

§ 765.22

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).

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

§ 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, SW., 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 must comply with the procedures set forth in 10 CFR part 1003, subpart C. 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.

[59 FR 26726, May 23, 1994, as amended at 60 FR 15017, Mar. 21, 1995]

§ 765.23 Annual report.

The Department shall prepare annually a report summarizing pertinent information concerning claims submitted in the previous calendar year, the sta-

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tus 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 National Nuclear Security Administration Service Center, Office of Technical Services, Environmental Programs Department, P.O. Box 5400, Albuquerque, NM 87185–5400 and will also be available in the Department's Freedom of Information Reading room, 1000 Independence Avenue SW., Washington, DC.

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

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, 2007 may submit a plan for subsequent remedial action. This plan may be submitted at any time after January 1, 2005, but no later than December 31, 2006. Reimbursement of costs of remedial action incurred after December 31, 2007 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