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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, 2007, 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 uranium processing site shall not exceed \$6.25 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 \$350 million. This total amount shall be adjusted for inflation by applying the CPI-U, as provided by § 765.12.

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(g) The total amount of reimbursement paid to the licensee of the active thorium processing site shall not exceed \$365 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 \$715 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.

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

§ 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.

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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 processing 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) \$6.25, 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

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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, 2007, 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 pursuant 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.*).

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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.

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

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 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.