

(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.

[59 FR 26726, May 23, 1994, as amended at 68 FR 32957, June 3, 2003]

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:

CPI-U means the Consumer Price Index for all-urban consumers published by the Department of Labor.

Commercial electricity generation means the production of electricity for sale to consumers.

DOE means the United States Department of Energy and its predecessor agencies.

Domestic utility means any utility in the United States that has purchased SWUs produced by DOE for the purpose of commercial electrical generation during the period beginning in 1945 to October 23, 1992.

Fund means an account in the U.S. Treasury referred to as the Uranium Enrichment Decontamination and Decommissioning Fund, established by section 1801 of the Atomic Energy Act of 1954, as amended.

Oak Ridge Operations Office means the Oak Ridge Operations Office of the Department of Energy in Oak Ridge, Tennessee.

Special Assessment means the Special Assessment levied on domestic utilities for payments into the Fund.

SWU means a separative work unit, the common measure by which uranium enrichment services are sold.

TESS means the Toll Enrichment Services System, which is the database that tracks uranium enrichment services transactions of the DOE Oak Ridge Operations Office for the purpose of planning, toll transaction processing, customer invoicing and historical tracking of SWU deliveries.

Use and burnup charges mean lease charges for the consumption of SWUs and natural uranium.

Subpart B—Procedures for Special Assessment

§ 766.100 Scope.

This subpart sets forth the procedures for the Special Assessment of domestic utilities for funds to be deposited in the Fund.

§ 766.101

§ 766.101 Data utilization.

DOE shall use the records from the Toll Enrichment Services System (TESS) and other records maintained by the Oak Ridge Operations Office in order to determine the total SWUs purchased from DOE for all purposes. DOE shall use records from TESS, relevant records of domestic utilities, and such other information as DOE deems to be reliable and probative in determining the number of SWUs that were purchased by each domestic utility prior to October 24, 1992. A domestic utility shall be considered to have purchased a SWU from DOE if the SWU was produced by DOE but purchased by the domestic utility from another source. DOE shall consider a purchase to have occurred upon the delivery of a SWU to the domestic utility purchasing the SWU. A domestic utility shall not be considered to have purchased a SWU from DOE if the SWU was purchased by the domestic utility but subsequently sold to another source.

SWUs purchased by all domestic utilities		Total SWUs produced—all purposes		Special assessment ratio
12345	÷	45678	=	.27026

(b) *Calculation of the Baseline Total Annual Special Assessment for Domestic Utilities.* The Annual Special Assessment ratio calculated in paragraph (a) of this section shall be multiplied by \$480 million, yielding the total amount of the Baseline Total Annual Special Assessment as of October 1992. In the event that this amount is in excess of \$150 million, the Baseline Total Annual Special Assessment shall be capped at \$150 million. All calculations will be carried out to the fifth significant digit. The Baseline Total Annual Special Assessment is determined as shown in the following hypothetical example:

Total fund		Annual assessment ratio		Baseline total annual special assessment
\$480,000,000	×	0.27026	=	\$129,724,800

§ 766.102 Calculation methodology.

(a) *Calculation of Domestic Utilities' Annual Assessment Ratio to the Fund.* Domestic utilities shall be assessed annually for their share of the Fund. The amount of the assessment shall be determined by the ratio of SWUs produced by DOE and purchased by domestic utilities prior to October 24, 1992, to the total number of SWUs produced by DOE for all purposes (including SWUs produced for defense purposes). All calculations will be carried out to the fifth significant digit. This ratio is expressed by the following hypothetical example:

Single utility SWUs		All utility SWUs		Utility ratio		Baseline total annual special assessment		Individual utility special assessment
300	÷	12345	=	.02430	×	\$129,724,800	=	\$3,152,312.64

(c) *Calculation of Baseline Total Annual Special Assessment per Utility.* The ratio of the total number of SWUs purchased by an individual domestic utility for commercial electricity generation, to the total number of SWUs purchased by all domestic utilities for commercial electricity generation, multiplied by the Baseline Total Annual Special Assessment calculated in paragraph (b) of this section, determines an individual utility's share of the Baseline Total Annual Special Assessment. All calculations will be carried out to the fifth significant digit. A hypothetical example of such a calculation follows:

(d) *Calculation of Inflation Adjustment.* The Baseline Total Annual Special Assessment billed to domestic utilities shall be adjusted for inflation using the most recently published monthly CPI-U and the CPI-U for October 1992. All calculations will be carried out to the

fifth significant digit. A hypothetical example of such a calculation follows:

CPI-U (Mar 93)		CPI-U (Oct 92)		Adjustment multiplier
150	÷	141.8	=	1.05783

Department of Energy

§ 766.104

Utility special Assessment	Adjustment multiplier	Adjusted utility assessment
\$3,152,312.64	× 1.05783	= \$3,334,610.88

§ 766.103 Special Assessment invoices.

(a) DOE shall issue annually a Special Assessment invoice to each domestic utility. This invoice will specify itemized quantities of enrichment services by reactor. In each Special Assessment invoice, DOE shall require payment, on or before 30 days from the date of each invoice, of that utility's prorated share of the Baseline Total Annual Special Assessment, as adjusted for inflation using the most recently published monthly CPI-U data.

(b) DOE shall enclose with the Fiscal Year 1993 Special Assessment invoice a sealed, business confidential, summary SWU transaction statement including:

(1) TESS information which documents, by reactor, the basis of the utility's assessment;

(2) A list of domestic utilities subject to the Special Assessment;

(3) The total number of SWUs purchased from DOE by all domestic utilities for all purposes prior to October 24, 1992.

(4) The total number of SWUs purchased from DOE for all purposes prior to October 24, 1992, including SWUs purchased or produced for defense purposes; and

(5) Such other information as may be appropriate.

(c) With regard to any fiscal year after Fiscal Year 1993, DOE shall enclose a summary SWU transaction statement with Special Assessment invoices that will include updated information regarding adjustments to Special Assessments resulting from the reconciliation and appeals process under Section 766.104.

(d) The date of each Annual Special Assessment invoicing will be set on or about October 1 with payment due 30 calendar days from the date of invoice starting with the Fiscal Year 1995 Special Assessment.

§ 766.104 Reconciliation, adjustments and appeals.

(a) A domestic utility requesting an adjustment shall, within 30 days from the date of a Special Assessment in-

voice, file a notice requesting an adjustment. Such notice shall include an explanation of the basis for the adjustment and any supporting documents, and may include a request for a meeting with DOE to discuss its invoice. If more time is needed to gather probative information, DOE will consider utility requests for up to 90 days additional time, providing that the initial notice requesting an adjustment was timely filed. The notice shall be filed at the address set forth in the Special Assessment invoice, and filing of this notice is complete only upon receipt by DOE. Domestic utilities are considered to have met the filing requirements upon DOE's receipt of the notice requesting an adjustment without regard to DOE's acceptance of supporting documentation. The filing of a notice for an adjustment shall not stay the obligation to pay.

(b) DOE may request additional information from domestic utilities and may acquire data from other sources.

(c) After reviewing a notice submitted under paragraph (a) of this section and other relevant information, and after making any necessary adjustment to its records in light of reliable and adequately probative records submitted in connection with the request for adjustment or otherwise obtained by DOE, DOE shall make a written determination granting or denying the requested adjustment. As appropriate, DOE shall modify the application of TESS data for any discrepancies or further transactions raised during the reconciliation process.

(d) Any domestic utility that wishes to dispute a written determination under paragraph (c) of this section shall have the right to file an appeal with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue S.W., Washington, DC 20585. Except for the Fiscal Year 1993 Special Assessment, any appeal must be filed on or before 30 days from the date of the written determination and should contain information of the type described in 10 CFR part 1003, subpart C. With regard to a written determination under paragraph (c) of this section concerning a Fiscal

§ 766.105

Year 1993 Special Assessment, a domestic utility must file an appeal on or before 30 days from the effective date of this paragraph or from the date of such written determination, whichever is later. The decision of the Office of Hearings and Appeals shall be the final decision of DOE. Upon completion of the reconciliation process, all records of SWU transactions shall be finalized and shall become the basis of subsequent Special Assessment invoices. These records shall be revised to reflect any decisions from the Office of Hearings and Appeals and any applicable court rulings.

(e) Refunds of Special Assessments shall be provided in cases where DOE has determined, as a result of reconciliation, that an overpayment has been made by a domestic utility, and that the domestic utility has no further current obligation to DOE.

[59 FR 41963, Aug. 15, 1994, as amended at 60 FR 15017, Mar. 21, 1995]

§ 766.105 Payment procedures.

DOE shall specify payment details and instructions in all Special Assessment invoices. Each domestic utility shall make payments to the Fund by wire transfer to the Department of Treasury.

§ 766.106 Late payment fees.

In the case of a late payment by a domestic utility of its Special Assessment, the domestic utility shall pay interest at the per annum rate (365-day basis) established by DOE for general application to monies due DOE and not received by DOE on or before a designated due date. Interest shall accrue beginning the date of the designated payment except that, whenever the due date falls on a Saturday, Sunday, or a United States legal holiday, interest shall commence on the next day immediately following which is not a Saturday, Sunday, or United States legal holiday. Late payment provisions for the Special Assessment to the Fund shall be based on the Treasury Current Value of Funds Rate (which is published annually by the Treasury and used in assessing interest charges for outstanding debts on claims owed to the United States Government), plus six (6) percent pro rata on a daily basis.

10 CFR Ch. III (1-1-06 Edition)

The additional six (6) percent charge shall not go into effect until five (5) business days after payment was originally due. Late payment fees shall be invoiced within two days of receipt of utility payment of the special assessment when delinquency is less than 30 days. For longer periods of delinquency, DOE will submit additional invoices, as appropriate. Late payment fees will be due 30 days from the date of invoice.

§ 766.107 Prepayment of future Special Assessments

DOE shall accept prepayment of future Special Assessments upon request by a domestic utility. A domestic utility's liability for the future assessments shall be satisfied to the extent of the prepayments. DOE shall use the pro rata share of prepayments attributable to a given fiscal year plus the Special Assessments collected from utilities who did not prepay for that fiscal year, in order to determine that the total amount of Special Assessments collected from domestic utilities in a given fiscal year does not exceed \$150 million, annually adjusted for inflation.

PART 770—TRANSFER OF REAL PROPERTY AT DEFENSE NUCLEAR FACILITIES FOR ECONOMIC DEVELOPMENT

- Sec.
- 770.1 What is the purpose of this part?
- 770.2 What real property does this part cover?
- 770.3 What general limitations apply to this part?
- 770.4 What definitions are used in this part?
- 770.5 How does DOE notify persons and entities that defense nuclear facility real property is available for transfer for economic development?
- 770.6 May interested persons and entities request that real property at defense nuclear facilities be transferred for economic development?
- 770.7 What procedures are to be used to transfer real property at defense nuclear facilities for economic development?
- 770.8 May DOE transfer real property at defense nuclear facilities for economic development at less than fair market value?
- 770.9 What conditions apply to DOE indemnification of claims against a person or