

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