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## DEPARTMENT OF ENERGY

### 10 CFR Part 765

**RIN 1901–AA88**

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

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Final rule; Technical and administrative amendments.

**SUMMARY:** The Department of Energy (DOE) adopts several technical and administrative amendments to its procedural regulations governing the reimbursement of remedial action costs at active uranium and thorium processing sites. Since it was enacted in 1992, the original legislation authorizing the program has been amended four times to increase the amounts authorized for reimbursement and to make technical changes. Today's regulatory amendments reflect the legislative amendments and make other technical corrections that have been identified since the original rule was issued. None of the amendments raise substantive issues or represent changes in policy.

**DATES:** This rule will be effective July 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** David E. Mathes, Office of Environmental Management, EM–30, U.S. Department of Energy, Germantown, Maryland 20874–1290. Telephone: (301) 903–7222. Internet: *david.mathes@em.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Discussion

The Secretary of Energy has approved today's technical and administrative regulatory amendments in order to conform 10 CFR part 765 to legislative amendments to Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486) and the need to make other corrections to the original rule published on May 23, 1994 (59 FR 26714). Congress has amended the original legislation four times since it was enacted on October 24, 1992. In 1996, Public Law 104–259 amended Title X to increase the authorized reimbursement amounts for uranium and thorium licensees from $270 million and $40 million to $350 million and $65 million, respectively, for an aggregate authorized reimbursement amount of $415 million; and to increase the maximum amount that may be reimbursed to uranium licensees per dry short ton of Federal-related byproduct material from $5.50 to $6.25. In 1998, Public Law 105–388 further amended Title X to increase the authorized reimbursement amount for the thorium licensee from $65 million to $140 million, for an aggregate authorized reimbursement amount to uranium and thorium licensees of $490 million. In 2000, Public Law 106–317 amended Title X to change the date for determining the availability of excess funds for reimbursement to uranium licensees from July 31, 2005, to December 31, 2008; to change the date after which work must be completed in accordance with an approved plan for subsequent remedial action to be eligible for reimbursement from December 31, 2002, to December 31, 2007; and to eliminate the requirement for the Department to place certain reimbursement funds in escrow. In 2002, Public Law 107–222 amended Title X to increase the authorized reimbursement amount for the thorium licensee from $140 million to $365 million, for an aggregate authorized reimbursement amount to uranium and thorium licensees of $715 million.

Part 765 is amended in several places to reflect these statutory provisions. Other technical corrections to the original rule are discussed in the following paragraphs.

Section 765.21(e) is revised to provide a licensee with an additional opportunity to provide reasonable documentation, as specified in § 765.20, for claims or portions of claims that DOE has denied during the claim year. The revised rule now gives a licensee 45 days after DOE issues a written decision to deny the claim, in which to provide the documentation for DOE reconsideration of the claim. If a licensee chooses not to submit the documentation, the licensee still has the right to file a formal appeal to the DOE's claim denial in accordance with § 765.22. If a licensee chooses to submit the documentation, DOE will consider whether the documentation results in the DOE's reversal of its initial decision to deny the claim and will inform the licensee of the DOE's subsequent decision. A licensee may also appeal that decision in accordance with § 765.22. By providing this additional opportunity to a licensee, DOE believes that both DOE and the licensee may save time and money by minimizing the number of appeals.

Section 765.23 is amended to indicate the new address for obtaining copies of the DOE status report on the reimbursement program.

Section 765.30(b) presents the procedure for submitting a plan for subsequent remedial action. The original rule indicated that licensees may submit this plan any time after January 1, 2000, but no later than December 31, 2001. Because Congress changed the date after which work must be completed in accordance with an approved plan for subsequent remedial action to be eligible for reimbursement from December 31, 2002, to December 31, 2007, this final rule correspondingly changes the dates for submitting a plan to DOE to any time after January 1, 2005, but no later than December 31, 2006.

Section 765.30(d) outlines the process for resubmitting a revised plan for subsequent remedial action if the original plan is rejected by DOE. The original rule indicated that a licensee may continue to submit revised plans for subsequent remedial action until DOE approves a plan, or September 30, 2002, whichever occurs first. This final rule changes the September 30, 2002, deadline to September 30, 2007, to correspond with the new statutory deadline for making reimbursements in accordance with a subsequent plan for remedial action.

Section 765.30(e) presents the procedures for determining the maximum amounts for which licensees may be eligible for reimbursement for work performed as described in their plans for subsequent remedial action submitted to and approved by DOE. The original rule indicated that a licensee is

eligible for the lesser of two amounts: (1) The total cost of remedial action multiplied by the Federal reimbursement ratio; or (2) $5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. As drafted, the original rule could have been construed to apply the per dry short ton limit to both uranium and thorium licensees. Since Title X (42 U.S.C. § 2296a(b)(2)(A)) limits the applicability of the per dry short ton limit to uranium licensees, this final rule amends § 765.30(e)(2) to clarify that the per dry short ton limit only applies to uranium licensees.

In accordance with § 765.30(b), because licensees' plans for subsequent remedial action are now due no later than December 31, 2006, this final rule amends § 765.30(e)(2) to clarify that the potential additional reimbursement for which a licensee may be entitled will be adjusted after the approval of claims for work performed through December 31, 2007, to account for the actual approved costs of work performed through 2007.

As originally prescribed, § 765.31(a) outlined the procedures for designating specific amounts on deposit in the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of the Treasury for reimbursement of costs incurred in accordance with an approved plan for subsequent remedial action. The purpose of this paragraph was to implement the original requirement of § 1001(b)(1)(B)(ii) of Pub. L. 102–486 that funds be placed in escrow not later than December 31, 2002, in accordance with an approved plan for subsequent remedial action. Because Pub. L. 106–317 amended the original legislation by striking the requirement to place funds in escrow, this final rule removes this paragraph and renumbers the subsequent paragraphs in this section.

## II. Procedural Requirements

### *A. 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 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

### *B. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. There is no legal requirement to propose today's rule for public comment, and therefore, the Regulatory Flexibility Act does not apply to this rulemaking proceeding.

### *D. Review Under the Paperwork Reduction Act*

No new collection of information or recordkeeping requirements is imposed by this final rule. Accordingly, no clearance by OMB is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### *E. Review Under Executive Order 13132*

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### *F. Review Under the National Environmental Policy Act*

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500—1508), DOE has established guidelines for compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). This rule makes technical corrections to procedures for the reimbursement of eligible remedial action costs incurred by licensees at active uranium and thorium processing sites. Implementation of this rule 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.

### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulations on States, local, and tribal governments and the private sector. DOE has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

### *H. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been

determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

**List of Subjects in 10 CFR Part 765**

Radioactive materials, Reclamation, Reporting and record keeping requirements, Uranium.

Issued in Washington, DC, on May 23, 2003.

**Jessie Hill Roberson,**

*Assistant Secretary for Environmental Management.*

■ For the reasons set forth in the preamble, part 765 of chapter III of title 10 of the Code of Federal Regulations is amended as set forth below.

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

■ 1. The authority citation for part 765 is revised to read as follows:

**Authority:** 42 U.S.C. 2296a *et seq.*

■ 2. In the table below, for each section indicated in the left column remove the language indicated in the middle column and add in its place the language indicated in the right column.

| Section | Remove | Add |
|---|---|---|
| 765.2(c) | ''December 31, 2002'' | ''December 31, 2007'' |
| 765.2(e) | ''$5.50'' | ''$6.25'' |
| 765.2(f) | ''$270 million'' | ''$350 million'' |
| 765.2(g) | ''$40 million'' | ''$365 million'' |
| 765.2(i) | ''$310 million'' | ''$715 million'' |
| 765.11(b) | ''December 31, 2002'' | ''December 31, 2007'' |
| 765.11(c)(1) | ''$5.50'' | ''$6.25'' |
| 765.11(c)(2) | ''$270 million'' | ''$350 million'' |
| 765.11(c)(3) | ''$40 million'' | ''$365 million'' |
| 765.12(a) | a. ''$5.50'' | a. ''$6.25'' |
| | b. ''$270 million'' | b. ''$350 million'' |
| | c. ''$40 million'' | c. ''$365 million'' |
| | d. ''$310 million'' | d. ''$715 million'' |
| 765.12(c) | ''$5.50'' | ''$6.25'' |
| 765.23 | ''Uranium Mill Tailings Remedial Action Project Office, 2155 Louisiana NE., Suite 10000, Albuquerque, NM 87110''. | ''National Nuclear Security Administration Service Center, Office of Technical Services, Environmental Programs Department, P.O. Box 5400, Albuquerque, NM 87185–5400'' |
| 765.30(b) | a. ''December 31, 2002'' | a. ''December 31, 2007'' |
| | b. ''January 1, 2000'' | b. ''January 1, 2005'' |
| | c. ''December 31, 2001'' | c. ''December 31, 2006'' |
| 765.30(b)(2) | ''December 31, 2002'' | ''December 31, 2007'' |
| 765.30(d) | a. ''September 30, 2002'' | a. ''September 30, 2007'' |
| | b. ''December 31, 2002'' | b. ''December 31, 2007'' |
| 765.32(a) | ''July 31, 2005'' | ''December 31, 2008'' |
| 765.32(c) | ''$5.50'' | ''$6.25'' |

■ 3. In §765.3, the definitions are amended by revising the introductory text and paragraph (2) of *Maximum reimbursement amount* or *maximum reimbursement ceiling* and *Plan for subsequent remedial action* to read as follows:

**§ 765.3 Definitions.**

* * * * *

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

* * * * *

(2) $6.25, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material.

* * * * *

*Plan for subsequent remedial action* means a plan approved by the Department which includes an estimated total cost and schedule for remedial action, and all applicable requirements of remedial action established by NRC or an Agreement State to be performed after December 31, 2007, at an active uranium or thorium processing site.

* * * * *

■ 4. In §765.21, paragraph (e) is revised to read as follows:

**§ 765.21 Procedures for processing reimbursement claims.**

* * * * *

(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 claim review. Within 45 days after the Department's issuance of a written decision to deny the claim due to inadequate documentation, the licensee may request the Department to reconsider its decision if the licensee provides reasonable documentation in accordance with § 765.20. If a licensee chooses not to submit the documentation, the licensee has the right to file a formal appeal to a claim denial in accordance with § 765.22. If a licensee chooses to submit the documentation, the Department will consider whether the documentation results in the Department's reversal of the initial decision to deny the claim and will inform the licensee of the Department's subsequent decision. The licensee may appeal that decision in accordance with § 765.22.

* * * * *

■ 5. In § 765.30, paragraph (e)(2) is revised to read as follows:

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

* * * * *

(e) * * *

(1) * * *

(2) For the uranium site licensees only, $6.25, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. For all licensees, 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. This resulting sum will be adjusted after the approval of claims for work performed through December 31, 2007, to reflect the actual approved costs of work performed through that date.

**§ 765.31 [Amended]**

■ 6. Section 765.31 is amended by removing paragraph (a) and redesignating paragraphs (b) through (d) as paragraphs (a) through (c).

[FR Doc. 03–13858 Filed 6–2–03; 8:45 am]

**BILLING CODE 6450–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Parts 703 and 742

## Investment and Deposit Activities and Regulatory Flexibility Program

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending its rule regarding the investment activities of Federal Credit Unions (FCUs). The amendments clarify and reformat the rule to make it easier to read and locate information. The amendments expand FCU investment authority to include purchasing equity-linked options for certain purposes and exempt RegFlex eligible FCUs from several investment restrictions. NCUA is also amending the Regulatory Flexibility Program to conform to the revisions to the investment rule.

**DATES:** The final rule is effective July 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Scott Hunt, Senior Investment Officer, Office of Strategic Program Support and Planning (OSPSP) at the above address or telephone (703) 518–6620; Dan Gordon, Senior Investment Officer, OSPSP at the above address or telephone; Kim Iverson, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; or Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### A. Background

NCUA identified part 703 of its rules as in need of revision. To that end, NCUA issued an advance notice of proposed rulemaking (ANPR) on October 18, 2001. 66 FR 54168 (October 26, 2001). After considering the comments to the ANPR submitted by 38 commenters, NCUA issued a proposed rule on December 19, 2002. 67 FR 78996 (December 27, 2002). NCUA received 14 comment letters regarding the proposed rule: five from FCUs, one from a State credit union, five from financial services entities, and three from credit union trade organizations. The comments were generally supportive of the proposal.

### B. Summary of Comments

*1. Broker-dealers and Safekeeping of Investments*

Throughout the rulemaking process, NCUA has expressed concern about the purchase of some brokered certificates of deposit (CDs). Deceptive practices or outright fraud on the part of some broker-dealers and safekeepers have caused losses for FCUs. NCUA does not believe, however, that more stringent standards on broker-dealers or safekeepers, such as those contemplated by the ANPR, would prevent losses. NCUA believes continued guidance to FCUs and prudent due diligence by FCUs is the best course of action. Therefore, NCUA is not making any substantive changes to broker-dealer and safekeeping requirements in this regard. The commenters generally supported this position.

The proposed rule permits the use of depository institutions whose broker-dealer activities are regulated by a State regulatory agency. This provides FCUs with greater access to broker-dealers. NCUA also believes additional broker-dealer competition promotes improved service, better execution, and reduced costs. The commenters supported this proposal. The Board adopts this proposed revision in the final rule.

Former § 703.50(c) exempts CD finders from the broker-dealer requirements. It was always NCUA's intent to carry this exemption forward in proposed § 703.8 as indicated in the preamble to the proposed rule. 67 FR 78996, 78996–97 (December 27, 2002). Specifically, if an FCU purchases a CD or share certificate directly from a bank, credit union, or other depository institution that issues the certificate, the FCU will not be bound by the broker-dealer requirements. This exemption was inadvertently omitted in the regulatory language in § 703.8 of the proposed rule through a clerical error. As stated in the proposal's preamble, NCUA indicated it was making no changes to the broker-dealer section of the rule in this regard. Thus, the inclusion of this exemption in the final rule will not change the requirements pertaining to the use of broker-dealers.

To be consistent with the broker-dealer requirements, the proposed rule added a due diligence requirement that calls for an FCU to review a safekeeper's financial condition, in addition to its registration status, and retain the documentation used to approve a safekeeper. NCUA believes these requirements represent prudent, minimum practices that FCUs should follow when evaluating a safekeeper. In addition, the proposed rule permitted State-regulated trust companies to be safekeepers for FCUs. NCUA recognizes these firms can provide a sound alternative for FCUs.

The commenters overwhelmingly concurred with this aspect of the proposed rule. NCUA adopts this proposal in the final rule.

*2. Expanded Investment Authorities*

The Federal Credit Union Act (Act) enumerates FCU investment powers. 12 U.S.C. 1757(7), (8), and (15). NCUA has adopted regulatory prohibitions against certain investments and investment activities permitted by the Act on the basis of safety and soundness concerns. In revising the rule, NCUA has explored ways to expand FCU investment powers. Generally, those investments currently prohibited by regulation exhibit high risks or are unsuitable for many FCUs, such as stripped mortgage-backed securities or variable rate investments tied to non-domestic interest rates.

As one means of expanding investment powers, the proposed rule permits some FCUs to purchase commercial mortgage related securities (CMRS), subject to certain restrictions. Specifically, the proposed rule limits the purchase of CMRS, which are not otherwise permitted by § 107(7)(E) of the Act, 12 U.S.C. 1757(7)(E), to RegFlex eligible FCUs. 12 CFR part 742. Further, a RegFlex eligible FCU may purchase CMRS if the CMRS: (1) Are rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization; (2) otherwise meet the definitions of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and CMRS as defined in proposed § 703.2; and (3) have an underlying pool of loans containing more than 50 loans with no one loan representing more than 10 percent of the pool. A RegFlex eligible FCU is limited to purchasing CMRS in an aggregate amount of up to 50 percent of its net worth. Most commenters supported NCUA's proposal to permit RegFlex eligible FCUs to purchase