Department of Energy
Washington, DC 20585

MAY 19 1994

Mr. Joseph Holonich, Chief
High-Level Waste and Uranium
Recovery Projects Branch
Division of Waste Management
Mail Stop 5E-4 OWFN
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Holonich:

Enclosed please find the following Department of Energy (DOE) documents: (1) final rule entitled "Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites," being issued under Title X of the Energy Policy Act of 1992; (2) Federal Register notice concerning claim submission and availability of funds for fiscal year 1994; and (3) draft guidance for the preparation of reimbursement claims. The final rule and notice will appear in the Federal Register on or about May 23, 1994.

DOE will meet with eligible licensees and other interested parties from 8:00 a.m. to 12:00 p.m. on June 9, 1994, to present an overview of the final rule and claim filing and processing procedures. The meeting will be held in Albuquerque, New Mexico, on the 10th floor of DOE's Uranium Mill Tailings Remedial Action (UMTRA) Project Office located at 2155 Louisiana NE. (i.e., the United New Mexico Bank Building located one block north of Interstate 40 at the intersection of Indian School Road and Louisiana Avenue). Please call Jim Coffey of the UMTRA Project Office at 505-845-4026 to confirm your attendance.

We appreciate your office's assistance in the Title X rulemaking effort, and we look forward to working with you in the successful implementation of this new program.

Sincerely,

for David E. Mathes, Director
Offsite Program Division
Office of Southwestern Area Programs
Environmental Restoration

3 Enclosures

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DEPARTMENT OF ENERGY

10 CFR Part 765

1901-AA53

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy

ACTION: Final Rule

SUMMARY: The Department of Energy, Office of Environmental Management, is promulgating this final rule to establish requirements governing reimbursement for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium or thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. The Energy Policy Act of 1992 requires the Department of Energy to implement these requirements of Title X and establish procedures for eligible licensees to submit claims for reimbursements.

EFFECTIVE DATE: (Insert date 30 days after date of publication in Federal Register)

ADDRESSES: The official record for this rulemaking activity is available for public review in the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Washington, D.C., from 9:30 a.m. to 4:30 p.m., Monday through Friday. The Department's standardized claims format guide and annual report will be available upon written request to the Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 2155 Louisiana NE, Suite 10000, Albuquerque, NM 87110.

FOR FURTHER INFORMATION CONTACT: David Mathes, Office of Environmental Management (EM-45), U.S. Department of Energy, (301) 903-7223, or Steven Hamp, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, (505) 845-4628.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Statutory Authority

Title X of the Energy Policy Act of 1992 (Sections 1001-1004 of Pub. L. No. 102-486, 42 U.S.C. §§ 2296a et seq. (hereinafter "the Act")), enacted on October 24, 1992, requires the Department of Energy (hereinafter the "Department") to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action at active uranium or thorium processing sites, which also include vicinity properties. Consistent with section 1002 of the Act (42 U.S.C. § 2296a-1) the Department is promulgating this final rule to implement the requirements of Title X and to establish procedures for eligible applicants to submit claims for reimbursement.

Title X provides that, with certain exceptions, remedial action costs at active uranium or thorium processing sites shall be borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 2092, 2111) (hereinafter the "Atomic Energy Act"). Section 1001(b)(1)(B) of the Act (42 U.S.C. § 2296a(b)(1)(B)) requires the Department to reimburse eligible licensees of an active processing site a portion of the costs determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States and either (a) incurred by such licensee not later than December 31, 2002; or (b) placed in escrow not later than December 31, 2002, and incurred by the licensee in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Department.

In order to be reimbursable, such costs must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. §§ 7901 et seq.) (hereinafter "UMTRCA") or, where appropriate, with requirements established by a state pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act (42 U.S.C. § 2021), hereinafter "Agreement State". In addition, claims for reimbursement of costs of remedial action must be supported by reasonable documentation as determined by the Department.

Section 1001(b)(2) of the Act (42 U.S.C. § 2296a(b)(2)) limits the amount of reimbursement paid to any one licensee of an active uranium mill tailings site to an amount not to exceed $5.50 multiplied by the dry short tons of byproduct material located at the site on October 24, 1992, and generated as an incident of sales to the United States. Total reimbursement, in the aggregate, for work performed at active uranium sites shall not exceed $140 million. Total reimbursement for work performed at the active thorium site shall not exceed $40 million, and is limited to costs incurred for offsite disposal. Under sections 1001(b)(2)(D) and 1003(a) of the Act (42 U.S.C. § 2296a(b)(2)(D) and § 2296a-2(a)), the $5.50 per dry short ton limit on reimbursement to individual uranium site licensees and aggregate ceilings shall be subject to annual adjustment for inflation based upon an inflation index chosen by the Department.

B. Background

1. Overview of Uranium Processing Activity Licensed Under the Atomic Energy Act

The U.S. Army's Manhattan Engineer District, from 1942 to 1946, and later the Atomic Energy Commission (hereinafter "AEC"), from 1947 through 1970, entered into several contracts for the

purchase of uranium concentrate to support the Nation's defense programs. Initially, four mills provided uranium for the Army, primarily through reprocessing radium and vanadium mill tailings. Eventually a total of 34 commercially operated mills produced uranium concentrate for sale to the United States Government.

These contracts were for the purchase of an agreed-upon quantity of uranium concentrate. Contract specifications addressed physical characteristics, grade, and impurities but did not include provisions for mill decommissioning, long-term management of the milling-process wastes, known as tailings, or stabilization of tailings piles. When these contracts were executed, the potential hazards of tailings were not fully recognized. Over the ensuing decades, however, potential radiological and chemical hazards associated with uranium and thorium mill tailings were identified and standards and requirements were developed for the control and management of tailings.

Between 1975 and 1979, the Department and the Energy Research and Development Administration, successor agencies to the AEC, completed studies of uranium mill sites that had produced uranium concentrate for the AEC, had subsequently ceased operations, and were considered inactive. These studies determined that uranium mill tailings located at these inactive uranium milling sites posed potentially significant health hazards to the public and that a program should be developed to ensure proper stabilization or disposal of these tailings to prevent or minimize radon diffusion into the environment and other related hazards.

2. Overview of Uranium Mill Tailings Radiation Control Act

As a result of these studies, in November 1978, Congress enacted UMTRCA, which authorizes the Department to undertake remedial action at "inactive" uranium milling sites and at vicinity properties contaminated with residual radioactive material[1] generated at a site. Inactive uranium milling sites are those which were no longer licensed under the Atomic Energy Act on January 1, 1978, and where all or substantially all of the uranium concentrate was produced for the Federal Government. The Department conducts remedial action in coordination with affected States and Indian tribes under cooperative agreements at 24 inactive sites.

In addition, UMTRCA established a program authorizing the United States Nuclear Regulatory Commission (hereinafter "NRC") to regulate mill tailings generated during processing operations at "active" processing sites (i.e., sites with active licenses under the Atomic Energy Act on or after January 1, 1978) to ensure sound management of tailings throughout the production, reclamation and disposal phases.

3. Legislative Background

UMTRCA did not provide for payment of costs of remedial action incurred at active uranium processing sites which were contaminated with uranium mill tailings generated under Federal

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[1] The term "residual radioactive material" is defined by Section 101(7) of UMTRCA (42 U.S.C. §7911(7)) to mean: "(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock or unprocessed ores or low-grade materials."

contract. Two reports prepared subsequently for Congress, by the Department in January 1979[2] and by the General Accounting Office in February 1979,[3] concluded that Federal assistance should be provided to licensees at these sites to address the cost of remediating mill tailings that were generated under contracts with the United States Government.

Congress directed the Department, through section 213 of Public Law 96-540, to develop a plan for establishing a cooperative program to provide Federal assistance in the stabilization and management of uranium mill tailings generated as an incident of sales to the United States Government which are commingled with other tailings. The Department was directed to identify, among other things, the amount of tailings generated under Federal contract at each active site. This determination was to be used to calculate the percentage of such tailings in relation to total tailings at each site, and the corresponding share of Federal assistance appropriate to meet the costs of stabilizing and managing tailings as required by Federal law.

Title X establishes the authority and framework for providing this Federal assistance. The Department is required to issue regulations governing reimbursement to licensees at active uranium and thorium processing sites for certain costs of remedial action. This final rule establishes the requirements and procedures under which the Department will implement this reimbursement program.

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[2] "Answers to Questions on Commingled Tailings at Currently Operating Uranium Ore Processing Mills That Produced Uranium Under Atomic Energy Commission Contracts" (Department of Energy, January 29, 1979).

[3] "Cleaning Up Commingled Uranium Mill Tailings: Is Federal Assistance Necessary" (General Accounting Office, EMD-79-29, U.S. Department of Commerce, February 5, 1979).

II. RESPONSE TO PUBLIC COMMENTS ON THE PROPOSED RULE

The Department's proposed rule was published on August 9, 1993 (58 FR 42450). A public hearing was held on September 14, 1993 in Denver, Colorado. A total of 16 written comments were received, of which four identical comments were also presented orally at the public hearing. Most of the comments concerned eligibility for reimbursement, reimbursable costs, determination of the Federal reimbursement ratio, definition of byproduct material, and claim documentation requirements. These and all other comments to the proposed rule are discussed below.

A. Eligibility for Reimbursement

Subject to certain specific limitations set forth in section 1001(b) of the Act (42 U.S.C. 2296(a)(b)), Title X requires the Department to reimburse licensees of active uranium or thorium processing sites for that portion of remedial action costs that may be attributed to byproduct material generated as an incident of sales to the United States. Parties eligible for reimbursement must be, or have been, licensed under section 62 or 81 of the Atomic Energy Act, and must have incurred costs of "decontamination, decommissioning, reclamation, or other remedial action" at an "active uranium or thorium processing site," as those terms are defined by Title X, sections 1004(3) and 1004(1), respectively (42 U.S.C. § 2296a-3(3) and § 2296a-3(1)). A number of comments were received requesting clarification or revision of the proposed rule's requirements concerning eligibility for reimbursement.

One commenter requested that the proposed rule's definition of "licensee" be changed to specifically include entities licensed by an Agreement State. Sections 1001(a) and (b) of the Act (42 U.S.C. 2296a(a) and (b)) require that the Department reimburse "persons licensed under section 62 or 81 of the Atomic

Energy Act of 1954." Both section 62 and section 81 confer licensing authority to AEC and its successor agency, the NRC.

However, NRC and a state may enter into an agreement pursuant to section 274 of the Atomic Energy Act which provides for discontinuance of the regulatory authority of the NRC under Chapters 6, 7, and 8, and section 161 of the Atomic Energy Act when the NRC finds, upon certification by the Governor, that the state's program is in all respects compatible with the NRC's program for the regulation of byproduct and source material. The discontinuance of NRC authority is coupled with the Agreement State's issuance of licenses pursuant to a counterpart to section 62 or 81 of the Atomic Energy Act, under state law.

If an Agreement State has received authority pursuant to a discontinuance agreement to issue licenses under either section 62 or section 81 of the Atomic Energy Act, recipients of an Agreement State-issued license, that was in effect or pending on January 1, 1978, are eligible to apply for reimbursement under Title X. In addition, some active site licensees have been subject to remedial action requirements established both by NRC and an Agreement State. Accordingly, the definition of "licensee" in the proposed rule has been revised to clarify that a person licensed under the authority of either section 62 or 81 of the Atomic Energy Act, by NRC, or under state law by an Agreement State, or both, is eligible to apply for reimbursement of costs of remedial action. This approach is consistent with, and reflected by, the definition of "active uranium or thorium processing site" in section 1004(1) of the Act (42 U.S.C. § 2296a-3(1)), which specifies that the license for the production of uranium or thorium derived from ore may be issued by NRC, AEC, or by an Agreement State.

Several comments were also received concerning the proposed eligibility requirement that a licensee also be a "site owner" of

an active processing site. These commenters pointed out that land ownership was not intended by Congress to be a requirement for reimbursement. One commenter indicated that ownership of the property on which its processing site is located is divided between private, Federal, and state parties. Other commenters were concerned that the intent of Title X would be contravened if land ownership was a condition of eligibility for reimbursement. These commenters suggested that land ownership could also be difficult to define and determine.

While section 1002 of the Act (42 U.S.C. § 2296a-1) appears to contemplate that applications for reimbursements will be made by "a site owner," section 1001(b)(2)(A) of the Act (42 U.S.C. § 2296a(b)(2)(A)) specifically refers to reimbursements paid "to any licensee," and the remainder of Title X is also drafted in terms of payments to licensees. The term site owner, as used in section 1002 (42 U.S.C. § 2296a-1), is not defined nor is there any legislative history that sheds light on the single reference to "site owner" in section 1002. Consistent with apparent Congressional intent, the Department has interpreted the term "site owner" to include any person that currently 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, or a right of access for the purposes of remediation, or any other legal or equitable interest. The Department has concluded that this definition will encompass all eligible current and former licensees. To avoid unnecessary confusion, the term "site owner" is not used in the rule and the term "licensee" is used instead.

B. Costs Eligible for Reimbursement

Several commenters proposed changes to, or requested clarification of, the language in section 765.11(a) of the proposed rule concerning reimbursable costs and the definition of "costs of remedial action." The proposed rule defined such costs as those costs incurred by a licensee that were necessary to perform "decontamination, decommissioning, reclamation, and other remedial action." The phrase "decontamination, decommissioning, reclamation, and other remedial action" is defined by section 1004(3) of the Act (42 U.S.C. § 2296a-3(3)), as well as the proposed rule, as work "necessary to comply with all applicable requirements of" UMTRCA or, where appropriate, with requirements established by an Agreement State.

Several commenters asked that the definition of "costs of remedial action" specifically include a list of cost categories that are eligible for reimbursement. Furthermore, some commenters suggested that this list should specifically include the cost of capital, cost of equipment, and interest that might have been earned over the period between the expenditure and reimbursement; administrative costs; and costs in implementing other environmental program requirements.

In response to these comments, the Department has revised the definition of "costs of remedial action" to include those activities specified in the Joint Explanatory Statement of the Committee of Conference that accompanied the enactment of Title X which states:

> "Funds made available under this program are intended to be provided for all costs that result from the disposition of by-product [sic] material at active processing sites (subject to the limitations of sec. 1001(b)), including groundwater remediation, treatment of contaminated soil, disposal of process wastes, removal actions, air pollution studies, mill and equipment

> decommissioning, site monitoring, administrative expenses, and additional expenditures required by related standards and regulations." (H.R. CONF. REP. NO. 102-1018, 102d Cong., 2d Sess. 392 (1992))

Rather than further attempt to enumerate more precise activities and circumstances for which costs are reimbursable, the Department has determined that this issue should be resolved on a case-by-case basis, consistent with the statutory requirements. Section 1004(3) of the Act (42 U.S.C. § 2296a-3(3)) limits reimbursement to costs for "work performed... which is necessary to comply" with UMTRCA or, where appropriate, with applicable Agreement State requirements. Therefore, whether work for which reimbursement is sought is necessary to comply with UMTRCA or, where appropriate, with applicable Agreement State requirements as required by section 1004(3) of the Act (42 U.S.C. § 2296a-3(3)), will depend on specific circumstances that may vary from one site to the next.

However, in the absence of specific statutory authority, the Department has determined that the carrying cost of past expenditures or other costs of capital or lost interest are not eligible for reimbursement. Costs incurred for activities required by other Federal and state regulatory authorities may only be considered reimbursable if the activity falls within the final rule's definition of "decontamination, decommissioning, reclamation, and other remedial action." For example, the United States Environmental Protection Agency or a state regulatory authority may require a licensee to obtain a storm water discharge permit pursuant to the Clean Water Act before the licensee is able to conduct a remedial action. Therefore, a licensee may be able to demonstrate that the cost in obtaining and maintaining the a discharge permit is necessary to comply with UMTRCA or, where appropriate, with Agreement State requirements.

Administrative costs and other costs associated with cleanup or restoration of the site may be eligible for reimbursement provided that a licensee can demonstrate that the costs were necessary to comply with the requirements of UMTRCA or, where appropriate, with applicable requirements of an Agreement State.

Several commenters construed the proposed rule to limit costs of remedial action to activities required by an approved site reclamation plan. These commenters requested that the rule be clarified to provide for reimbursement of other activities required by other written authorization from NRC or an Agreement State.

The final rule clarifies that costs for activities required by NRC or an Agreement State and established by a license condition or other authorization or directive may be eligible for reimbursement. The phrase "or other written authorization" is used throughout the final rule to specify that the activity may be authorized by the applicable regulatory authority by some mechanism other than an approved reclamation plan.

Several commenters requested that the final rule specify that costs incurred prior to the enactment of UMTRCA are reimbursable. This request is consistent with section 1001(b)(1) of the Act (42 U.S.C. § 2296a(b)(1)), which provides that the Secretary shall reimburse a licensee for costs of decontamination, decommissioning, reclamation, and other remedial action which are attributable to byproduct material generated as an incident of sales to the United States and incurred by the licensee not later than December 31, 2002. Furthermore, section 1004(3) of the Act (42 U.S.C. § 2296a-3(3)) specifies that the term "decontamination, decommissioning, reclamation, and other remedial action" means work performed that is necessary to comply

with UMTRCA or, where appropriate, requirements established by an Agreement State.

Therefore, the final rule states that pre-UMTRCA costs may be eligible for reimbursement if the licensee can demonstrate and obtain the Department's approval that the work was necessary to comply with UMTRCA. A licensee can make this demonstration by providing a written authorization from the NRC or an Agreement State which indicates that the work performed by the licensee prior to the enactment of UMTRCA was necessary to comply with UMTRCA or, where appropriate, with applicable Agreement State requirements.

Some commenters objected to section 765.11(a) of the proposed rule, concerning the requirement that reimbursable costs must be for activities "contributing to final closure." These commenters were concerned that the applicable regulatory authority may revise an approved reclamation plan, license condition, or other directive for the remediation of the site. Under the proposed rule, a licensee's previously incurred costs of remedial action would not be reimbursable. The Department acknowledges this concern and has revised the final rule by deleting this requirement.

In addition, commenters objected to section 765.20 of the proposed rule which required licensees to certify that remedial action work was completed as required by a reclamation plan or other written authorization. These commenters were concerned that licensees might not be reimbursed prior to completion of remedial actions for individual tasks, as specified in an approved reclamation plan or other written authorization, upon the licensees completion of these tasks. The Department agrees with these commenters and notes that it is the Department's intent to reimburse these costs upon completion of the individual tasks instead of the entire remediation.

Finally, one commenter suggested that section 765.2(d) of the proposed rule be modified to clarify that expenses incurred as a result of an NRC directive, an Agreement State directive, or both, are eligible for reimbursement. A mill may have been regulated by both the NRC and an Agreement State during the mill's history, and may have therefore incurred costs for activities required by directives from both regulatory authorities. This commenter urged that references to "NRC or Agreement State" be revised to read "NRC and/or an Agreement State."

The Department has retained the proposed language but wishes to clarify that use of the phrase "NRC or an Agreement State" refers to NRC, an Agreement State, or both.

C. Determining The Federal Reimbursement Ratio

The proposed rule provided that the Department would establish a "Federal reimbursement ratio" to determine the portion of costs of remedial action attributable to byproduct material generated as an incident of sales to the United States. Under the proposed rule, the Federal reimbursement ratio would be the ratio of Federal-related dry short tons of byproduct material to total dry short tons of byproduct material present at each site on the date of enactment of Title X.

Some commenters suggested that the Department should allow licensees to use a method other than the proposed rule's tonnage or quantity-based approach to establish a site's Federal reimbursement ratio. These commenters argued that at some sites the tonnage-based Federal reimbursement ratio may not accurately reflect the true costs of remediation attributable to byproduct material generated as an incident of sales to the United States. These commenters also suggested that the rule allow greater flexibility in the methods available to determine the Federal

reimbursement ratio. In particular, these commenters requested that the rule allow such ratio to be based on the acreage covered by Federal-related dry short tons of byproduct material compared to the total acreage covered by all dry short tons of byproduct material at the site.

Title X limits reimbursement to costs "attributable to" byproduct material generated as an incident of sales to the United States, but does not require a specific method for determining how to attribute costs to byproduct material generated as an incident of sales to the United States. Section 1001(b)(2)(A) of the Act (42 U.S.C. § 2296a(b)(2)(A)) establishes a $5.50 per dry short ton of byproduct material limit on reimbursement. This indicates that the tonnage approach is an appropriate method for determining the Federal portion of remedial action costs. However, the tonnage approach may not, in some cases, most accurately reflect the portion of costs attributable to byproduct material generated as an incident of sales to the United States. As the Department recognized in the "Commingled Uranium Tailings Study, Volume II: Technical Report," (Department of Energy, June 30, 1982) different approaches for allocating costs attributable to byproduct material generated as an incident of sales to the United States may be appropriate, depending on the unique characteristics at each site.

Accordingly, the final rule has been revised to allow a licensee to demonstrate that an alternative method for determining the Federal reimbursement ratio, other than the tonnage approach, should be used. In order to make this demonstration, the final rule requires the licensee to demonstrate to the satisfaction of the Department that such alternative method is more accurate than the tonnage-based approach in delineating between costs of remedial action attributable to byproduct material generated as an incident of

sales to the United States and costs attributable to other byproduct material at the site. Any licensee requesting that the Department consider an alternative approach for establishing a site's Federal reimbursement ratio, must submit the request in writing, together with any information the licensee wants the Department to consider in support of the request. The Department reserves the right to approve or reject the alternative method, based on the Department's determination of whether such method may provide an effective, accurate, and verifiable means of attributing costs of remedial action for byproduct material generated as an incident of sales to the United States. Regardless of the methodology used to establish the Federal reimbursement ratio, the statutory ceiling on reimbursements to licensees will not change.

D. Definition of Byproduct Material and Dry Short Tons of Byproduct Material; and Determination of Reimbursement Ceiling at Each Active Uranium Processing Site

One commenter disagreed with the proposed rule's definition of "dry short tons of byproduct material." This commenter requested that the definition be expanded to include other wastes as well as tailings. For the reasons stated below, the Department has not adopted this approach.

Section 1001(b)(2)(A) of the Act (42 U.S.C. § 2296(a)(b)(2)(A)) requires that the ceiling for uranium mill tailings sites shall not exceed an amount equal to $5.50 multiplied by the dry short tons of byproduct material onsite on the date of Title X's enactment and generated as an incident of sales to the United States. Although Title X incorporates by reference the Atomic Energy Act's definition of "byproduct

material,"[4] the phrase "dry short ton of byproduct material" is not defined in either Act. While the definition of "byproduct material" could be read to suggest that the term includes wastes other than tailings, section 1001(b)(2)(A) of the Act (42 U.S.C. § 2296a(b)(2)(A)) appears to use the phrase "uranium mill tailings" interchangeably in the same sentence with the phrase "byproduct material." The apparent interchangeable use of these terms is further reflected by the fact that House Bill 776[5], which ultimately was enacted, established a reimbursement limit of $5.50 per "dry short tons of byproduct material," (emphasis added) while the section-by-section analysis of the House Energy and Commerce Report[6] accompanying the bill described the limit as "$5.50 per dry ton for uranium tailings" (emphasis added).

Consequently, for the purposes of this rule's maximum reimbursement ceiling determination for active uranium processing site licensees and Federal reimbursement ratio for uranium and thorium licensees, the Department is defining the phrase "dry short ton of byproduct material" in the final rule to mean "the quantity of tailings generated from the extraction and processing of 2,000 pounds of uranium or thorium ore-bearing rock."

One commenter requested that the proposed definition of "tailings" be revised to conform to the definition established by section 101(8) of UMTRCA (42 U.S.C. § 7911(8)). The Department

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[4] Section 1004(2) of the Act (42 U.S.C. 2296a-3(2)) provides that the term "byproduct material" has the meaning given that term in section 11e.(2) of the Atomic Energy Act, which defines "byproduct material" as "the tailings or wastes produced from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content."

[5] Section 1001(b)(2)(A) of H.R. 776, 102d Cong., 2d Sess. (1992).

[6] See H.REP. NO. 474, 102 Cong., 2d Sess. pt 1, at 205 (1992), reprinted in 1992 U.S.C.C.A.N. 2028.

agrees with this comment and has revised the definition accordingly.

The following table establishes the Department's determination as to the quantity of Federal-related dry short tons of byproduct material and total dry short tons of byproduct material present at each active uranium or thorium processing site as of October 24, 1992. The data from which these quantities are derived were obtained from the reports entitled "Commingled Uranium Mill Tailings Study, Volume II: Technical Report," (DOE, June 30, 1982) and "Integrated Data Base for 1992: U.S. Spent Fuel and Radioactive Waste Inventories, Projections, and Characteristics" (DOE/RW 0006, Rev. 8). In some cases, this data was updated based on the Department's review of quantity information provided by some licensees in response to the proposed rule. These quantity reports are available in the Department's Freedom of Information Reading Room indicated in the "ADDRESSES" section of this preamble. These quantities shall be the basis for the Department's determination of the Federal reimbursement ratio applicable to each active processing site, unless a licensee requests and the Department agrees to use an alternative method for computing the ratio. These quantities will also be the basis for the Department's determination of the individual maximum reimbursement ceiling applicable to each active uranium processing site.

Although Title X provides that the per dry short ton limit on reimbursement for each eligible uranium licensee shall not exceed an amount equal to $5.50, as adjusted for inflation, the Department is authorized to establish a lower per dry short ton limit if necessary. Based on the total quantity of 56.231 million Federal-related dry short tons of byproduct material, the Department is establishing an initial per dry short ton limit of $4.80. This is necessary because the aggregate $270 million statutory ceiling will not support the maximum allowable

reimbursement of $5.50 per dry short ton, as established by the Act, if remedial action costs at all of the eligible uranium processing sites reach or approach this per dry short ton limit (i.e., $270 million divided by 56.231 million Federal-related dry short tons of byproduct material equals $4.80 per dry short ton). The Department will adjust the preliminary limit on reimbursement accordingly when the $270 million statutory ceiling is adjusted annually for inflation or if other circumstances, as determined by the Department, enable the adjustment of the preliminary limit.

	Dry Short Tons of Byproduct Material (millions)		
	Federal-Related	Total	Federal Reimbursement Ratio
Licensee/Active Uranium Site			
American Nuclear Corp., Gas Hills Mill Site, (Gas Hills, WY)	2.191	6.0	0.365
Atlantic Richfield Company, Blue Water Mill Site (Grants, NM)	8.837	23.9	0.370
Atlas Corp., Moab Mill Site (Moab, UT)	5.946	10.6	0.561
Cotter Corp., Canon City Mill Site (Canon City, CO)	0.315	2.2	0.143

Dawn Mining Company, Ford Mill Site (Ford, WA)	1.171	3.1	0.378
Homestake Mining Company, Grants Mill Site (Grants, NM)	11.411	22.3	0.512
Pathfinder Mines Corp., Lucky McMine (Riverton, WY)	2.842	11.7	0.243
Petrotomics Company, Shirley Basin Mill Site (Shirley Basin, WY)	0.725	6.3	0.115
Quivira Mining Company, Ambrosia Lake Mill Site (Grants, NM)	10.017	33.2	0.302
Tennessee Valley Authority, Edgemont Mill Site, (Edgemont, SD)	1.625	2.0	0.813
UMETCO Mineral Corp. Uravan Mill Site (Nucla, CO)	5.701	10.5	0.543
Union Carbide Corp. East Gas Hills Mill Site (Gas Hills Station, WY)	2.103	8.0	0.263
Western Nuclear, Inc. Split Rock Mill Site (Jeffrey City, WY)	3.347	7.7	0.435
Licensee/Active Thorium Site			
Kerr-McGee Chemical Corp., West Chicago Thorium Mill Site (West Chicago, IL)	0.032	0.058	0.552

E. Documentation Requirements

Section 765.20 of the proposed rule required that each claim for reimbursement of costs of remedial action be supported by adequate documentation. All costs for which reimbursement was sought and all supporting documentation were to be organized and cross-referenced to specific requirements or activities in an approved reclamation plan. Further, the proposed rule expressed a preference for documentation that was prepared contemporaneously to the time the costs were incurred.

A number of commenters questioned the use of the word "adequate" to describe the documentation necessary to support a claim for reimbursement. Section 1002 of the Act (42 U.S.C. 2296a-1)) requires a licensee to submit a claim together with "reasonable" documentation. In the final rule, the word "adequate" has been replaced with "reasonable" in section 765.20(a) to make the language of the rule consistent with that of Title X.

The proposed rule also generated several comments concerning the amount and type of documentation necessary. Many commenters contended that the documentation requirements were unduly burdensome. Several commenters recommended that the Department consider accepting a summary of the available documentation, while reserving the right to audit the actual documentation at the licensee's facility.

As a result of these comments, the Department has modified the documentation requirements in the final rule to specifically permit the submission of claims that summarize the supporting documentation, without requiring the submission of all supporting documentation with the claim itself. Under the final rule, licensees may submit a claim which outlines all costs of remedial action for which reimbursement is sought and summarizes the

documentation available to support the claim. The Department may audit or may require the licensee to audit, on a case-by-case basis, any documents used in support of a claim. Under the final rule, licensees are still required to organize and cross-reference summary documentation supporting a claim to the activity or requirement established in the reclamation plan, or other written authorization for both pre- and post-UMTRCA costs of remedial action, in order to facilitate such an audit. These documents also must be retained by each licensee until 4 years after final payment of a claim is made by the Department, access to which must be made available to the Department upon request.

In addition, many commenters indicated that contemporaneous documentation might not be available to support claims. Various reasons, including the passage of time since costs were incurred, were provided to support the request that non-contemporaneous documentation be permitted to support the claim for reimbursement.

The proposed rule did not prohibit the use of non-contemporaneous documentation. Instead it established a preference, but not a requirement, for contemporaneous documentation. The final rule has been clarified to indicate that documentation prepared contemporaneous to the time the costs were incurred should be used where available. To support a claim for reimbursement, the most appropriate documentation, but not the only acceptable documentation, is documentation that was prepared contemporaneous to the time the cost was incurred. If contemporaneous documentation is not available, section 765.20(d)(2) provides that non-contemporaneous documentation may be submitted, provided that the documentation is the only means available to document the costs for which reimbursement is sought. This approach reflects the Department's understanding that Title X establishes a test of reasonableness regarding the level of documentation necessary to support a claim for

reimbursement. The level of documentation that reasonably can be expected will depend on the specific circumstances involved in each claim, including the time that has elapsed since the costs were incurred and the activity for which costs were incurred. The Department intends to evaluate each claim on a case-by-case basis using this standard of reasonableness.

Some commenters requested that section 765.20(e) of the proposed rule be revised to exclude the requirement that the licensee certify that a quality assurance program was implemented. The Department has determined that this certification is not required by the Act, but rather is a responsibility of NRC or an Agreement State. Therefore, this requirement has been deleted from the final rule.

Finally, one commenter encouraged the Department to provide a standardized claims format guide so that guidance for preparing claims will be available to licensees when the rule is finalized. The Department is preparing guidance to aid licensees in claim submission procedures. This guide will be distributed to eligible licensees shortly after publication of the final rule. In addition, the guide will be made available to other interested parties upon written request to the Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 2155 Louisiana NE, Suite 10000, Albuquerque, NM 87110, or by visiting the Department of Energy's Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Washington, D.C., from 9:30 a.m. to 4:30 p.m., Monday through Friday.

F. NRC Or Agreement State Concurrence

Several commenters objected to the provision in section 765.21(d) of the proposed rule requiring NRC or Agreement State concurrence in the reimbursement claim approval process. These commenters asserted that involving the NRC or Agreement States in the process will cause undue delay. Furthermore, commenters argued that the Department's review will be adequate because of the Department's experience with UMTRCA Title I sites and because approved reclamation plans, or other written authorization for both pre- and post-UMTRCA costs, will be submitted to support claims for reimbursement. Some commenters argued that NRC or Agreement State concurrence is unnecessary for those claims that fall clearly within the scope of an approved plan or license condition. However, another commenter strongly supported the requirement for written certification from NRC or an Agreement State that claims be substantially in conformance with NRC or Agreement State authorization.

As discussed elsewhere in this preamble, section 1004(3) of the Act (42 U.S.C. § 2296a-3(3)) requires that remedial action costs for which reimbursement is claimed must be for work "necessary to comply with all applicable requirements" of UMTRCA or, where appropriate, with applicable requirements established by an Agreement State. Whether work is necessary to comply with UMTRCA or Agreement State requirements often may be determined, at least in part, by a review of a site's approved reclamation plan or other written authorization. Licensees are required to link each cost of remedial action for which reimbursement is claimed to a specific element or activity contained in an approved reclamation plan or other NRC or Agreement State authorization for both pre- and post-UMTRCA costs. This will facilitate the Department's review of claims, and help to ensure that reimbursement is made only for costs incurred for activities

necessary to comply with UMTRCA or, where appropriate, with applicable Agreement State requirements.

There may be situations, nevertheless, where the Department's review of the site's reclamation plan or other written authorization does not confirm that an activity for which reimbursement is claimed was necessary to comply with UMTRCA or, where appropriate, Agreement State requirements. To address these situations, section 765.21(d) of the proposed rule provided that before approving a claim for reimbursement, the Department would request NRC or the Agreement State to review the claim and provide written concurrence that the activities for which reimbursement is claimed are "substantially in conformance with the licensee's approved reclamation plan."

In response to the concerns raised by commenters, however, the Department has revised the requirement for NRC or Agreement State written concurrence. When it is not clear from a comparison of a claim and the approved site reclamation plan or other written authorization that an activity for which reimbursement is sought was necessary to comply with UMTRCA or, where appropriate, with applicable Agreement State requirements, the Department will consult with the appropriate regulatory authority to determine whether the activity was necessary to comply with these requirements.

In addition, some commenters urged that section 765.21(c) of the rule explicitly provide licensees with a right to attend and participate in informal conferences between Department and NRC or Agreement State personnel concerning a claim for reimbursement. The Department has decided not to adopt this approach. The claim submittal and review process provide a licensee with ample opportunity to present any relevant information or clarification necessary for the Department to be fully informed in reviewing and acting upon a claim. In

addition, the Department may, at its discretion, provide a licensee with additional opportunities to clarify any issues which could arise with regard to a claim prior to reaching a final decision. However, to conform with the above revision to section 765.21(d) the Department has deleted the reference to the informal conference with NRC or an Agreement State in section 765.20(c). Any informal conference would be conducted as part of the Department's consultation with these regulatory agencies pursuant to section 765.21(d).

G. Reimbursement of Costs of Subsequent Remedial Action

Section 765.30 of the proposed rule required licensees seeking reimbursement of costs after December 31, 2002 to submit a subsequent plan for remedial action to the Department in accordance with section 1001(b)(1)(B)(ii) of the Act. Specifically, reimbursement of costs incurred after December 31, 2002 would be subject to Department's approval of a plan containing: (1) applicable remedial action requirements established by NRC or an Agreement State pursuant to UMTRCA that had not yet been satisfied by the licensee; and (2) the total cost of remedial action required at the site, with supporting documentation, segregated into actual costs incurred and anticipated future costs.

Several commenters indicated that the proposed rule provided inadequate guidance on the criteria the Department will use in approving a subsequent plan for remedial action. Specifically, these commenters construed proposed section 765.30(c) to mean that the Department would, if necessary, require a licensee to make changes to a reclamation plan approved by NRC or an Agreement State. In addition, some of these commenters claimed that the Department's review should be limited to matters of schedule.

The Department did not intend the proposed rule to require a licensee to make any changes to a reclamation plan approved by NRC or an Agreement State. On the other hand, the statutory authority to review and approve such plans is by no means limited to the scheduling of subsequent remedial action. To clarify the scope and purpose of this review, section 765.30(c) has been revised to state that the intended purpose of the Department's review is to determine conformance with an NRC- or Agreement State-approved reclamation plan, as well as the reasonableness of anticipated future costs.

Several commenters requested that the Department clarify in section 765.30(b) of the proposed rule the time in which it would approve a subsequent plan for remedial action which was previously rejected by the Department and modified by a licensee.

The final rule has been revised to provide that a licensee may continue to resubmit a subsequent plan for remedial action until the Department approves the plan or September 30, 2002, whichever date is earlier. This deadline for submission of plans provides sufficient time for a licensee to resubmit such a plan. It also allows the Department sufficient time to review and approve the plan and to designate by December 31, 2002 available amounts deposited in the Uranium Enrichment Decontamination and Decommissioning Fund, an escrow account established at the United States Treasury Department pursuant to section 1801 of the Act (42 U.S.C. §2297(g)), for reimbursement.

Some of these commenters requested that the Department allow for the reimbursement of remedial action costs incurred after December 31, 2002 for plans which have been submitted, but not yet approved by the Department, before this date. The Department does not have statutory authority to reimburse licensees for costs of remedial action after December 31, 2002 for which a plan has not been approved. Therefore, the final rule does not allow

for the reimbursement of remedial costs incurred after December 31, 2002, for those plans which have not been approved by this date.

One commenter questioned how the Department intends to address costs incurred prior to December 31, 2002, but not yet approved by the Department at the time the plan is submitted by the licensee.

To ensure that all incurred and future costs of remedial action are included in a subsequent plan for remedial action, the Department has revised section 765.30(b)(2) to include a third category of costs: those costs incurred or expected to be incurred prior to December 31, 2002. This category includes those costs incurred prior to December 31, 2002 but not yet submitted in a claim for reimbursement, or approved by the Department.

Finally, many commenters requested that sections 765.20(e) and 765.30(b)(2) of the proposed rule eliminate the provision that claims for reimbursement will be reviewed by the Department to assure that the costs are consistent with the surety requirements provided by the licensees to NRC or an Agreement State. These commenters argued that there are many significant differences between the anticipated costs upon which the surety requirements are based and the anticipated costs contained in plans for subsequent remedial action. These commenters also noted that in some circumstances the surety may not take into consideration all costs that may be reimbursed under Title X.

The Department acknowledges these concerns and has eliminated the surety requirement in the final rule. To conform with this change, the Department has deleted the definition of "surety requirements" contained in section 765.3 of the proposed rule.

H. Actions Subject to Appeals Procedures

Section 765.22 of the proposed rule provided procedures for appealing the Department's determination concerning the total dry short tons of byproduct material quantity and Federal-related dry short tons of byproduct material quantity present at a site. Although proposed section 765.22 provided licensees the opportunity to appeal the Department's dry short tons of byproduct material quantity determination, several commenters argued that proposed section 765.10(b), which required a licensee to either concur with the Department's determination or waive or exhaust its right of appeal prior to submitting a claim for reimbursement, effectively forced licensees to forego their right of appeal to obtain timely reimbursement. These commenters expressed concern that licensees would be unfairly penalized if denied reimbursement during the potentially lengthy appeals period.

The Department agrees with these commenters and has eliminated the requirement that a licensee waive its right of appeal with respect to a quantity determination of dry short tons of byproduct material prior to submitting a claim. However, in order to define the Federal reimbursement ratio that the Department will use to calculate reimbursement, the Department must, prior to providing any reimbursement to a licensee, make a determination concerning the total and Federal-related dry short tons of byproduct material quantities present at each site on October 24, 1992. Therefore, although under the final rule a licensee may submit a claim for reimbursement while appealing the Department's dry short tons of byproduct material quantity determination, the appeal must be made within 45 days after receiving notice of such determination. The 45-day limit provides a licensee with the right to appeal without foregoing the right to timely reimbursement and helps ensure that the

Department is able to make the determinations necessary for orderly administration of the reimbursement program.

Under section 765.10(b), the Department's dry short tons of byproduct material quantity determinations will be used to calculate that portion of an approved claim that will be reimbursed. If the licensee's appeal of the Department's initial determination is successful, the difference between the initial quantity determination and that established by the appeals process will be paid to the licensee.

Some commenters noted that the proposed rule did not provide a licensee an opportunity to appeal the Department's decision concerning plans for subsequent remedial action, as well as other determinations required by this rule. This omission in the proposed rule was unintentional. Section 765.22 has been revised and streamlined in the final rule to allow appeals of any Department determination required by this rule, including a decision to reject or modify a plan for subsequent remedial action. While the decision to appeal a Department determination associated with this rule lies in the discretion of each eligible licensee, the rule requires that any appeal comply with the appeals process specified in section 765.22.

I. Miscellaneous Comments

Under section 765.3 of the proposed rule, the definition of "offsite disposal" refers to disposal of byproduct material from the sole existing thorium mill site pursuant to a plan approved by, or written authorization from, the Illinois Department of Nuclear Safety or other appropriate state agency. One commenter urged that the specific reference to the Illinois Department of Nuclear Safety be deleted from the definition in the event of a name change or revision of responsibilities of that agency, and the definition also include approvals and authorizations from the

NRC. The Department has determined that the language of Title X does not limit reimbursement for offsite disposal to activities required by a specific state regulatory authority. Therefore, the definition of "offsite disposal" in the final rule has been modified to include activities required by the NRC or the State of Illinois.

Another commenter suggested that the Department consider making partial provisional advance payments to licensees, subject to an audit of expenditures. The Department does not have the statutory authority to make partial provisional advance payments.

A number of commenters suggested that the Department clarify how available funds will be disbursed if there are insufficient funds for full payment of all claims. Language in the proposed rule did not explicitly specify the priority for disbursement of funds among claims submitted by different review submission deadlines established by the Department. The final rule has been revised to specify that, if funds available are insufficient to make full payment in any given review cycle, all outstanding approved claims will be reimbursed on a prorated basis, regardless of when the claims were submitted or approved. This approach is consistent with the requirement of Title X that reimbursements be made to licensees at least annually.

Commenters also requested that claims be processed and paid twice a year. Title X requires that licensees be reimbursed at least annually. Therefore, the Department intends to provide payments to the licensees on at least an annual basis, but the Department is not prepared to commit in the rule to a more frequent reimbursement schedule.

The Department has modified section 765.20(a) and (d) of the proposed rule to clarify that the claim submission deadline(s) for a given year will be announced in the Federal Register

shortly after the annual appropriation of funds by the Congress. To ensure an equitable distribution of annual appropriations, DOE will make payments for approved costs of remedial action from the Fund within one year of the claim submission deadline.

Some commenters also urged the Department to modify the proposed rule's application of the inflation index adjustment provided in section 765.12 for claims approved for reimbursement. Some commenters argued that claims for reimbursement should be adjusted for inflation from the date the costs were incurred until the date of reimbursement. Others thought that an inflation adjustment should be made for the period between the submission or approval of a claim and the date of reimbursement.

Section 1001(b)(2)(D) of the Act (42 U.S.C. § 2296(a)(b)(2)(D)) specifies the authority provided to the Department to adjust certain amounts for inflation. While the Secretary is given discretion to determine the appropriate inflation index to apply, this section dictates the amounts that are subject to adjustment for inflation. Congress explicitly and unequivocally limited the application of the inflation index to "the amounts in subparagraphs (A), (B), and (C) of this paragraph [section 1001(b)(2) of the Act]" (42 U.S.C. § 2296a(b)(2)(D)). The amounts in subparagraphs (A), (B), and (C) of paragraph 1001(b)(2) are $5.50, $270,000,000, and $40,000,000, respectively. The Department is not authorized to adjust for inflation any claims for reimbursement. As a result, the approach taken in the proposed rule has been retained in the final rule.

In addition to the revisions discussed above, the Department also made minor clarifying or editorial changes to the proposed rule which are not specifically discussed in this preamble.

III. Section-By-Section Analysis

A. Subpart A - General

1. Section 765.1 Purpose

Section 765.1 specifies that the purpose of this rule is to establish procedures and requirements governing the reimbursement of remedial action costs authorized by Title X of the Act. The section confirms that the rule is promulgated as required by section 1002 of the Act (42 U.S.C. § 2296a-1).

2. Section 765.2 Scope and Applicability

Section 765.2 describes the general scope and applicability of the rule. In particular, the section provides that reimbursements shall be made to a licensee of an active uranium or thorium processing site for costs of decontamination, decommissioning, reclamation, or other remedial action, which are supported by reasonable documentation and determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States. Costs of decontamination, decommissioning, reclamation, and other remedial action must be for work that is necessary to comply with the requirements of UMTRCA or, where appropriate, with applicable requirements established by an Agreement State. Moreover, except as provided by section 765.32, reimbursement of a uranium site licensee shall be limited to $5.50, as adjusted for inflation, per Federal-related dry short ton of byproduct material. The total reimbursement paid to all uranium licensees shall not exceed $270 million, as adjusted for inflation. Reimbursement of the thorium site licensee shall not exceed $40 million, as adjusted for inflation.

3. Section 765.3 Definitions

Section 765.3 defines the acronyms and key terms used in the rule. Many of the definitions contained in section 765.3 are taken verbatim, or with minor changes, from Title X, UMTRCA, or the Atomic Energy Act. Additional definitions, discussed below, were developed specifically for this rule.

The term "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 such 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 the site; and
(ii) contaminated with residual byproduct material.

The term "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.

The term "Atomic Energy Act" means Atomic Energy Act of 1954, as amended, (42 U.S.C. §§ 2011 et seq.).

The term "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.

The term "claim for reimbursement" is defined as the submission of an application for reimbursement in accordance with the requirements established in Subpart C of this rule.

The term "costs of remedial action" means costs incurred by a licensee prior to or after enactment of UMTRCA to perform decontamination, decommissioning, reclamation, or other remedial action. These costs must be substantiated by documentation in accordance with the requirements of Subpart C of the rule. Costs of remedial action may include, but are not limited to, ground water 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 directly related to remedial action, expenditures required to meet necessary regulatory standards, and other costs for activities necessary to comply with the requirements of UMTRCA or applicable requirements established by an Agreement State.

The term "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.

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

The term "dry short ton of byproduct material" is defined as the quantity of tailings generated from the extraction and processing of 2,000 pounds of uranium or thorium ore-bearing rock.

The term "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 dry short tons of total 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.

The term "Federal-related dry short ton(s) of byproduct material" is defined as the dry short ton(s) of byproduct material present at the site on October 24, 1992 that was generated as an incident of sales to the United States.

The term "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.

The term "inflation index" is defined as the consumer price index for all urban consumers (CPI-U) as published by the Department of Commerce's Bureau of Labor Statistics.

The term "licensee" includes any site owner licensed under section 62 or 81 of the Atomic Energy Act by either NRC, or an Agreement State.

The terms "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.

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

The term "offsite disposal" is defined as the decontamination, decommissioning, reclamation and other remedial action associated with disposal of byproduct material in a location not contiguous to the West Chicago Thorium Mill Site. This includes activities required by the State of Illincis, or NRC provided these activities are consistent with the ultimate removal of byproduct material from the West Chicago Thorium Mill Site.

The term "plan for subsequent remedial action" is defined as a plan approved by the Department, which includes an estimated total cost 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.

The terms "reclamation plan" or "site reclamation plan" means a plan approved by NRC or an Agreement State that establishes the work necessary to comply with UMTRCA or where appropriate applicable Agreement State requirements.

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

The term "Secretary" means the Secretary of Energy or her designees.

The term "site owner" is defined as 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.

The term "tailings" is defined as the remaining portion of a metal-bearing ore after some or all of the metal, such as uranium, has been extracted.

The term "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).

The term "Title X" or "the Act" means Subtitle A of Title X of the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (42 U.S.C. §§ 2296a-1 et seq.).

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

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

The term "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 with applicable Agreement State requirements.

B. Subpart B - Reimbursement Criteria

1. Section 765.10 Eligibility for Reimbursement

Section 765.10 outlines the basic eligibility requirements governing reimbursement. In particular, as required by section 1001 of the Act (42 U.S.C. § 2296a), section 765.10 specifies that licensees shall be eligible for reimbursement of certain costs of remedial action, subject to the procedures and limitations specified in this rule.

Section 765.10(a) of the rule provides that costs of remedial action attributable to byproduct material generated as an incident of sales to the United States are reimbursable. Section 765.10(b) states that prior to reimbursement, the Department must determine the number of total dry short tons of byproduct material present at the site on October 24, 1992 and Federal-related dry short tons of byproduct material. This section provides that these determinations are subject to the appeals procedures specified in the rule. Provisions are made concerning reimbursement in the event of an appeal.

2. Section 765.11 Reimbursable Costs

Section 765.11 defines the requirements that a licensee must meet to be reimbursed for costs of remedial action at its active uranium or thorium processing site. Reimbursable costs of remedial action must be incurred prior to December 31, 2002, or

be in accordance with a plan for subsequent remedial action approved by the Department. These costs of remedial action shall be reimbursed only if supported by reasonable documentation and approved by the Department in accordance with this rule. This documentation must demonstrate that the costs of remedial action incurred by a licensee are necessary to comply with applicable requirements of UMTRCA, or, where appropriate, with requirements established by an Agreement State. These requirements are contained in a reclamation plan, or other written authorization, issued or approved by NRC or an Agreement State, for work performed prior to or after enactment of UMTRCA. In addition, costs of remedial action are reimbursable only if the Department determines that they are attributable to byproduct material generated as an incident of sales to the United States and present at the site on October 24, 1992. These costs are equal to the total costs of remedial action at a site multiplied by the Federal reimbursement ratio established for the site, and approved by the Department for reimbursement.

Section 765.11 limits the amount of reimbursement paid to any one licensee of an active uranium processing site to an amount not to exceed $5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. Total reimbursement in the aggregate of uranium site licensees is limited to $270 million, as adjusted for inflation. Reimbursement of costs of remedial action at the eligible thorium processing site may only be made for costs incurred for offsite disposal, and is limited to $40 million, as adjusted for inflation.

3. Section 765.12 Inflation Index Adjustment Procedures

Title X directs the Department to determine an appropriate inflation index by which to increase annually (1) the $5.50 per dry short ton of byproduct material limit on reimbursement to

individual uranium site licensees, (2) the amount of $270 million authorized for payment to active uranium processing site licensees, (3) the amount of $40 million authorized for payment to the active thorium processing site licensee, and (4) the aggregate amount of $310 million authorized for payment to all licensees by Title X. As discussed elsewhere in this preamble, the Department intends to use the Consumer Price Index-Urban (CPI-U) as the appropriate inflation index for these adjustments. Section 765.12 of the rule provides that the CPI-U will be used to adjust these amounts annually beginning in 1994, to account for inflation that occurred in the previous calendar year.

C. Subpart C - Procedures for Filing and Processing Reimbursement Requests

Subpart C establishes the procedures for preparing and processing reimbursement claims. These procedures are designed to ensure that all information the Department needs to review a claim is made available to the Department, that claims are evaluated on a consistent basis, and that claims are processed in an efficient and equitable manner.

1. Section 765.20 Reimbursement Request Filing Procedures

Section 765.20 of the rule establishes the filing procedures, content, and format that a licensee must follow when submitting a claim for reimbursement. Each claim for reimbursement of remedial action costs must be supported by reasonable documentation.

A copy of the licensee's approved reclamation plan or other written authorization from NRC or an Agreement State must be submitted with the initial claim. Any revisions to this plan or authorization by NRC or an Agreement State must be submitted with

the next claim prepared following approval of the revision. Each claim must provide a summary of all costs of remedial action for which reimbursement is claimed. The summary of costs must identify the pre- and post-UMTRCA costs associated with each major activity or requirement established by the site's reclamation plan or other written authorization.

The claim for reimbursement must also include a summary of the documentation available to support the claim. All 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 for pre- and post-UMTRCA costs. All documentation used in support of a claim must be made accessible to the Department, and the documentation should demonstrate that each cost for which reimbursement is claimed was incurred for a pre- or post-UMTRCA specific activity included in a reclamation plan or other written authorization, approved by NRC or an Agreement State. Where available, invoices, payroll records, receipts, and other documents should be used by the licensee to support claims for reimbursement. The rule requires licensees to utilize documents that were prepared contemporaneous to the time the cost which they support was incurred, whenever these documents are available. Documents prepared substantially after the cost was incurred will be considered by the Department in reviewing claims if that documentation is the only means available to document costs for which reimbursement is sought. The Department may audit, or require a licensee to audit, any documentation used to support a claim on a case-by-case basis and will exercise its discretion in determining the weight to accord to various supporting documents.

2. Section 765.21 Processing Reimbursement Requests

Section 765.21 outlines the procedures to be followed by the Department in processing each claim for reimbursement.

Sections 765.21(a) - (c) provide that the Department will conduct a preliminary review of each claim within 60 days of the claim submittal deadline to determine if additional information is necessary. The Department may audit documentation used in support of the claim or request additional information or clarification necessary to verify any information provided by the licensee in a claim for reimbursement. In addition, the Department may request an informal conference with the applicant and, if necessary, with NRC or an Agreement State, to obtain information or clarification concerning any aspect of a claim. While the applicant is not required to provide additional information or 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.

The Department will conduct a final review of all relevant information to make a reimbursement decision. The Department will notify the claimant of its decision regarding a claim within 10 days of completing the final review.

Sections 765.21(f) - (g) discuss the timing for processing and for payment of reimbursement requests. Reimbursements will be made on a prorated basis if there are insufficient funds available to reimburse all claims in full. Amounts not initially disbursed will be paid on a prorated basis, until satisfied in full, as funds become available. All outstanding, approved claims will be paid on the same prorated basis, regardless of when the claim was submitted or approved. Payments will be provided from the Fund, as required by the Act. Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. § 1341) as specified by section 765.21(g) of this rule. Following each annual appropriation by Congress, the Department will issue a Federal Register notice informing licensees of the availability of funds for reimbursement and whether the Department anticipates that

approved claims for that year may be subject to prorated payment.

Section 765.21(h) requires an officer or other authorized official of a licensee to certify the accuracy of a claim for reimbursement, and subjects the individual making the certification to Federal statutes which provide civil and criminal penalties for making false claims.

3. Section 765.22 Appeals Procedures

Section 765.22 requires a licensee to utilize the Department's administrative appeals process (see 10 CFR Part 205, Subpart H) to appeal any Department determination required by this rule, including decisions that: (1) determine tailings quantities of dry short tons of byproduct material or the Federal reimbursement ratio; (2) deny, in whole or in part, any claim for reimbursement; or (3) require modification of or reject a plan for subsequent remedial action. Any appeal must be filed with the Department's Office of Hearing and Appeals (hereinafter "OHA") within 45 days after the licensee receives notice, actual or constructive, (i.e., by a publication in the Federal Register) of the Department's determination. OHA is a quasi-judicial body that reports to the Secretary of Energy and, except as otherwise provided by law, is responsible for conducting informal adjudicative proceedings of the Department, where there is a provision for separation of function. In connection with these duties, OHA holds hearings, receives evidence, develops a record, and issues a final determination, which is the Department's final decision, subject to review in the federal courts. A licensee must file an appeal in order to exhaust its administrative remedies, and the receipt of an OHA decision is a prerequisite to seeking judicial review of any determination made under this Part.

4. Section 765.23 Annual Report

The Department will prepare an annual report, available to the public, summarizing pertinent information from the preceding year regarding the reimbursement program. The information may include, but not be limited to, individual and aggregate reimbursement claims approved and paid, approval of plans for subsequent remedial action, completion of particular elements of remedial action at active sites, total amounts paid and remaining for reimbursement, and other information. Licensees should be aware that any information submitted in a claim for reimbursement may be subject to public disclosure, through the annual report as well as by specific request, in accordance with the Freedom of Information Act (5 U.S.C. § 552) and all other applicable requirements.

Subpart D - Additional Reimbursement Procedures

1. Section 765.30 Reimbursement of Costs Incurred in Accordance with a Plan for Subsequent Remedial Action

Section 765.30 of Subpart D establishes procedures for reimbursement of costs incurred in accordance with a plan for subsequent remedial action approved by the Department.

Reimbursement of costs incurred after December 31, 2002 shall be subject to the submission by the licensee of a plan for subsequent remedial action and approval of the plan by the Department. Each licensee seeking reimbursement of costs of remedial action to be incurred after December 31, 2002 shall submit their plan to the Department for its review and approval at any time between January 1, 2000 and December 31, 2001. The plan must include an estimated total cost and schedule for remedial action as well as 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. Each licensee will be required to provide reasonable documentation or other information to support its estimate of costs to be incurred.

The Department may approve, approve with modification, or reject any plan submitted by a licensee. At any time following submittal of a plan, the Department may request additional information from the licensee, and may consult with NRC or an Agreement State concerning remaining remedial action requirements contained in the site's approved reclamation plan. If the Department rejects a plan, the licensee may file an appeal pursuant to section 765.22 or submit revised plans for review by the Department, until a plan is approved, or until September 30, 2002, whichever occurs first. The Department has established September 30, 2002, as the deadline for submission of any potential revised plans so that the Department will have sufficient time to review the submittals and designate available amounts on deposit in the Fund for reimbursement by December 31, 2002 consistent with section 1001(b)(1)(B)(ii) of the Act (42 U.S.C. § 2296a(b)(1)(B)(ii)). A failure by a licensee to receive approval from the Department of a plan for subsequent remedial action prior to December 31, 2002 will preclude that licensee from receiving any reimbursement for costs incurred after that date. Costs incurred in accordance with the requirements of a plan for subsequent remedial action, and approved by the Department, will be reimbursed in an amount equal to the approved cost multiplied by the site's Federal reimbursement ratio, until such time as the Department determines that its obligation under Title X to reimburse the licensee has been satisfied.

2. Section 765.31 Designation of Funds Available for Subsequent Remedial Action

Section 765.31 establishes procedures for reimbursement of costs incurred in accordance with an approved plan(s) for subsequent remedial action.

Upon approval of each plan submitted by a licensee, and subject to the availability of appropriated funds and the requirements of the Anti-Deficiency Act (31 U.S.C. § 1341), the Department will designate amounts deposited in the Fund at the United States Department of Treasury, established pursuant to section 1801 of the Atomic Energy Act (42 U.S.C. § 2297g), to reimburse a licensee for estimated costs of remedial action in implementing a Department-approved plan for subsequent remedial action.

3. Section 765.32 Reimbursement of Excess Funds

Section 1001(b)(2)(E)(i) of the Act (42 U.S.C. § 2296a(b)(2)(B)(i)) authorizes the Department to determine, as of July 31, 2005, whether the aggregate amount authorized to be appropriated by section 1003 of the Act (42 U.S.C. § 2296a-2) when considered with the $5.50 per dry short ton limit on reimbursement, as adjusted for inflation, for active uranium processing site licensees, exceeds the amount reimbursable to licensees under section 1001(b)(2) of the Act (42 U.S.C. § 2296a(b)(2)). If any active uranium processing site licensee incurs reimbursable costs in excess of $5.50 per dry short ton limit on reimbursement, and the Department has determined that excess funds exist as of July 31, 2005, section 1001(b)(2)(E)(ii) of the Act (42 U.S.C. § 2296a(b)(2)(E)(ii)) authorizes the Department to provide reimbursement of those costs on a prorated basis to the extent funds are available.

Section 765.32 outlines the procedures that would govern any additional reimbursement.

IV. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866,

"Regulatory Planning and Review," (58 Fed. Reg. 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq. The Regulatory Flexibility Act requires that a regulatory flexibility analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." This rule involves reimbursement for costs of remedial action at active uranium and thorium processing sites. The number of potentially eligible applicants is very limited. Because this rule provides for reimbursement of funds authorized by Title X, it does not pose any adverse effect on the private sector economy or small entities, and in fact may provide a benefit to small entities located near active processing sites. The Department, therefore, certifies that this rule will not have a significant impact on a substantial number of small entities.

VI. Review Under the Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. §§ 3501 et seq.) and have been assigned OMB control number 1910-1400.

VII. Review Under the National Environmental Policy Act

This rule establishes procedures for the reimbursement of eligible remedial action costs incurred by licensees at active uranium or thorium processing sites. Implementation of this rule will result in cost reimbursement payments to eligible licensees, but will not affect the legally required cleanup of the sites or

result in any other environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A6. of Appendix A to Subpart D, 10 CFR Part 1021, which applies to the establishment of procedural rulemakings such as procedures for the review and approval of applications for grants and cooperative agreements. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

VIII. Review Under Executive Order 12612

This rule does not have a substantial direct effect on the States, the relationship between the States and the Federal Government, or the distribution of power and responsibilities among various levels of government. Therefore, no federalism assessment under Executive Order 12612 is required.

IX. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs agencies to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the rule clearly specifies any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings available prior to judicial review; any provisions for the exhaustion of administrative proceedings; and defines key terms. The Department certifies that today's rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

List of Subjects in 10 CFR Part 765

Radioactive ma terials, Reclamation, Reporting and recordkeeping requirements, Uranium.

Issued in Washington, D.C., on this 10th day of May 1994.

Thomas P. Grumbly
Assistant Secretary for Environmental Management

For the reasons set out in the Preamble, Chapter III of Title 10 of the Code of Federal Regulations is amended by adding a new Part 765 to read as follows:

Part 765 - Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

Subpart A - General

Sec.

Subpart B - Reimbursement Criteria

Subpart C - Procedures for Submitting and Processing Reimbursement Requests

Subpart D - Additional Reimbursement Procedures

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

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 section 765.32, the total amount of reimbursement paid to any licensee of an active uranium 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 section 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 section 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 section 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 section 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 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) $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 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, Pub. L. No. 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 section 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.

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 section 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 section 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 section 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 section 765.2(e) of this rule) $270 million (as specified in section 765.2(f) of this rule), $40 million (as specified in section 765.2(g) of this rule) and $310 million (as specified in section 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 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 section 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 information 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 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, S.W., 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 will be governed by, and must comply in full with, the procedures set forth in 10 CFR Part 205, Subpart H. 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.

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 Independence Avenue, S.W., Washington, D.C.

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 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 Department will designate specific amounts on deposit in the Fund for reimbursement, subject to the availability of appropriated funds as specified in section 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 section 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 section 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 section 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 section 765.11.

[6450-01P]

U.S. Department of Energy

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursements in fiscal year 1994.

SUMMARY: This Notice announces the Department of Energy's acceptance of initial claims and the availability of approximately $40.6 million in funds in fiscal year 1994 for reimbursements of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. The Department of Energy anticipates that claims submitted by licensees in fiscal year 1994 will substantially exceed $40.6 million and would therefore be subject to prorated payment.

DATES: The closing date for the submission of claims for reimbursement in fiscal year 1994 is [insert date 45 days after publication in Federal Register].

ADDRESSES: Claims may be mailed to the Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 2155 Louisiana NE, Suite 10000, Albuquerque, NM 87110. All claims should be addressed to the attention of Steven Hamp and sent by registered or certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Steven Hamp, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, (505) 845-4628.

SUPPLEMENTARY INFORMATION:

The Department of Energy is issuing a final rule under 10 CFR Part 765 published elsewhere in this issue to implement the requirements of Title X of the Energy Policy Act of 1992 (sections 1001-1004 of Pub. L. 102-486, 42 U.S.C. §§ 2296 et seq.) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires the Department of Energy to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incidant of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 or, where appropriate, with requirements established by a state pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. § 2021). Claims for reimbursement of costs of remedial action must be supported by reasonable documentation as determined by the Department of Energy in accordance with 10 CFR Part 765. Section 1001(b)(2) of the Act limits the amount of reimbursement to any one licensee of an active uranium mill tailings site to an amount not to exceed $5.50, as adjusted for inflation, multiplied by the number of dry short tons of byproduct material located at the site on October 24, 1992, and generated as an incident of sales to the United States. Total reimbursement, in the aggregate, for work performed at the active uranium sites shall not exceed $270 million, as adjusted for inflation. Total reimbursement for work performed at the active thorium processing site shall not exceed $40 million, as adjusted for inflation, and is limited to costs incurred for offsite disposal.

Funds for the reimbursements will be provided from the

Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. § 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. § 1341).

Authority: Section 1001-1004 of Pub. L. No. 102-486, 106 Stat. 2776 (42 U.S.C. §§ 2296a et seq.)

Issued in Washington, D.C., on this 10th day of May 1994.

Thomas P. Grumbly
Assistant Secretary for Environmental Management