b) of this section.

(b) A licensee shall file an appeal of any Department determination subject to the requirements of this part with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any appeal must be filed within 45 days from the date the licensee received notice, actual or constructive (i.e., publication in the FEDERAL REGISTER), of the Department's determination. Appeals must comply with the procedures set forth in 10 CFR part 1003, subpart C. The decision of the Office of Hearings and Appeals shall be the final decision of the Department. A licensee must file an appeal in order to exhaust its administrative remedies, and the receipt of an appellate decision is a prerequisite to seeking judicial review of any determination made under this part.

[59 FR 26726, May 23, 1994, as amended at 60 FR 15017, Mar. 21, 1995]

§ 765.23 Annual report.

The Department shall prepare annually a report summarizing pertinent information concerning claims submitted in the previous calendar year, the status of the Department's review of the claims, determinations made regarding the claims, amounts paid for claims approved, and other relevant information concerning this reimbursement program. The report will be available to all interested parties upon written request to the Department's Uranium Mill Tailings Remedial Action Project Office, 2155 Louisiana NE., suite 10000, Albuquerque, NM 87110 and will also be available in the Department's Freedom of Information Reading room, 1000

10 CFR Ch. III (1-1-02 Edition)

Independence Avenue SW., Washington, DC.

Subpart D—Additional Reimbursement Procedures

§ 765.30 Reimbursement of costs incurred in accordance with a plan for subsequent remedial action.

(a) This section establishes procedures governing reimbursements of costs of remedial action incurred in accordance with a plan for subsequent remedial action approved by the Department as provided in this section. Costs otherwise eligible for reimbursement in accordance with the terms of this part and incurred in accordance with the plan shall be reimbursed in accordance with the provisions of subpart D and subpart C. In the event there is an inconsistency between the requirements of subpart D and subpart C, the provisions of subpart D shall govern reimbursement of such costs of remedial action.

(b) A licensee who anticipates incurring costs of remedial action after December 31, 2002 may submit a plan for subsequent remedial action. This plan may be submitted at any time after January 1, 2000, but no later than December 31, 2001. Reimbursement of costs of remedial action incurred after December 31, 2002 shall be subject to the approval of this plan by the Department. This plan shall describe:

(1) All applicable requirements established by NRC pursuant to UMTRCA, or where appropriate, by the requirements of an Agreement State, included in a reclamation plan approved by NRC or an Agreement State which have not yet been satisfied in full by the licensee, and

(2) The total cost of remedial action required at the site, together with all necessary supporting documentation, segregated into actual costs incurred to date, costs incurred or expected to be incurred prior to December 31, 2002 but not yet approved for reimbursement, and anticipated future costs.

(c) The Department shall review the plan for subsequent remedial action to verify conformance with the NRC- or Agreement State-approved reclamation plan or other written authorization, and to determine the reasonableness of

Department of Energy

§ 765.32

anticipated future costs, and shall approve, approve with suggested modifications, or reject the plan. During its review, the Department may request additional information from the licensee to clarify or provide support for any provision or estimate contained in the plan. The Department may also consult with NRC or an Agreement State concerning any provision or estimate contained in the plan. Upon approval, approval with modifications, or rejection of a plan, the Department shall inform and explain to the licensee its decision.

(d) If the Department rejects a plan for subsequent remedial action submitted by a licensee, the licensee may appeal the Department's rejection or prepare and submit a revised plan. The licensee may continue to submit revised plans for subsequent remedial action until the Department approves a plan, or September 30, 2002, whichever occurs first. A failure by a licensee to receive approval from the Department of a plan prior to December 31, 2002 will preclude that licensee from receiving any reimbursement for costs of remedial action incurred after that date.

(e) The Department shall determine, in approving a plan for subsequent remedial action, the maximum reimbursement amount for which the licensee may be eligible. This maximum reimbursement amount shall be the smaller of the following two quantities:

(1) The amount obtained by multiplying the total cost of remedial action at the site, as determined in the approved plan for subsequent remedial action, by the Federal reimbursement ratio established for such site; or

(2) \$5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. The Department shall subtract from the maximum reimbursement amount any reimbursement already approved to be paid to the licensee. The resulting sum shall be the potential additional reimbursement to which the licensee may be entitled.

§ 765.31 Designation of funds available for subsequent remedial action.

(a) Upon the Department's approval of each plan for subsequent remedial action submitted by a licensee, the De-

partment will designate specific amounts on deposit in the Fund for reimbursement, subject to the availability of appropriated funds as specified in § 765.21(g). If insufficient funds are available at the time of approval of a plan for subsequent remedial action to provide for reimbursement of the total estimated costs, the designation of specific amounts on deposit in the Fund for reimbursement will be made on a prorated basis. Any remaining balance will be designated for reimbursement at the time additional funds become available.

(b) The Department shall authorize reimbursement of costs of remedial action, incurred in accordance with an approved plan for subsequent remedial action and approved by the Department as specified in subpart C to this part, to be made from the Fund. These costs are reimbursable until:

(1) This remedial action has been completed, or

(2) The licensee has been reimbursed its maximum reimbursement amount as determined by the Department pursuant to paragraph (e) of § 765.30.

(c) A licensee shall submit any claim for reimbursement of costs of remedial action incurred pursuant to an approved plan for subsequent remedial action in accordance with the requirements of subpart C of this part. The Department shall approve, approve in part, or deny any claims in accordance with the procedures specified in subpart C of this part. The Department shall authorize the disbursement of funds upon approval of a claim for reimbursement.

(d) After all remedial actions have been completed by affected Agreement State or NRC licensees, the Department will issue a Federal Register notice announcing a termination date beyond which claims for reimbursement will no longer be accepted.

§ 765.32 Reimbursement of excess funds.

(a) No later than July 31, 2005, the Department shall determine if the aggregate amount authorized for appropriation pursuant to section 1003 of the Act (42 U.S.C. 2296a-2), as adjusted for inflation pursuant to § 765.12, exceed as of that date the combined total of all

reimbursements which have been paid to licensees under this part, any amounts approved for reimbursement and owed to any licensee, and any anticipated additional reimbursements to be made in accordance with approved plans for subsequent remedial action.

(b) If the Department determines that the amount authorized pursuant to section 1003 of the Act (42 U.S.C. 2296a-2), as adjusted for inflation, exceed the combined total of all reimbursements (as indicated in paragraph (a) of this section), the Department may establish procedures for providing additional reimbursement to uranium licensees for costs of remedial action, subject to the availability of appropriated funds. If the amount of available excess funds is insufficient to provide reimbursement of all eligible costs of remedial action, then reimbursement shall be paid on a prorated basis.

(c) Each eligible uranium licensee's prorated share will be determined by dividing the total excess funds available by the total number of Federal-related dry short tons of byproduct material present at the site where costs of remedial action exceed \$5.50 per dry short ton, as adjusted for inflation pursuant to §765.12. The resulting number will be the maximum cost per dry short ton, over \$5.50, that may be reimbursed. Total reimbursement for each licensee that has incurred approved costs of remedial action in excess of \$5.50 per dry short ton will be the product of the excess cost per dry short ton multiplied by the number of Federal-related dry short tons of byproduct material at the site or the actual costs incurred and approved by the Department, whichever is less.

(d) Any costs of remedial action for which reimbursement is sought from excess funds determined by the Department to be available is subject to all requirements of this part except the per dry short ton limit on reimbursement established by paragraph (d) of §765.11.

PART 766—URANIUM ENRICHMENT DECONTAMINATION AND DE-COMMISSIONING FUND; PROCEDURES FOR SPECIAL ASSESSMENT OF DOMESTIC UTILITIES

Subpart A—General

Sec.

- 766.1 Purpose.
- 766.2 Applicability.
- 766.3 Definitions.

Subpart B—Procedures for Special Assessment

- 766.100 Scope.
- 766.101 Data utilization.
- 766.102 Calculation methodology.
- 766.103 Special Assessment invoices.
- 766.104 Reconciliation, adjustments and appeals.
- 766.105 Payment procedures.
- 766.106 Late payment fees.
- 766.107 Prepayment of future Special Assessments.

AUTHORITY: 42 U.S.C. 2201, 2297g, 2297g-1, 2297g-2, 7254.

SOURCE: 59 FR 41963, Aug. 15, 1994, unless otherwise noted.

Subpart A—General

§ 766.1 Purpose.

The provisions of this part establish procedures for the Special Assessment of domestic utilities for the Uranium Enrichment Decontamination and Decommissioning Fund pursuant to sections 1801, 1802 and 1803 of the Atomic Energy Act of 1954, as amended (42 U.S.C. §2011 *et seq.*).

§ 766.2 Applicability.

This part applies to all domestic utilities in the United States that purchased separative work units from the DOE between 1945 and October 23, 1992.

§ 766.3 Definitions.

For the purposes of this part, the following terms shall be defined as follows: