interest imputed under § 1.482–2(a)(3), it is exempt from section 7872.

Exemption for Money, Securities and Property Received by Futures Commissions Merchants, Etc.

Commentators suggested that the exemption for money, securities and property deposited with a futures commission merchant or with a clearing organization be made permanent. The Service has concluded that the interest arrangements of such deposits do not have a significant effect on the Federal tax liability of the borrower or lender. Accordingly, this document removes the limitation that only money, securities and property received prior to July 1, 1986 are exempt from the application of section 7872. Additionally, the regulations extend the exemption to margin payments received by a stockbroker and to clearing fund deposits.

The continued exemption from the below-market loan rules for these types of deposits reflects current practice with respect to such deposits, under which the level of commissions charged to customers is not based on whether deposits are made in the form of money or interest-bearing securities. If current practice evolves in the direction of large interest-free cash deposits and lower commissions to attempt to obtain an indirect deduction for commission expenses, the Service will reconsider whether this exemption is warranted.

Exemptions for Loans to Charitable Organizations

Commentators suggested that the exemption for loans to a charitable organization be modified to apply the de minimis limitation to loans to each such organization, rather than to all such organizations. The Service has concluded that such a modification is appropriate and that the interest arrangements of loans subject to such limits will not have a significant effect on the Federal tax liability of the borrower or lender. The Service has additionally concluded that if loans to a charitable organization are not greater than $250,000 the interest arrangements of such loans will not have a significant effect on the Federal tax liability of the borrower or lender.

Inapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6.)

Drafting Information

The principal author of these regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Gift taxes, Below-market loans.

PART 1—[AMENDED]

Amendments to the regulations

The amendments to 26 CFR Part 1 are as follows:

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 1.7872–5T also issued under 26 U.S.C. 7872.

Par. 2. Section 1.7872–5T (b) is amended by revising paragraphs (b) (9), (12) and (13) to read as follows.

§ 1.7872–5T Exempted Loans (Temporary)

* * * * *

(b) * * *

(9) Loans to a charitable organization (described in section 170(c)), but only if at no time during the taxable year will the aggregate outstanding amount of loans by the lender to that organization exceed $250,000. Charitable organizations which are effectively controlled, within the meaning of section 1.482–1(a)(1), by the same person or persons shall be considered one charitable organization for purposes of this limitation.

* * * * *

(12) Any loan expected from the application of section 482 for the period referred to in § 1.482–2(a)(3).

(13) All money, securities, and property—

(i) Received by a futures commission merchant or registered broker/dealer or by a clearing organization (A) to margin, guarantee or secure contracts for future delivery on or subject to the rules of a qualified board or exchange (as defined in section 1256(g)(7)), or (B) to purchase, margin, guarantee or secure options contracts traded on or subject to the rules of a qualified board or exchange, so long as the amounts so received to purchase, margin, guarantee or secure such contracts for future delivery or such options contracts are reasonably necessary for such purposes and so long as any commissions received by the futures commission merchant, registered broker-dealer, or clearing organization are not reduced for those making deposits of money, and all money accruing to account holders as the result of such futures and options contacts or

(ii) Received by a clearing organization from a member thereof as a required deposit to a clearing fund, guaranty fund, or similar fund maintained by the clearing organization to protect it against defaults by members.

* * * * *

Note.—There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under section (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: June 30, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-15618 Filed 7-9-86; 8:45 am]

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26 CFR Parts 1 and 602

[T.D. 8094]

Income Taxes; Special Rules Relating to Nuclear Decommissioning Costs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the Federal income tax treatment of nuclear decommissioning costs. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.** Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect all taxpayers that include nuclear decommissioning costs in cost of service for ratemaking purposes.

DATES: The regulations are effective on July 18, 1984, and apply with respect to taxable years ending on or after such date.

FOR FURTHER INFORMATION CONTACT: C. Scott McLeod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T, 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) and the Table of OMB Control Numbers (26 CFR Part 602) to provide rules under sections 88 and 468A of the Internal Revenue Code of 1954. Section 88 was added to the Code by section 91(f) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 607) and section 468A was added to the Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 604).

Explanation of Provisions

Section 88 requires taxpayers that are engaged in the furnishing or sale of electric energy generated by a nuclear power plant to include in gross income the amount of nuclear decommissioning costs that are included in cost of service for ratemaking purposes for any taxable year. The regulations clarify that the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer, whether paid to the taxpayer, a nuclear decommissioning fund or other entity, must be included in the gross income of such taxpayer in the same manner as amounts charged for electric energy, even though the taxpayer does not control the investment or current expenditure of the amount. In addition, the regulations provide general guidance on the effective date of section 88.

Section 468A provides an elective method for taking into account nuclear decommissioning costs for Federal income tax purposes. In general, an eligible taxpayer that elects the application of section 468A is allowed a deduction for the amount of cash payments made to a nuclear decommissioning fund during any taxable year. Taxpayers using an accrual method of accounting that do not elect the application of section 468A are not allowed a deduction for nuclear decommissioning costs prior to the taxable year in which economic performance occurs with respect to such costs (see section 461(h)).

Section 468A(b) limits the amount of deductible cash payments that can be made to a nuclear decommissioning fund during any taxable year to the lesser of (1) the amount of nuclear decommissioning costs allocable to the fund that is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or (2) the ruling amount applicable to the fund for such taxable year. Cash payments made to a nuclear decommissioning fund during any taxable year that exceed the limitation are not deductible by the taxpayer and may cause a disqualification of the fund.

Section 468A(d) provides that a taxpayer must request and receive a schedule of ruling amounts from the Internal Revenue Service in order for amounts paid to a nuclear decommissioning fund to be allowed as a deduction. The schedule of ruling amounts is a schedule of annual amounts that the Internal Revenue Service determines to be necessary to fund, at a rate no more rapid than level funding, the portion of the total estimated cost of decommissioning that is attributable to the remaining estimated useful life of the nuclear power plant as of the date of the nuclear decommissioning fund is established. The schedule of ruling amounts is required to be reviewed by the Internal Revenue Service at least once during the estimated useful life of the nuclear power plant or more frequently at the request of the taxpayer.

Section 468A(e)(1) provides that a nuclear decommissioning fund is to be established by the taxpayer for each nuclear power plant to which the section 468A election applies. The assets of a nuclear decommissioning fund are to be used exclusively (1) to satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates, (2) to pay administrative costs and other incidental expenses of the nuclear decommissioning fund, and (3) to the extent that the assets of the nuclear decommissioning fund are not required for the aforementioned purposes, to invest in public debt securities of the United States, obligations of a State or local government, or time or demand deposits. In addition, section 468A(e)(5) and (6) contains special rules to discourage acts of self-dealing between the nuclear decommissioning fund and certain disqualified persons. If a nuclear decommissioning fund fails to comply with the qualification requirements or engages in an act of self-dealing, it may be disqualified by the Internal Revenue Service and treated as having distributed its assets on the date of disqualification.

Section 468A(e)(2) provides that the gross income of a nuclear decommissioning fund is subject to tax at the maximum rate in effect under section 11(b). In determining the gross income of a nuclear decommissioning fund for purposes of this tax, the amount of any payment to the fund that is deductible by the taxpayer under section 468A is excluded from the gross income of the fund and the amount of administrative costs and other incidental expenses of the fund paid by the fund to any person other than the taxpayer is deductible by the fund if such amount would be deductible in determining the taxable income of a corporation. Finally, for purposes of subtitle F of the Code (relating to procedure and administration), a nuclear decommissioning fund is treated as a corporation and any tax imposed on the income of the nuclear decommissioning fund is treated as a tax imposed by section 11.

In general, the amount of any actual distribution from a nuclear decommissioning fund must be included in the gross income of the taxpayer for the taxable year in which the distribution occurs. Thus, the amount of any distribution from a nuclear decommissioning fund used to satisfy, in whole or in part, any liability for the decommissioning of a nuclear power plant must be included in gross income of the taxpayer. The amount of an actual distribution from a nuclear decommissioning fund to pay administrative costs or other incidental expenses of the nuclear decommissioning fund is not included in the gross income of the taxpayer, however, unless such amount is paid to the taxpayer. In addition, the amount of any deemed distribution must be included in the gross income of the taxpayer for the taxable year in which the deemed distribution occurs. A deemed distribution from a nuclear decommissioning fund generally occurs upon the disqualification of the fund, a disposition of an interest in the nuclear power plant to which the fund relates or the substantial completion of the decommissioning of the nuclear power plant to which the fund relates.

The regulations under section 468A specify those taxpayers that are eligible for, and the manner of making, the election under section 468A. In addition, the regulations provide specific guidance on the manner of requesting a schedule of ruling amounts and the factors to be taken into account in determining a schedule of ruling amounts. Finally, the regulations provide guidance on the nuclear decommissioning fund qualification requirements, the consequences if a nuclear decommissioning fund is disqualified, the treatment of the selling and purchasing taxpayer in the case of a disposition of an interest in a nuclear power plant, the effective date of section 468A and the transitional rules applicable to taxpayers that elect section 468A for taxable years beginning before January 1, 1987.

Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act.

Drafting Information

The principal author of these regulations is C. Scott McLeod of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61-1 through 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.441-1 through 1.483-2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 1 and Part 602 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.468A-5T also issued under 26 U.S.C. 468A(e)(5).

Par. 2. The following new section is added immediately after § 1.85-1 to read as follows:

§ 1.88-1T Nuclear decommissioning costs (temporary).

(a) *In general.* Section 88 provides that the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer that is engaged in the furnishing or sale of electric energy generated by a nuclear power plant must be included in the gross income of such taxpayer in the same manner as amounts charged for electric energy. For this purpose, amounts payable to any other person (such as a trust or State government) shall be treated as if payable to the taxpayer. Thus, the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer, whether paid to the taxpayer, a nuclear decommissioning fund or other entity, is required to be included in gross income under section 88 and this section, even though the taxpayer does not control the investment or current expenditure of the amount and the amount will not be paid to the taxpayer at the time decommissioning costs are incurred.

(b) *Example.* The following example illustrates the application of the principles of paragraph (a) of this section:

Example. X corporation, an accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X, is authorized by the public utility commission of State A to collect nuclear decommissioning costs from ratepayers residing in State A. With respect to the sale of electric energy, X includes in income amounts that have been billed to customers as well as estimated unbilled amounts that relate to energy provided by X after the previous billing but before the end of the taxable year ("accrued unbilled amounts"). The decommissioning costs are included in the monthly bills provided by X to its ratepayers and the entire amount billed is remitted directly to X. Under paragraph (a) of this section, the decommissioning costs must be included in the gross income of X in the same manner as amounts charged for electric energy (*i.e.*, by including in income decommissioning costs that relate to amounts billed as well as decommissioning costs that relate to accrued unbilled amounts). The same rule would apply if the decommissioning costs charged to ratepayers were separately billed and the amounts billed were remitted to State A to be held in trust for the purpose of decommissioning the nuclear power plant owned by X. In that case, X must include in gross income decommissioning costs that relate to amounts billed as well as decommissioning costs that relate to accrued unbilled amounts.

(c) *Cross reference.* For special rules relating to the deduction for amounts paid to a nuclear decommissioning fund, see § 1.468A-1T through § 1.468A-8T.

(d) *Effective date.* (1) Section 88 and this section apply to nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer on or after July 18, 1984, and with respect to taxable years ending on or after such date.

(2) If the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer before July 18, 1984, is includible in gross income in a different manner than amounts charged for electric energy, such amount must be included in gross income for the taxable year in which includible in gross income under the method of accounting of the taxpayer that was in effect when such amount was charged to customers.

Par. 3. The following new §§ 1.468A-1T through 1.468A-8T are added in the appropriate places:

§ 1.468A-1T Nuclear decommissioning costs; general rules (temporary).

(a) *Introduction.* Section 468A provides an elective method for taking into account nuclear decommissioning costs for Federal income tax purposes. In general, an eligible taxpayer that elects the application of section 468A pursuant to the rules contained in § 1.468A-7T is allowed a deduction (as determined under § 1.468A-2T) for the taxable year in which the taxpayer makes a cash payment to a nuclear decommissioning fund. Taxpayers using an accrual method of accounting that do not elect the application of section 468A are not allowed a deduction for nuclear decommissioning costs prior to the taxable year in which economic performance occurs with respect to such costs (see section 461(h)).

(b) *Definitions.* The following terms are defined for purposes of §§ 1.468A-1T through 1.468A-8T:

(1) The term "eligible taxpayer" means any taxpayer that possesses a direct ownership interest in a nuclear power plant (including a nuclear power plant that is under construction). Such term includes a taxpayer that owns an interest in a nuclear power plant as a tenant in common or joint tenant, but does not include a taxpayer that owns stock in a corporation which owns a nuclear power plant or a taxpayer that is a partner in a partnership which owns a nuclear power plant. Thus, in the case of a partnership that owns a nuclear power plant, the election under section 468A must be made by the partnership and not by the partners.

In the case of an unincorporated organization described in § 1.761-2(a)(3) that elects under section 761(a) to be excluded from the application of subchapter K, each taxpayer that is a co-owner of the nuclear power plant is eligible to make a separate election under section 468A.

(2) The term "nuclear decommissioning fund" means a fund that satisfies the requirements of § 1.468A-5T.

(3) The term "nuclear power plant" means any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy, if the rates for such furnishing or sale, as the case may be, have been established or approved by a public utility commission. Each unit (*i.e.*, nuclear reactor) located on a multi-unit site is a separate nuclear power plant.

(4) The term "nuclear decommissioning costs" or "decommissioning costs" means all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant that has permanently ceased the production of electric energy. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all othewise deductible expenses to be incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses. Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425). An expense is otherwise deductible for purposes of this paragraph (b)(4) if it would be deductible under chapter 1 of the Internal Revenue Code without regard to section 280B.

(5) The term "public utility commission" means any State or political subdivision thereof, any agency, instrumentality or judicial body of the United States, or any judicial body, commission or other similar body of the District of Columbia or of any State or any political subdivision thereof that establishes or approves rates for the furnishing or sale of electric energy.

§ 1.468A-2T Treatment of electing taxpayer (temporary).

(a) *In general.* An eligible taxpayer that elects the application of section 468A pursuant to the rules contained in § 1.468A-7T (an "electing taxpayer") is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment as provided in paragraph (c) of this section) to a nuclear decommissioning fund. The amount of the deduction for any taxable year equals the total amount of cash payments made (or deemed made) by the electing taxpayer to a nuclear decommissioning fund (or nuclear decommissioning funds) during such taxable year. A payment may not be made (or deemed made) to a nuclear decommissioning fund before the first taxable year in which all of the following conditions are satisfied:

(1) The construction of the nuclear power plant has commenced.

(2) Nuclear decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates are included in the taxpayer's cost of service for ratemaking purposes (see paragraph (b) of this section).

(3) A ruling amount is applicable to the nuclear decommissioning fund (see § 1.468A-3T).

(b) *Limitation on payments to a nuclear decommissioning fund*—(1) *In general.* For purposes of paragraph (a) of this section, the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year shall not exceed the lesser of—

(i) The cost of service amount applicable to the nuclear decommissioning fund for such taxable year (as defined in paragraph (b)(2) of this section); or

(ii) The ruling amount applicable to the nuclear decommissioning fund for such taxable year (as determined under § 1.468A-3T).

If the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of this paragraph (b)(1), the excess is not deductible by the electing taxpayer. In addition, see paragraph (c) of § 1.468A-5T for rules which provide that the Internal Revenue Service may disqualify a nuclear decommissioning fund if the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of this paragraph (b)(1).

(2) *Cost of service amount.* (i) For purposes of section 468A and the regulations thereunder, the "cost of service amount applicable to a nuclear decommissioning fund for a taxable year" is the amount of decommissioning costs included in the electing taxpayer's cost of service for ratemaking purposes for such taxable year that is properly allocable to the nuclear power plant to which the nuclear decommissioning fund relates. The allocation of the amount of decommissioning costs included in cost of service to each of the nuclear power plants of the electing taxpayer must be performed on a reasonable and consistent basis taking into account the assumptions and determinations, if any, used by the public utility commission(s) in establishing or approving the amount of decommissioning costs included in cost of service.

(ii) Decommissioning costs shall generally not be considered included in cost of service for purposes of this section unless—

(A) The order or opinion of the applicable public utility commission identifies the amount of decommissioning costs that is included in cost of service for ratemaking purposes; or

(B) The written records of the ratemaking proceeding clearly and unambiguously indicate the amount of decommissioning costs that is included in cost of service for ratemaking purposes.

(c) *Deemed payment rules.* (1) The amount of any cash payment made by an electing taxpayer to a nuclear decommissioning fund on or before the 15th day of the third calendar month after the close of any taxable year (the "deemed payment deadline date") shall be deemed made during such taxable year if the electing taxpayer irrevocably designates the amount as relating to such taxable year on its timely filed Federal income tax return for such taxable year (see paragraph (b)(4)(iv) of § 1.468A-7T for rules relating to such designation).

(2) The amount of any cash payment made by a customer of an electing taxpayer to a nuclear decommissioning fund of such electing taxpayer shall be deemed made by the electing taxpayer if the amount is included in the gross income of the electing taxpayer in the manner prescribed by section 88 and § 1.88-1T.

(d) *Treatment of distributions*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, the amount of any actual or deemed distribution from a nuclear decommissioning fund shall be included in the gross income of the electing taxpayer for the taxable year in which the distribution occurs. A distribution from a nuclear decommissioning fund shall include an expenditure from the fund or the use of the fund's assets—

(i) To satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the fund relates; or

(ii) To pay administrative costs and other incidental expenses of the fund. See paragraphs (c) and (d) of § 1.468A–5T for rules relating to the deemed distribution of the assets of a nuclear decommissioning fund in the case of a disqualification or termination of the fund. In addition, see paragraph (a) of § 1.468A–6T for rules relating to the deemed distribution of the assets of a nuclear decommissioning fund in the case of a disposition of an interest in a nuclear power plant.

(2) *Exceptions to inclusion in gross income*—(i) *Payment of administrative costs and incidental expenses.* The amount of any payment by a nuclear decommissioning fund for administrative costs or other incidental expenses of such fund (as defined in paragraph (a)(3)(ii)(A) of § 1.468A–5T) shall not be included in the gross income of the electing taxpayer unless such amount is paid to the electing taxpayer (in which case the amount of the payment is included in the gross income of the electing taxpayer under section 61).

(ii) *Withdrawals of excess contributions.* The amount of a withdrawal of an excess contribution (as defined in paragraph (c)(2)(ii) of § 1.468A–5T) by an electing taxpayer pursuant to the rules of paragraph (c)(2) of § 1.468A–5T shall not be included in the gross income of the electing taxpayer. See paragraph (b)(1) of this section, which provides that the payment of such amount to the nuclear decommissioning fund is not deductible by the electing taxpayer.

(iii) *Actual distributions of amounts included in gross income as deemed distributions.* If the amount of a deemed distribution is included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurs, no further amount is required to be included in gross income when the amount of the deemed distribution is actually distributed by the nuclear decommissioning fund. The amount of a deemed distribution is actually distributed by a nuclear decommissioning fund as the first actual distributions are made by the nuclear decommissioning fund on or after the date of the deemed distribution.

(iv) *Distributions upon substantial completion of decommissioning.* The amount of a deemed distribution of the assets of a nuclear decommissioning fund upon termination of the fund (see paragraph (d) of § 1.468A–5T) shall not be included in the gross income of the electing taxpayer for the taxable year in which the termination occurs to the extent that the amount is refunded to ratepayers within one calendar year after the termination of the fund. Thus, an amended return may be required if an amount is refunded within the one-year period but after the filing of the original return for the taxable year in which the termination occurs.

(e) *Deduction when economic performance occurs.* An electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs no earlier than the taxable year in which economic performance occurs with respect to such costs (see section 461(h)(2)). The amount of nuclear decommissioning costs that is deductible under this paragraph (e) is determined without regard to section 280B (see paragraph (b)(4) of § 1.468A–1T). A deduction is allowed under this paragraph (e) whether or not a deduction was allowed with respect to such costs under section 468A(a) and paragraph (a) of this section for an earlier taxable year (see paragraph (a)(2) of § 1.468A–8T, however, for the effective date applicable to this paragraph (e)).

(f) *Effect of interim rate orders and retroactive adjustments to such orders*—(1) *In general.* (i) The amount of decommissioning costs included in cost of service for any taxable year that ends before the date of a retroactive adjustment to an interim rate order or interim determination of a public utility commission shall include amounts authorized pursuant to such interim rate order or interim determination unless a taxpayer elects the application of paragraph (f)(2) of this section for such taxable year.

(ii) If a retroactive adjustment to an interim rate order or interim determination reduces the amount of decommissioning costs included in cost of service for one or more taxable years ending before the date of the adjustment, the amount of such reduction shall be subtracted from the amount of decommissioning costs included in cost of service (as determined under paragraph (b)(2) of this section) for one or more taxable years ending on or after the date of the adjustment. For this purpose, the amount of such reduction shall be taken into account in the following manner:

(A) If the retroactive order reduces the amount of decommissioning costs included in cost of service for one taxable year ending before the date of the adjustment, the total amount of the reduction shall be taken into account for the taxable year that includes the date of the adjustment.

(B) If the retroactive order reduces the amount of decommissioning costs included in cost of service for two taxable years ending before the date of the adjustment, one-half of the total amount of the reduction shall be taken into account for each of the first two taxable years ending on or after the date of the adjustment.

(C) If the retroactive order reduces the amount of decommissioning costs included in cost of service for three or more taxable years ending before the date of the adjustment, one-third of the total amount of the reduction shall be taken into account for each of the first three taxable years ending on or after the date of the adjustment.

(2) *Special rule permitting withdrawal of excess contribution that results from retroactive adjustment to interim rate order.* (i) If a retroactive adjustment that reduces the amount of decommissioning costs included in cost of service for a taxable year occurs on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for such taxable year, a taxpayer may elect the application of this paragraph (f)(2) for such taxable year by—

(A) Including in the amount of decommissioning costs included in cost of service for such taxable year only the amount of decommissioning costs authorized for such taxable year under the retroactive adjustment; and

(B) Withdrawing any excess contribution that results from such treatment in accordance with the rules of paragraph (c)(2) of § 1.468A–5T.

(ii) If a taxpayer elects the application of this paragraph (f)(2) for any taxable year, the retroactive adjustment shall not be treated for purposes of paragraph (f)(1)(ii) of this section as a reduction in the amount of decommissioning costs included in cost of service for such taxable year.

(3) *Revised schedule of ruling amounts.* If the rules provided in this paragraph (f) result in a cost of service amount applicable to a nuclear decommissioning fund for any taxable year that is less than the cost of service amount applicable to the nuclear decommissioning fund for the immediately preceding taxable year, the taxpayer is generally required to request a revised schedule of ruling amounts for the period beginning with the taxable year in which the taxpayer's request must be filed (see paragraph (i)(1)(iii)(C) of § 1.468A–3T. If a taxpayer has made an election under paragraph (f)(2) of this section and is required to request a revised schedule of ruling amounts by reason of the cost of service limitation

described in paragraph (f)(2)(i)(A) of this section, the taxpayer must file a request for a revised schedule on or before the 90th day following the date that the excess contribution is withdrawn from the nuclear decommissioning fund.

(4) *Example.* The following example illustrates the application of the principles of this paragraph (f):

Example. X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X. During 1989, X is authorized pursuant to an interim rate order issued by the public utility commission of State A to collect nuclear decommissioning costs of $500,000 per year beginning on January 1, 1990. On July 1, 1992, the public utility commission of State A issues a final rate order that authorizes X to collect decommissioning costs of $400,000 per year as of January 1, 1990. The excess decommissioning costs of $250,000 collected between January 1, 1990, and July 1, 1992, must be refunded to the ratepayers of State A by X.

If X elects the application of paragraph (f)(2) of this section for the 1991 taxable year, the amount of decommissioning costs included in cost of service for such taxable year is $400,000. If X made a contribution of $500,000 to a nuclear decommissioning fund for the 1991 taxable year, X must withdraw $100,000 from the nuclear decommissioning fund on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the 1991 taxable year (see paragraph (c)(2) of § 1.468A–5T.

In addition, under paragraph (f)(1)(i) of this section, the amount of decommissioning costs included in cost of service for the 1990 taxable year is $500,000, and, under paragraph (f)(1)(ii) of this section, the amount of decommissioning costs included in cost of service for the 1992 taxable year is $300,000. Because the cost of service amount for the 1991 taxable year ($400,000) is less than the cost of service amount for the 1990 taxable year ($500,000) (and because the Internal Revenue Service was not notified of the decrease in the taxpayer's most recent request for a schedule of ruling amounts), paragraph (i)(1)(iii)(C) of § 1.468A–3T applies and X must file a request for a revised schedule of ruling amounts for the period beginning with the 1992 taxable year on or before the 90th day following the date that the excess contribution for 1991 is withdrawn from the nuclear decommissioning fund.

Alternatively, if X does not elect the application of paragraph (f)(2) of this section for the 1991 taxable year, under paragraph (f)(1)(i) of this section, the amount of decommissioning costs included in costs of service for the 1990 and 1991 taxable years is $500,000, and, under paragraph (f)(1)(ii) of this section, the amount of decommissioning costs included in cost of service for the 1992 and 1993 taxable years is $300,000. Because the cost of service amount for the 1992 taxable year ($300,000) is less than the cost of service amount for the 1991 taxable year ($500,000) (and because the Internal Revenue Service was not notified of the decrease in the taxpayer's most recent request for a schedule of ruling amounts), paragraph (i)(1)(iii)(C) of § 1.468A–3T applies and X must file a request for a revised schedule of ruling amounts for the period beginning with the 1993 taxable year on or before June 29, 1993.

§ 1.468A–3T Ruling amount (temporary).

(a) *In general.* (1) An electing taxpayer is allowed a deduction under section 468A(a) for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer has received a schedule of ruling amounts for the nuclear decommissioning fund that includes a ruling amount for such taxable year. A schedule of ruling amounts for a nuclear decommissioning fund ("schedule of ruling amounts") is a ruling (within the meaning of paragraph (a)(2) of § 601.201) specifying the annual payments ("ruling amounts") that, over the taxable years remaining in the "funding period" as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event greater than) the "amount of decommissioning costs allocable to the fund." The projected balance of a nuclear decommissioning fund as of the last day of the funding period shall be calculated by taking into account the fair market value of the assets of the fund as of the first day of the first taxable year to which the schedule of ruling amounts applies and the estimated rate of return to be earned by the assets of the fund after payment of the estimated administrative costs and incidental expenses to be incurred by the fund (as defined in paragraph (a)(3)(ii)(A) of § 1.468A–5T), including all Federal, State and local income taxes to be incurred by the fund (the "after-tax rate of return"). See paragraph (c) of this section for a definition of funding period and paragraph (d) of this section for guidance with respect to the amount of decommissioning costs allocable to a fund.

(2) To the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on the reasonable assumptions and determinations used by the applicable public utility commission(s) in establishing or approving the amount of decommissioning costs included in cost of services for ratemaking purposes. Thus, for example, each schedule of ruling amounts shall be based on the public utility commission's reasonable assumptions concerning the after-tax rate of return to be earned by the nuclear decommissioning fund and the reasonable assumptions concerning the total estimated cost of decommissioning the nuclear power plant.

(3) The Internal Revenue Service shall provide a schedule of ruling amounts that is identical to the schedule of ruling amount proposed by the taxpayer in connection with the taxpayer's request for a schedule of ruling amounts (see paragraph (h)(2)(viii) of this section), but no schedule of ruling amounts shall be provided unless the taxpayer's proposed schedule of ruling amounts is consistent with the principles and provisions of this section. If a proposed schedule of ruling amounts is not consistent with the principles and provisions of this section, the taxpayer may propose an amended schedule of ruling amounts that is consistent with such principles and provisions.

(4) The Internal Revenue Service may, in its discretion, provide a schedule of ruling amounts that is determined on a basis other than the rules of paragraph (a) through (g) of this section if—

(i) In connection with its request for a schedule of ruling amounts, the taxpayer explains the need for special treatment and sets forth an alternative basis for determining the schedule of ruling amounts; and

(ii) The Internal Revenue Service determines that special treatment is consistent with the purpose of section 468A.

(b) *Level funding limitation*—(1) The ruling amount specified in a schedule of ruling amounts for any taxable year in the level funding limitation period shall not be less than the ruling amount specified in such schedule for any earlier taxable year.

(2) For purposes of this section, the level funding limitation period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund (see paragraph (a)(1) of § 1.468A–2T for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) Ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(2) of this section).

(3) The ruling amount specified in a schedule of ruling amounts for a taxable year after the end of the level funding limitation period may be less than the

ruling amount specified in such schedule for an earlier taxable year.

(c) *Funding period*—(1) *General rule.* For purposes of this section, the funding period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such a nuclear decommissioning fund (see paragraph (a)(1) of § 1.468A–2T for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) Ends on the later of—

(A) The last day of the taxable year that includes the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's cost of service for ratemaking purposes (see paragraph (e)(1) of this section); or

(B) The last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(2) of this section).

(2) *Examples.* The following examples illustrate the application of the principles of paragraphs (a), (b) and (c) of this section:

Example (1). (i) X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by power plants owned by X. On March 15, 1995, X commences the construction of a nuclear power plant in State A. On May 15, 1995, the public utility commission of State A issues a final rate order for the four-year period beginning on January 1, 1995, that authorizes X to collect decommissioning costs from ratepayers residing in State A. For the 1995 taxable year, X is authorized to collect decommissioning costs of $500,000, and, for each taxable year during the remainder of the period to which the rate order applies, X is authorized to collect decommissioning costs in an amount equal to 105 percent of the amount authorized to be collected for the preceding taxable year.

In determining the amount of decommissioning costs to be collected from ratepayers residing in State A, the public utility commission assumes that (A) decommissioning costs will be included in cost of service for each taxable year in the period that begins with 1995 and ends with 2025 and (B) decommissioning costs collected pursuant to subsequent rate orders will increase in the same manner as amounts collected pursuant to the rate order issued on May 15, 1995. In addition, in determining the rate of return to be earned by X with respect to the nuclear power plant, the public utility commission assumes that the nuclear power plant will be included in rate base for each year in the period that begins with 2000 and ends with 2025.

(ii) X requests a schedule of ruling amounts in accordance with the rules of paragraph (h) of this section for the period beginning with the 1995 taxable year. In determining the level funding limitation period and the funding period, the Internal Revenue Service shall assume that a deductible payment will be made to a nuclear decommissioning fund for the 1995 taxable year. Thus, under paragraph (b) of this section, the level funding limitation period begins on January 1, 1995, and ends on December 31, 2025. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1995, and ends on December 31, 2025.

(iii) In its request for a schedule of ruling amounts, X proposes a ruling amount for each taxable year in the funding period that corresponds to the projected cost of service amount for such taxable year. If (A) the assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs included in cost of service are reasonable and (B) the amounts collected pursuant to the proposed schedule, combined with the after-tax earnings on such amounts, will result in a projected balance of the nuclear decommissioning fund as of December 31, 2025, equal to the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the initial schedule of ruling amounts shall equal the ruling amount proposed by X in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for the 1995 taxable year would be $500,000, and the ruling amount for each subsequent taxable year would be 105 percent of the ruling amount for the preceding taxable year.

Example (2). (i) Assume the same facts as in Example (1), except that on May 15, 1995, the public utility commission of State A issues a final rate order for the four-year period beginning on January 1, 1995, that authorizes X to collect decommissioning costs of $600,000 per year from ratepayers residing in State A. In determining the amount of decommissioning costs to be collected from ratepayers residing in State A, the public utility commission assumes that decommissioning costs of $600,000 will be collected for each taxable year in the period that begins with 1995 and ends with 2004 and that decommissioning costs of $200,000 will be collected for each taxable year in the period that begins with 2005 and ends with 2025.

(ii) X requests a schedule of ruling amounts in accordance wtih the rules of paragraph (h) of this section for the period beginning with the 1995 taxable year. In determining the level funding limitation period and the funding period, the Internal Revenue Service shall assume that a deductible payment will be made to a nuclear decommissioning fund for the 1995 taxable year. Thus, under paragraph (b) of this section, the level funding limitation period begins on January 1, 1995, and ends on December 31, 2025. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1995, and ends on December 31, 2025.

(iii) In its request for a schedule of ruling amounts, X proposes a ruling amount for each taxable year in the funding period that corresponds to the projected cost of service amount for such taxable year. A schedule of ruling amounts based on the projected cost of service amount would be inconsistent with the level funding limitation of paragraph (b) of this section because the projected cost of service amount for 2005 is less than the projected cost of service amount for 2004. Consequently, under paragraph (a)(3) of this section, no schedule of ruling amounts shall be provided to X unless X proposes an amended schedule of ruling amounts that is consistent with the level funding limitation and the other principles and provisions of this section.

(iv) Assume that X proposes an amended schedule of ruling amounts that provides for ruling amounts of $400,000 for each taxable year in the funding period. If (A) the schedule of ruling amounts proposed by X is based on the reasonable assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs included in cost of service and (B) the amounts collected pursuant to the proposed schedule, combined with the after-tax earnings on such amounts, will result in a projected balance of the nuclear decommissioning funds as of December 31, 2025, equal to the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the initial schedule of ruling amounts shall equal the ruling amount proposed by X in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for the 1995 taxable year and for each subsequent taxable year through 2025 would be $400,000.

(v) Under section 468A(b) and paragraph (b)(1) of § 1.46A–2T, the maximum amount of cash payments that X can make to a nuclear decommissioning fund for any taxable year shall not exceed the lesser of (A) the cost of service amount for such taxable year or (B) the ruling amount for such taxable year. If the projected cost of service amount that was assumed in determining rates under the rate order that was issued on May 15, 1995, is the actual cost of service amount for each taxable year in the funding period and the ruling amounts provided in the initial schedule of ruling amounts are not changed by a subsequent schedule of ruling amounts, then X would be allowed to make a deductible contribution of $400,000 to a nuclear decommissioning fund for each taxable year in the period that begins with 1995 and ends with 2004 and to make a deductible contribution of $200,000 to such nuclear decommissioning fund for each taxable year in the period that begins with 2005 and ends with 2025.

Example (3). (i) Y corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by power plants owned by Y. On June 1, 1990, a nuclear power plant owned by Y began commercial operations in State B. In the first ratemaking proceeding in which the nuclear power plant was included in rate base, the public utility commission of State B assumed that the nuclear power plant would be included in rate base for each year in the period that began with 1990 and ended with 2020. In addition, for each taxable year in the period that began with 1990 and ended with 2017, Y made a deductible contribution of $750,000 to a nuclear decommissioning fund established by Y. The $750,000 contribution equalled the cost of service amount and the ruling amount for each taxable year in the 27-year period.

(ii) On August 30, 2017, the public utility commission of State B issues a final rate order for the six-year period beginning on January 1, 2018, that authorizes Y to collect decommissioning costs of: (A) $500,000 for 2018, 2019 and 2020; (B) $1,500,000 for 2021; (C) $1,000,000 for 2022; and (D) $750,000 for 2023. In determining the amount of decommissioning costs to be collected from ratepayers residing in State B, the public utility commission assumes that decommissioning costs will no longer be included in cost of service after 2023. In addition, in determining the rate of return to be earned by Y with respect to the nuclear power plant, the public utility commission assumes that the nuclear power plant will no longer be included in rate base after 2020.

(iii) Under paragraph (i)(1) of this section, Y is required to request a revised schedule of ruling amounts on or before June 29, 2018. Assume that on March 15, 2018, Y requests a revised schedule of ruling amounts in accordance with the rules of paragraph (h) of this section. In its request, Y proposes a ruling amount for each taxable year in the period that begins with 2018 and ends with 2023 that corresponds to the amount of decommissioning costs to be including in cost of service under the rate order of August 30, 2017.

(iv) Under paragraph (b) of this section, the level funding limitation period begins on January 1, 1990, and ends on December 31, 2020. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1990, and ends on December 31, 2023.

(v) If (A) the assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs included in cost of service are reasonable and (B) the projected balance of the nuclear decommissioning fund as of December 31, 2023 (taking into account the fair market value of the assets of the fund as of January 1, 2018, and the estimated after-tax rate of return to be earned by the assets of the fund) will equal the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the revised schedule of ruling amounts shall equal the ruling amount proposed by Y in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for 2018, 2019 and 2020 would be $500,000, the ruling amount for 2021 would be $1,500,000, the ruling amount for 2022 would be $1,000,000 and the ruling amount for 2023 would be $750,000. Although the ruling amount specified in the revised schedule of ruling amounts for 2018, 2019 and 2020 is less than a ruling amount specified in a prior schedule of ruling amounts for years prior to 2018, the revised schedule of ruling amounts is consistent with the level funding limitation. Under paragraph (i)(3) of this section, a ruling amount specified in a revised schedule of ruling amounts for any taxable year in the level funding limitation period can be less than one or more ruling amounts specified in a prior schedule of ruling amounts for a prior taxable year. In addition, although the ruling amount specified in the revised schedule of ruling amounts for 2021, 2022 and 2023 is less than a ruling amount specified in such schedule for a prior taxable year, the revised schedule of ruling amounts is consistent with the level funding limitation because the level funding limitation period ends on December 31, 2020.

(d) *Decommissioning costs allocable to a fund.* The amount of decommissioning costs allocable to a nuclear decommissioning fund is determined for purposes of this section by applying the following rules and definitions:

(1) *General rule.* The amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant to which the fund relates, multiplied by the qualifying percentage.

(2) *Total estimated cost of decommissioning.* (i) The total estimated cost of decommissioning a nuclear power plant is the reasonably estimated cost of decommissioning used by the applicable public utility commission in establishing or approving the amount of decommissioning costs included in cost of service for ratemaking purposes. If the estimated costs used by the applicable public utility commission are expected to be paid in any taxable year other than the taxable year that includes the last day of the funding period or the immediately succeeding taxable year, such costs must be adjusted (decreased or increased, as the case may be) by discounting or compounding such costs at the assumed after-tax rate of return from the date such costs are expected to be paid to the last day of the funding period.

(3) *Taxpayer's share.* The taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such nuclear power plant multiplied by the percentage of such nuclear power plant that is directly owned by the taxpayer (see paragraph (b)(1) of § 1.468A-1T for circumstances in which a taxpayer possesses a direct ownership interest in a nuclear power plant).

(4) *Qualifying percentage.* (i) Except as otherwise provided in paragraph (b)(5)(i) of § 1.468-8T (relating to a special transitional rule), the qualifying percentage for any nuclear decommissioning fund is equal to the fraction, the numerator of which is the number of taxable years in the estimated period for which the nuclear decommissioning fund is to be in effect and the denominator of which is the number of taxable years in the estimated useful life of the applicable nuclear power plant.

(ii) Except as otherwise provided in paragraph (b)(5) (ii) of § 1.468-8T (relating to a special transitional rule), the estimated period for which a nuclear decommissioning fund is to be in effect—

(A) Begins on the later of—

(*1*) The first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund; or

(*2*) The first day of the taxable year that includes the date that the nuclear power plant to which such nuclear decommissioning fund relates begins commercial operations; and

(B) Ends on the first day of the taxable year that includes the estimated date on which the nuclear power plant to which such nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(3) of this section).

(iii) The estimated useful life of a nuclear powerplant—

(A) Begins on the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations; and

(B) Ends on the first day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(3) of this section).

(e) *Determination of estimated dates.* (1) For purposes of paragraph (c)(1)(ii)(A) of this section (relating to the funding period), the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's cost of service for ratemaking purposes is determined under the ratemaking assumptions that were used to determine the last rates (whether interim or final) that were established or approved by the applicable public utility commission prior to the filing of the current request for a schedule of ruling amounts.

(2) For purposes of paragraph (b)(2)(ii) and (c)(1)(ii)(B) of this section (relating to the level funding limitation period and the funding period), the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes is determined

under the rulemaking assumptions that were used to determine the last rates (whether interim or final) that were established or approved by the applicable public utility commission prior to the filing of the current request for schedule of ruling amounts.

(3) For purposes of paragraph (d)(4)(ii)(B) of this section (relating to the qualifying percentage), the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

(f) *Special rules in the case of rates established or approved by two or more public utility commissions.* If two or more public utility commissions establish or approve rates for electric energy generated by a single nuclear power plant, the following rules shall apply in determining the schedule of ruling amounts for the nuclear decommissioning fund that relates to such nuclear power plant:

(1) A schedule of ruling amounts shall be separately determined pursuant to the rules of paragraphs (a) through (e) of this section for each public utility commission that has determined the amount of decommissioning costs to be included in cost of service for ratemaking purposes with respect to such nuclear power plant (see paragraph (g) of this section).

(2) The separate determination with respect to a public utility commission shall be based on the reasonable assumptions and determinations used by such public utility commission and shall take into account only that portion of the total estimated cost of decommissioning the nuclear power plant that is properly allocable to the ratepayers whose rates are established or approved by such public utility commission.

(3) The ruling amount applicable to the nuclear decommissioning fund for any taxable year is the sum of the ruling amounts for such taxable year determined under the separate schedules of ruling amounts.

(4) The schedule of ruling amounts for the nuclear decommissioning fund is the schedule of the ruling amounts determined under paragraph (f)(3) of this section.

(g) *Requirement of determination by public utility commission of decommissioning costs to be included in cost of service.* The Internal Revenue Service will not provide a taxpayer with a schedule of ruling amounts for any nuclear decommissioning fund unless a public utility commission that establishes or approves rates for electric energy generated by the nuclear power plant to which the nuclear decommissioning fund relates has determined the amount of decommissioning costs of such nuclear power plant to be included in the taxpayer's cost of service for ratemaking purposes.

(h) *Manner of requesting schedule of ruling amounts*—(1) *In general.* (i) In order to receive a ruling amount for any taxable year, a taxpayer must file a request for a schedule of ruling amounts that complies with the requirements of this paragraph (h), the applicable procedural rules set forth in paragraph (e) of § 601.201 (Statement of Procedural Rules) and the requirements of any applicable revenue procedure that is in effect on the date the request is filed.

(ii) A separate request for a schedule of ruling amounts is required for each nuclear decommissioning fund established by a taxpayer (see paragraph (a) of § 1.468A–5T for rules relating to the number of nuclear decommissioning funds that a taxpayer can establish).

(iii) A request for a schedule of ruling amounts must not contain a request for a ruling on any other issue, whether the issue involves section 468A or another section of the Internal Revenue Code.

(iv) A request for a schedule of ruling amounts must be mailed or delivered to the Internal Revenue Service, Associate Chief Council (Technical), Attention CC:C:E, 1111 Constitution Avenue NW., Washington, DC 20224.

(v) Except as otherwise provided in paragraph (b)(1) of § 1.468A–8T, the Internal Revenue Service shall not provide a taxpayer with a ruling amount applicable to any taxable year that ends before the taxable year in which a request for a schedule of ruling amounts is filed. In addition, except as otherwise provided in paragraph (b)(1) of § 1.468A–8T, a taxpayer should file a request for a schedule of ruling amounts on or before the 180th day of a taxable year to assure receipt of the schedule of ruling amounts on or before the deemed payment deadline date (within the meaning of paragraph (c)(1) of § 1.468A–2T) applicable to such taxable year. If a request for a schedule of ruling amounts (other than a request required by reason of an election under paragraph (f)(2) of § 1.468A–2T) is filed after the 180th day of a taxable year, the Internal Revenue Service may be unable to provide the taxpayer with a schedule of ruling amounts on or before the deemed payment deadline date applicable to such taxable year. In determining the date when a request is filed, the principles of sections 7502 and 7503 shall apply.

(vi) Except as provided in paragraph (h)(1)(vii) of this secton, a request for a schedule of ruling amounts shall be considered filed only if such request complies substantially with the requirements of this paragraph (h).

(vii) If a request does not comply substantially with the requirements of this paragraph (h), the Internal Revenue Service shall notify the taxpayer of this fact. If the information or materials necessary to comply substantially with the requirements of this paragraph (h) are provided to the Internal Revenue Service within 60 days after such notification, the request shall be considered filed on the date of original submission. If the information or materials necessary to comply substantially with the requirements of this paragraph (h) are not provided within 60 days after such notification, the request shall be considered filed on the date that all information or materials necessary to comply substantially with the requirements of this paragraph (h) are provided.

(2) *Information required.* A request for a schedule of ruling amounts must contain the following information:

(i) The taxpayer's name, address and taxpayer identification number.

(ii) Whether the request is for an initial schedule of ruling amounts, a mandatory review of the schedule of ruling amounts (see paragraph (i)(1) of this section) or an elective review of the schedule of ruling amounts (see paragraph (i)(2) of this section).

(iii) The name and location of the nuclear power plant with respect to which a schedule of ruling amounts is requested.

(iv) A description of the taxpayer's ownership interest in the nuclear power plant and the percentage of such nuclear power plant that is directly owned by the taxpayer.

(v) An identification of each public utility commission that establishes or approves rates for the furnishing or sale by the taxpayer of electric energy generated by the nuclear power plant and, for each public utility commission identified—

(A) Whether the public utility commission has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes; and

(B) Whether a proceeding is pending before the public utility commission that may result in an increase or decrease in the amount of decommissioning costs included in the taxpayer's cost of service.

(vi) For each public utility commission that has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes—

(A) The amount of decommissioning costs that are to be included in the taxpayer's cost of service for each taxable year under the current determination;

(B) A description of the assumptions, estimates and other factors that were used in determining the amounts described in paragraph (h)(2)(vi)(A) of this section, including each of the following is applicable—

(*1*) A description of the proposed method of decommissioning the nuclear power plant (for example, prompt removal/dismantlement, safe storage entombment with delayed dismantlement, or safe storage mothballing with delayed dismantlement);

(*2*) The estimated year in which substantial decommissioning costs will first be incurred;

(*3*) The estimated year in which the decommissioning of the nuclear power plant will be substantially complete (see paragraph (d)(2) of § 1.468A–5T for a definition of substantial completion of decommissioning);

(*4*) The total estimated cost of decommissioning expressed in current dollars (*i.e.*, based on price levels on the date that the request for a schedule of ruling amounts is made);

(*5*) The total estimated cost of decommissioning expressed in future dollars (*i.e.*, based on anticipated price levels when expenses are expected to be paid);

(*6*) For each taxable year in the period that begins with the year specified in paragraph (h)(2)(vi)(B)(*2*) of this section ("the estimated year in which substantial decommissioning costs will first be incurred") and ends with the year specified in paragraph (h)(2)(vi)(B)(*3*) of this section ("the estimated year in which the decommissioning of the nuclear power plant will be substantially complete"), the estimated cost of decommissioning expressed in future dollars;

(*7*) A description of the methodology used in converting the estimated cost of decommissioning expressed in current dollars to the estimated cost of decommissioning expressed in future dollars;

(*8*) The assumed after-tax rate of return to be earned by the amounts collected for decommissioning;

(*9*) The proposed period over which decommissioning costs will be included in the cost of service of the taxpayer and the projected amount that will be included in cost of service for each taxable year in the proposed period;

(*10*) The estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes as determined under the ratemaking assumptions that were used to determine the last rates (whether interim or final) that were established or approved by the applicable public utility commission prior to the filing of the current request for a schedule of ruling amounts; and

(*11*) The estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes as determined under the ratemaking assumptions that were used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

(C) A copy of the public utility commission's most recent determination that includes decommissioning costs in cost of service; and

(D) A copy of each engineering or cost study that was relied on or used by the taxpayer or the public utility commission in determining the amount of decommissioning costs to be included in the taxpayer's cost of service under the current determination.

(vii) For each proceeding pending before a public utility commission that may result in an increase or decrease in the amount of decommissioning costs included in the taxpayer's cost of service—

(A) A description of the stage of the proceeding;

(B) The amount of decommissioning costs that are proposed to be included in the taxpayer's cost of service for each taxable year;

(C) A description of the assumptions, estimates and other factors that were used in determining the amount of decommissioning costs that are proposed to be included in the taxpayer's cost of service for each taxable year, including each of the items described in paragraph (h)(2)(vi)(B) of this section if applicable; and

(D) A copy of each engineering or cost study that was relied on or used by the taxpayer or the public utility commission in determining the amount of decommissioning costs that are proposed to be included in the taxpayer's cost of service.

(viii) A proposed schedule of ruling amounts for each taxable year remaining in the funding period as of the date the schedule of ruling amounts will first apply.

(ix) A description of the assumptions, estimates and other factors that were used in determining the proposed schedule of ruling amounts, including each of the following—

(A) The level funding limitation period (as such term is defined in paragraph (b)(2) of this section);

(B) The funding period (as such term is defined in paragraph (c) of this section);

(C) The assumed after-tax rate of return to be earned by the assets of the nuclear decommissioning fund;

(D) The fair market value of the assets (if any) of the nuclear decommissioning fund as of the first day of the first taxable year to which the schedule of ruling amounts will apply;

(E) The amount expected to be earned by the assets of the nuclear decommissioning fund (based on the after-tax rate of return applicable to the fund) over the period that begins on the first day of the first taxable year to which the schedule of ruling amounts will apply and ends on the last day of the funding period;

(F) The amount of decommissioning costs allocable to the nuclear decommissioning fund (as such term is defined in paragraph (d) of this section);

(G) The total estimated cost of the decommissioning (as such term is defined in paragraph (d)(2) of this section);

(H) The taxpayer's share of the total estimated cost of decommissioning (as such term is defined in paragraph (d)(3) of this section);

(I) The qualifying percentage (as such term is defined in paragraph (d)(4)(i) of this section);

(J) The estimated period for which the nuclear decommissioning fund is to be in effect (as such term is defined in paragraph (d)(4)(ii) of this section); and

(K) The estimated useful life of the nuclear power plant (as such term is defined in paragraph (d)(4)(iii) of this section).

(x) If applicable, an explanation of the need for a schedule of ruling amounts determined on a basis other than the rules of paragraphs (a) through (g) of this section and a description of an alternative basis for determining a schedule of ruling amounts (see paragraph (a)(3) of this section).

(xi) Any other information required by the Internal Revenue Service that may be necessary or useful in determining the schedule of ruling amounts.

(3) *Administrative procedures.* The Internal Revenue Service may prescribe

administrative procedures that supplement the provisions of paragraphs (h)(1) and (h)(2) of this section. In addition, the Internal Revenue Service, in its discretion, can waive the requirements of paragraph (h)(1) and (h)(2) under appropriate circumstances.

(i) *Review and revision of schedule of ruling amounts*—(1) *Mandatory review.* (i) Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (h) of this section must file a request for a revised schedule of ruling amounts on or before the 180th day of the 10th taxable year following the close of the taxable year in which the most recent schedule of ruling amounts was received. In addition, if any of the events specified in paragraph (i)(1)(iii) of this section occurs, the taxpayer must file a request for a revised schedule of ruling amounts on or before the 180th day of the taxable year following the taxable year in which the event occurs. See paragraph (f)(3) of § 1.468A-2T for an exception to the 180-day requirement in the case of certain retroactive adjustments to interim rate orders. See, also, paragraph (a)(2) of § 1.468A-6T for rules requiring a revised schedule of ruling amounts in the case of a sale, exchange or other disposition of a portion of an electing taxpayer's direct ownership interest in a nuclear power plant.

(ii) A request for a schedule of ruling amounts required by paragraph (i)(1)(i) of this section must be made in accordance with the rules of paragraph (h) of this section. If a taxpayer does not properly file a request for a revised schedule of ruling amounts by the date provided in paragraph (i)(1)(i) of this section or paragraph (f)(3) of § 1.468A-2T, the taxpayer's ruling amount for the taxable year this includes such date and for all succeeding taxable years until a new schedule is obtained shall be zero unless, in its discretion, the Internal Revenue Service provides otherwise in such new schedule of ruling amounts.

(iii) A taxpayer is required to request a revised schedule of ruling amounts in accordance with the rules of paragraph (h) of this section if—

(A) Any public utility commission that establishes or approves rates for the furnishing or sale of electric energy generated by a nuclear power plant to which a nuclear decommissioning fund relates increases the proposed period over which decommissioning costs of such nuclear power plant will be included in cost of service for ratemaking purposes and the Internal Revenue Service was not notified of the increase in the taxpayer's most recent request for a schedule of ruling amounts;

(B) Any public utility commission that establishes or approves rates for the furnishing or sale of electric energy generated by a nuclear power plant to which a nuclear decommissioning fund relates adjusts the estimated date on which such nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes and the Internal Revenue Service was not notified of the adjustment in the taxpayer's most recent request for a schedule of ruling amounts; or

(C) The cost of service amount applicable to the nuclear decommissioning fund for any taxable year (as defined in paragraph (b)(2) of § 1.468A-2T) is less than the cost of service amount applicable to the nuclear decommissioning fund for the immediately preceding taxable year and the Internal Revenue Service was not notified of the decrease in the taxpayer's most recent request for a schedule of ruling amounts.

(2) *Elective review.* Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (h) of this section can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of paragraph (h) of this section; thus, the Internal Revenue Service generally will not provide a revised ruling amount applicable to any taxable year that ends before the taxable year in which the request for a revised schedule of ruling amounts is filed (see paragraph (h)(1)(v) of this section).

(3) *Determination of revised schedule of ruling amounts.* A revised schedule of ruling amounts for a nuclear decommissioning fund shall be determined under this section without regard to any schedule of ruling amounts for such nuclear decommissioning fund that was issued prior to such revised schedule. Thus, a ruling amount specified in a revised schedule of ruling amounts for any taxable year in the level funding limitation period can be less than one or more ruling amounts specified in a prior schedule of ruling amounts for a prior taxable year.

§ 1.468A-4T Treatment of nuclear decommissioning fund (temporary).

(a) *In general.* A nuclear decommissioning fund is subject to tax on all of its modified gross income (as defined in paragraph (b) of this section) for any taxable year at a single rate equal to the maximum rate in effect under section 11(b) (determined without regard to the amendment to section 11(b) made by the Tax Reform Act of 1984). Such tax is in lieu of any other tax that may be imposed under subtitle A of the Internal Revenue Code on the income earned by the assets of the nuclear decommissioning fund.

(b) *Modified gross income.* For purposes of this section, the term "modified gross income" means gross income as defined under section 61 computed with the following modifications:

(1) The amount of any payment to the nuclear decommissioning fund with respect to which a deduction is allowed under section 468(a) is excluded from gross income.

(2) A deduction is allowed for the amount of administrative costs and other incidental expenses of the nuclear decommissioning fund (including taxes, legal expenses, accounting expenses, actuarial expenses and trustee expenses, but not including decommissioning costs) that are otherwise deductible and that are paid by the nuclear decommissioning fund to any person other than the electing taxpayer. An expense is otherwise deductible for purposes of this paragraph (b)(2) if it would be deductible under chapter 1 of the Internal Revenue Code in determining the taxable income of a corporation. For example, because Federal income taxes are not deductible under chapter 1 of the Internal Revenue Code in determining the taxable income of a corporation, the tax imposed by section 468A(e)(2) and paragraph (a) of this section is not deductible in determining the modified gross income of a nuclear decommissioning fund. Similarly, because certain expenses allocable to tax-exempt interest income are not deductible under section 265 of the Internal Revenue Code in determining the taxable income of a corporation, such expenses are not deductible in determining the modified gross income of a nuclear decommissioning fund.

(3) A deduction is allowed for the amount of otherwise deductible losses that are sustained by the nuclear decommissioning fund in connection with the sale, exchange or worthlessness of an investment described in paragraph (a)(3)(i)(C) of § 1.468A-5T. A loss is otherwise deductible for purposes of this paragraph (b)(3) is such a loss would be deductible by a corporation under section 165 (f) or (g) and sections 1211(a) and 1212(a).

(4) A deduction is allowed for the amount of an otherwise deductible net operating loss of the nuclear decommissioning fund. For purposes of this paragraph, the net operating loss of a nuclear decommissioning fund for a taxable year is the amount by which the

deductions allowable under paragraph (b) (2) and (3) of this section exceed the gross income of the nuclear decommissioning fund computed with the modification described in paragraph (b)(1) of this section. A net operating loss is otherwise deductible for purposes of this paragraph (b)(4) if such a net operating loss would be deductible by a corporation under section 172(a).

(c) *Special rules*—(1) *Period for computation of modified gross income.* The modified gross income of a nuclear decommissioning fund must be computed on the basis of the taxable year of the electing taxpayer. If an electing taxpayer changes its taxable year, each nuclear decommissioning fund of the electing taxpayer must change to the new taxable year. See section 442 and § 1.442–1 for rules relating to the change to a new taxable year.

(2) *Recognition of gain or loss upon distribution of property by a fund.* A distribution of property by a nuclear decommissioning fund (whether an actual distribution or a deemed distribution) shall be considered a disposition of property by the nuclear decommissioning fund for purposes of section 1001. In determining the amount of gain or loss from such disposition, the amount realized by the nuclear decommissioning fund shall be the fair market value of the property on the date of disposition. Except as otherwise provided in paragraph (b)(3) of this section, a nuclear decommissioning fund must include in modified gross income the amount of any gain or loss realized on the disposition of the property notwithstanding any provision of the Internal Revenue Code that provides that the gain or loss is not realized or recognized.

(3) *Denial of credits against tax.* The tax imposed on the modified gross income of a nuclear decommissioning fund under paragraph (a) of this section is not to be reduced or offset by any credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code other than the credit provided by section 31(c) for amounts withheld under section 3406 (back-up withholding).

(4) *Other corporate taxes inapplicable.* Although the modified gross income of a nuclear decommissioning fund is subject to tax at a rate equal to the maximum rate in effect under section 11(b) (determined without regard to the amendment to section 11(b) made by the Tax Reform Act of 1984), a nuclear decommissioning fund is not subject to the other taxes imposed on corporations under subtitle A of the Internal Revenue Code. For example, a nuclear decommissioning fund is not subject to the corporate minimum tax imposed by section 56, the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, and the alternative tax imposed on a corporation under section 1201(a).

(d) *Treatment as corporation for purposes of subtitle F.* For purposes of subtitle F of the Internal Revenue Code and the regulations thereunder, a nuclear decommissioning fund is to be treated as if it were a corporation and the tax imposed by section 468A(e)(2) and paragraph (a) of this section is to be treated as a tax imposed by section 11. Thus, for example, the following rules apply:

(1) A nuclear decommissioning fund must file a return with respect to the tax imposed by section 468A(e)(2) and paragraph (a) of this section for each taxable year (or portion thereof) that the fund is in existence even though no amount is included in the gross income of the fund for such taxable year. The return is to be made on Form 1120–ND. For purposes of this paragraph (d)(1), a nuclear decommissioning fund is in existence for the period that—

(i) Begins on the date that the first deductible payment is actually made to such nuclear decommissioning fund; and

(ii) Ends on the date of termination (see paragraph (d) of § 1.468A–5T), the date of disqualification (see paragraph (c) of § 1.468A–5T) or the date that the electing taxpayer disposes of its entire direct ownership interest in the nuclear power plant to which the nuclear decommissioning fund relates (see paragraph (a) of § 1.468A–6T), whichever is applicable.

(2) For each taxable year of the nuclear decommissioning fund, the return described in paragraph (d)(1) of this section must be filed on or before the 15th day of the third month following the close of such taxable year unless the nuclear decommissioning fund is granted an extension of time for filing under section 6081. If such an extension is granted for any taxable year, the return for such taxable year must be filed on or before the extended due date for such taxable year. In no event will the filing of the initial return of a nuclear decommissioning fund be required before January 6, 1987.

(3) A nuclear decommissioning fund must provide its employer identification number on returns, statements and other documents as required by the forms and instructions relating thereto. The employer identification number is obtained by filing a Form SS–4 in accordance with the instructions relating thereto.

(4) A nuclear decommissioning fund must make payments of estimated tax during its taxable year as provided in section 6154(b) if its estimated tax for such taxable year can reasonably be expected to be $40 or more. For purposes of section 6154 and this section, the estimated tax of a nuclear decommissioning fund for any taxable year is the amount that the nuclear decommissioning fund estimates as the amount of tax imposed by section 468A(e)(2) and paragraph (a) of this section for such taxable year.

(5) A nuclear decommissioning fund must deposit all payments of tax imposed by section 468A(e)(2) and paragraph (a) of this section (including any payments of estimated tax) with an authorized government depositary in accordance with § 1.6302–1.

(6) A nuclear decommissioning fund is subject to the addition to tax imposed by section 6655 in case of a failure to pay estimated income tax. For purposes of section 6655 and this section—

(i) The tax with respect to which the amount of the underpayment is computed in the case of a nuclear decommissioning fund is the tax imposed by section 468A(e)(2) and paragraph (a) of this section; and

(ii) A nuclear decommissioning fund is to be considered a large corporation under section 6655(i) if such nuclear decommissioning fund had modified gross income (as defined in paragraph (b) of this section) of $1,000,000 or more for any taxable year during the testing period.

§ 1.468A–5T Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; and termination of fund upon substantial completion of decommissioning (temporary).

(a) *Qualification requirements*—(1) *In general.* A nuclear decommissioning fund must be a trust established or organized and maintained at all times in the United States for the exclusive purpose of providing funds for the decommissioning of a nuclear power plant. A separate nuclear decommissioning fund is required for each electing taxpayer and for each nuclear power plant with respect to which an electing taxpayer possesses a direct ownership interest. An electing taxpayer can maintain only one nuclear decommissioning fund for each nuclear power plant with respect to which the taxpayer elects the application of section 468A.

(2) *Limitation on contributions.* Except as otherwise provided in paragraph (b)(1)(ii) of § 1.468A–6T

(relating to the acquisition of an interest in a nuclear power plant from a taxpayer that maintained a nuclear decommissioning fund with respect to such nuclear power plant), a nuclear decommissioning fund is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under section 468A(a) and paragraph (a) of § 1.468A-2T. Thus, for example, securities may not be contributed to a nuclear decommissioning fund even if the taxpayer or a fund established by the taxpayer previously held such securities for the purpose of providing funds for the decommissioning of a nuclear power plant.

(3) *Limitation on use of fund*—(i) *In general.* The assets of a nuclear decommissioning fund are to be used exclusively—

(A) To satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates;

(B) To pay administrative costs and other incidental expenses of the nuclear decommissioning fund; and

(C) To the extent that the assets of the nuclear decommissioning fund are not currently required for the purposes described in paragraph (a)(3)(i) (A) or (B) of this section, to invest in—

(*1*) Public debt securities of the United States;

(*2*) Obligations of a State or local government that are not in default as to principal or interest; or

(*3*) Time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(7) (1982)), located in the United States.

(ii) *Terms defined.* For purposes of paragraph (a)(3)(i) of this section:

(A) The term "administrative costs and other incidental expenses of a nuclear decommissioning fund" means all ordinary and necessary expenses incurred in connection with the operation of the nuclear decommissioning fund. Such term includes the tax imposed by section 468A(e)(2) and paragraph (a) of § 1.468A-4T, any State or local tax imposed on the income or the assets of the fund, legal expenses, accounting expenses, actuarial expenses and trustee expenses. Such term does not include decommissioning costs. Such term also does not include the excise tax imposed on the trustee or other disqualified person under section 4951 or the reimbursement of any expenses incurred in connection with the assertion of such tax unless such expenses are considered reasonable and necessary under section 4951(d)(2)(C) and it is determined that the trustee or other disqualified person is not liable for the excise tax.

(B) The term "public debt securities of the United States" means obligations that are taken into consideration for purposes of the public debt limit.

(C) The term "obligations of a State or local government" means the obligations of a State or local governmental unit the interest on which is exempt from tax under section 103(a).

(D) The term "time or demand deposits" includes checking accounts, savings accounts, certificates of deposit or other time or demand deposits. The term does not include common or collective trust funds, such as a common trust fund as defined in section 584.

(b) *Prohibitions against self-dealing*—(1) *In general.* Except as otherwise provided in this paragraph (b), the excise taxes imposed by section 4951 shall apply to each act of self-dealing between a disqualified person and a nuclear decommissioning fund.

(2) *Self-dealing defined.* For purposes of this paragraph (b), the term "self-dealing" means any act described in section 4951 (d), except—

(i) A payment by a nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates;

(ii) A withdrawal of an excess contribution by the electing taxpayer pursuant to the rules of paragraph (c)(2) of this section;

(iii) A payment of amounts remaining in a nuclear decommissioning fund to the electing taxpayer after the termination of such fund (as determined under paragraph (d) of this section); or

(iv) Any act described in section 4951(d)(2) (B) or (C).

(3) *Disqualified person defined.* For purposes of this paragraph (b), the term "disqualified person" includes each person described in section 4951(e)(4) and paragraph (d) of § 53.4951-1.

(c) *Disqualification of nuclear decommissioning fund*—(1) *In general.* Except as otherwise provided in paragraph (c)(2) of this section, if at any time during a taxable year of a nuclear decommissioning fund—

(i) The nuclear decommissioning fund does not satisfy the requirements of paragraph (a) of this section, or

(ii) The nuclear decommissioning fund and a disqualified person engage in an act of self-dealing (as defined in paragraph (b)(2) of this section),

The Internal Revenue Service may, in its discretion, disqualify all or any portion of the fund as of the date that the fund does not satisfy the requirements of paragraph (a) of this section or the date on which the act of self-dealing occurs, whichever is applicable, or as of any subsequent date ("date of disqualification"). The Internal Revenue Service shall notify the electing taxpayer of the disqualification of a nuclear decommissioning fund and the date of disqualification by registered or certified mail to the last known address of the electing taxpayer (the "notice of disqualification").

(2) *Exception to disqualification*—(i) *In general.* A nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of this section by reason of an excess contribution or the withdrawal of such excess contribution by an electing taxpayer if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the taxpayer year to which the excess contribution relates.

(ii) *Excess contribution defined.* For purposes of this section, an excess contribution is the amount by which cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceed the payment limitation contained in section 468A(b) and paragraph (b) of § 1.468A-2T.

(iii) *Taxation of income attributable to an excess contribution.* The income of a nuclear decommissioning fund attributable to an excess contribution is required to be included in the gross income of the nuclear decommissioning fund under paragraph (b) of § 1.468A-4T.

(3) *Effect of disqualification.* If all or any portion of a nuclear decommissioning fund is disqualified under paragraph (c)(1) of this section, the portion of the nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of disqualification. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see paragraph (c)(2) of § 1.468A-4T). In addition, the electing taxpayer must include in gross income for the taxable year that includes the date of disqualification an amount equal to the product of—

(i) The fair market value of the assets of the fund determined as of the date of disqualification, reduced by—

(A) The amount of any excess contribution that was not withdrawn before the date of disqualification if no deduction was allowed with respect to such excess contribution; and

(B) The amount of any deemed distribution that was not actually distributed before the date of disqualification (as determined under paragraph (c)(2)(iii) of § 1.468A-2T) if the amount of the deemed distribution was included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurred; and

(ii) The fraction of the nuclear decommissioning fund that was disqualified under paragraph (c)(1) of this section.

Contributions made to a disqualified fund after the date of disqualification are not deductible under section 468A(a) and paragraph (a) of § 1.468A-2T, or if the fund is disqualified only in part, are deductible only to the extent provided in the notice of disqualification. In addition, if any assets of the fund that are deemed distributed under this paragraph (c)(3) are held by the fund after the date of disqualification (or if additional assets are acquired with nondeductible contributions made to the fund after the date of disqualification), the income earned by such assets after the date of disqualification must be included in the gross income of the electing taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Internal Revenue Code. An electing taxpayer can establish a nuclear decommissioning fund to replace a fund that has been disqualified in its entirety only if the Internal Revenue Service specifically consents to the establishment of a replacement fund in connection with the issuance of an initial schedule of ruling amounts for such replacement fund.

(d) *Termination of nuclear decommissioning fund upon substantial completion of decommissioning*—(1) *In general.* Upon substantial completion of the decommissioning of a nuclear power plant to which a nuclear decommissioning fund relates, such nuclear decommissioning fund shall be considered terminated and treated as having distributed all of its assets on the date the termination occurs. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see paragraph (c)(2) of § 1.468A-4T). In addition, unless the exception provided in paragraph (d)(2)(iv) of § 1.468A-2T applies, the electing taxpayer shall include in gross income for the taxable year in which the termination occurs an amount equal to the fair market value of the assets of the fund determined as of the date of termination. Contributions made to a nuclear decommissioning fund after the termination date are not deductible under section 468A(a) and paragraph (a) of § 1.468A-2T. In addition, if any assets are held by the fund after the termination date, the income earned by such assets after the termination date must be included in the gross income of the electing taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Internal Revenue Code. Finally, an electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs that are incurred during any taxable year (see paragraph (e) of § 1.468A-2T) even if such costs are incurred after substantial completion of decommissioning (*e.g.*, expenses incurred to monitor or safeguard the plant site).

(2) *Substantial completion of decommissioning defined.* (i) For purposes of this paragraph (d), the substantial completion of the decommissioning of a nuclear power plant occurs at the time that the maximum acceptable radioactivity levels mandated by the Nuclear Regulatory Commission (or its successor) with respect to a decommissioned nuclear power plant are satisfied.

(ii) The Internal Revenue Service may prescribe administrative procedures that clarify the definition of substantial completion of decommissioning to take into account technological change or amendments to the rules issued by the Nuclear Regulatory Commission (or its successor).

§ 1.468A-6T Disposition of an interest in a nuclear power plant (temporary).

(a) *Treatment of selling taxpayer*—(1) *In general.* In the case of any sale, exchange or other disposition of any portion of a direct ownership interest in a nuclear power plant with respect to which the taxpayer maintains a nuclear decommissioning fund, the portion of the nuclear decommissioning fund that relates to the direct ownership interest sold, exchanged or otherwise disposed of is treated as distributed to the taxpayer on the date of such disposition. (Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see paragraph (c)(2) of § 1.468A-4T)). In addition, the electing taxpayer must include in gross income for the taxable year in which the disposition of the interest in the nuclear power plant occurs an amount equal to the product of—

(i) The fair market value of the assets of the fund determined as of the date of disposition, reduced by—

(A) The amount of any excess contribution that was not withdrawn before the date of disposition if no deduction was allowed with respect to such excess contribution; and

(B) The amount of any deemed distribution that was not actually distributed before the date of disposition (as determined under paragraph (c)(2)(iii) of § 1.468A-2T) if the amount of the deemed distribution was included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurred;

and

(ii) The fraction of the taxpayer's direct ownership interest sold, exchanged or otherwise disposed of in such transaction.

Such amount must be included in gross income even if no gain was recognized or realized on the sale, exchange or other disposition of the interest in the nuclear power plant. Thus, for example, such amount must be included in gross income even if the exchange of the interest in the nuclear power plant is described in section 351, 368, 721 or 1031. In addition, if any assets of the fund that are deemed distributed under this paragraph (a)(1) are held by the fund after the date of disposition, the income earned by such assets after the date of disposition must be included in the gross income of the taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Internal Revenue Code.

(2) *Revised schedule of ruling amounts required.* If the taxpayer retains a direct ownership interest in the nuclear power plant after the sale, exchange or other disposition of a portion of its former direct ownership interest and does not file a request for a revised schedule of ruling amounts on or before the 90th day after the date of disposition, the ruling amount applicable to the nuclear decommissioning fund to which the nuclear power plant relates for the taxable year in which such disposition occurs and all succeeding taxable years until a new schedule is obtained shall be zero unless, in its discretion, the Internal Revenue Service provides otherwise in such new schedule of ruling amounts.

(b) *Treatment of purchasing taxpayer*—(1) *In general.* (i) A taxpayer that purchases or otherwise acquires a direct ownership interest in a nuclear power plant (a "purchasing taxpayer") from a taxpayer that on the date of acquisition maintains a nuclear decommissioning fund with respect to such nuclear power plant can elect to make a deductible contribution to a nuclear decommissioning fund established by the purchasing taxpayer in an amount not greater than the amount included in the gross income of the selling taxpayer under paragraph (a)(1) of this section. Such contribution must be made (or deemed made under paragraph (c)(1) of § 1.468A–2T) during the purchasing taxpayer's taxable year in which the date of acquisition occurs. The amount of any contribution made to a nuclear decommissioning fund pursuant to this paragraph (b)(1)(i) is not taken into account in applying the payment limitation of paragraph (b) of § 1.468A–2T and the taxpayer is not required to obtain a ruling amount with respect to such contribution.

(ii) A deductible contribution made by a purchasing taxpayer under paragraph (b)(1)(i) of this section may be made in cash. In addition, for purposes of paragraph (b)(1)(i) of this section only, a purchasing taxpayer may contribute property described in paragraph (a)(3)(i)(C) of § 1.468A–5T to a nuclear decommissioning fund established by the purchasing taxpayer if the property—

(A) Was owned by the nuclear decommissioning fund of the selling taxpayer immediately before the sale, exchange or other disposition of an interest in the nuclear power plant;

(B) Was distributed to the selling taxpayer under paragraph (a)(1) of this section; and

(C) Was acquired by the purchasing taxpayer as part of the same transaction in which the interest in the nuclear power plant was acquired.

If the purchasing taxpayer contributes property to a nuclear decommissioning fund under this paragraph (b)(1)(ii), the amount of the contribution (and the basis of the property to the nuclear decommissioning fund) shall equal the fair market value of the property on the date that the property was distributed to the selling taxpayer under paragraph (a)(1) of this section and no gain or loss shall be recognized by the purchasing taxpayer with respect to the transfer of the property to the nuclear decommissioning fund. In addition, no gain or loss shall be recognized by the selling taxpayer with respect to the transfer of such property to the purchasing taxpayer, even if the purchasing taxpayer does not contribute the property to a nuclear decommissioning fund. The nuclear decommissioning fund of the selling taxpayer shall recognize gain or loss on the distribution of such property by the fund (see paragraph (a)(1) of this section). Finally, if the purchasing taxpayer does not contribute the property to a nuclear decommissioning fund under this paragraph (b)(1)(ii), the basis of the property to the purchasing taxpayer shall be the fair market value of the property on the date that the property was distributed to the selling taxpayer under paragraph (a)(1) of this section.

(iii) Except as provided in paragraph (b)(1)(i) of this section, a purchasing taxpayer is allowed a deduction under section 468A(a) for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer has received a schedule of ruling amounts for the nuclear decommissioning fund that includes a ruling amount for such taxable year (see § 1.468A–3T).

(2) *Manner of making election.* A purchasing taxpayer is allowed a deduction under paragraph (b)(1)(i) of this section only if the Election Statement (as required by § 1.468A–7T) for the taxable year in which the acquisition occurs indicates that an election is made under paragraph (b) of § 1.468A–6T. In addition, the Election Statement must include—

(i) The name, address and taxpayer identification number of the selling taxpayer;

(ii) The date of the sale, exchange or other disposition;

(iii) The amount included in the gross income of the selling taxpayer under paragraph (a) of this section;

(iv) The amount of the cash payment made (or deemed made) to the nuclear decommissioning fund pursuant to this paragraph (b); and

(v) The fair market value of the property contributed to the nuclear decommissioning fund pursuant to paragraph (b)(1)(ii) of this section determined as of the date that the property was distributed to the selling taxpayer.

§ 1.468A–7T Manner of and time for making election (temporary).

(a) *In general.* An eligible taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to the nuclear decommissioning fund only if the taxpayer elects the application of section 468A. A separate election under section 468A is required for each nuclear power plant and for each taxable year with respect to which a deductible cash payment is made to a nuclear decommissioning fund. The election under section 468A for any taxable year is irrevocable and must be made by attaching a statement ("Election Statement") and a copy of the schedule of ruling amounts provided pursuant to the rules of § 1.468A–3T to the taxpayer's Federal income tax return for such taxable year. Except as otherwise provided in paragraph (b)(3) of § 1.468A–8T, the return to which the Election Statement and a copy of the schedule of ruling amounts is attached must be filed on or before the time prescribed by law (including extensions) for filing the return for the taxable year with respect to which section 468A is to apply.

(b) *Required information.* The Election Statement must include the following information:

(1) The legend "Election Under Section 468A" typed or legibly printed at the top of the first page.

(2) The taxpayer's name, address and taxpayer identification number.

(3) The taxable year for which the election is made.

(4) For each nuclear power plant with respect to which an election is made—

(i) The name and location of the nuclear power plant;

(ii) The name and employer identification number of the nuclear decommissioning fund;

(iii) The total amount of actual cash payments made to the nuclear decommissioning fund during the taxable year that were not treated as deemed cash payments under paragraph (c)(1) of § 1.468A–2T for a prior taxable year;

(iv) The total amount of cash payments deemed made to the nuclear decommissioning fund under paragraph (c)(1) of § 1.468A–2T for the taxable year; and

(v) The cost of service amount for the taxable year (see paragraph (b)(2) of § 1.468A–2T).

§ 1.468A–8T Effective date and transitional rules (temporary).

(a) *Effective date*—(1) *In general.* Section 468A and § 1.468A–1T through § 1.468A–8T are effective on July 18, 1984, with respect to taxable years ending on or after such date.

(2) *Cut-off method applicable to electing taxpayers.* Any amount of nuclear decommissioning costs taken into account before July 18, 1984, for a taxable year beginning before such date, is not allowable as a deduction after July 17, 1984, under section 468A (c)(2) and paragraph (e) of § 1.468A–2T.

(b) *Transitional rules.*—(1) *Time for filing request for schedule of ruling amounts.* If a taxpayer files a request for a schedule of ruling amounts under paragraph (h) of § 1.468A-3T on or before July 10, 1987 and the requirement of paragraph (g) of § 1.468A-3T is satisfied before the date the request is filed, the limitations contained in paragraph (h)(1)(v) of § 1.468A-3T shall not apply with respect to, and the Internal Revenue Service will provide a ruling amount for, any taxable year that ends on or after July 18, 1984, and begins before January 1, 1987.

(2) *Time for making payment to a nuclear decommissioning fund.* The amount of any cash payment to a nuclear decommissioning fund that relates to a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, shall be deemed made during such taxable year if—

(i) The taxpayer makes such payment on or before the 30th day after the date the taxpayer receives a ruling amount applicable to such taxable year; and

(ii) The taxpayer irrevocably designates the amount of such payment as relating to such taxable year on the Election Statement attached to its Federal income tax return (or amended return) for such taxable year.

(3) *Manner of and time for making election.* A taxpayer can elect the application of section 468A for a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, by attaching the Election Statement and a copy of the schedule of ruling amounts to an amended return for such taxable year that is filed on or before the 90th day after the date that the taxpayer receives a ruling amount for such taxable year.

(4) *Determination of cost of service limitation.* For purposes of section 468A (b)(1) and paragraph (b)(2) of § 1.468A-2T, the cost of service amount applicable to a nuclear decommissioning fund for the taxable year that includes July 18, 1984, is the amount determined under paragraph (b)(2) of § 1.468A-2T multiplied by a fraction, the numerator of which is the amount of nuclear decommissioning costs that is directly or indirectly charged to customers in such taxable year and that is included in the taxable income of the taxpayer for such taxable year and the denominator of which is the amount of nuclear decommissioning costs that is directly or indirectly charged to customers in such taxable year and that would have been includible in the gross income of the taxpayer if such amount was taken into account by the taxpayer in the same manner as amounts charged for electric energy (see § 1.88-1T). Under the preceding sentence, an amount of decommissioning costs is included in the taxable income of a taxpayer for the taxable year that includes July 18, 1984, if the amount is included in gross income for such taxable year and no deduction (other than a deduction allowed under section 468A (a) and paragraph (a) of § 1.468A-2T) is claimed with respect to such amount for such taxable year.

(5) *Determination of qualifying percentage.* (i) In the case of a nuclear power plant that began commercial operations before July 18, 1984, and whose estimated useful life for ratemaking purposes was adjusted by a public utility commission before July 18, 1984—

(A) If a taxpayer requests a schedule of ruling amounts for such nuclear power plant on or before July 10, 1987, the qualifying percentage equals the percentage of total depreciation costs (determined without regard to capitalized decommissioning costs) with respect to the nuclear power plant that remains to be recovered for ratemaking purposes as of the first day of the taxable year that includes July 18, 1984; or

(B) If a taxpayer does not request a schedule of ruling amounts for such nuclear power plant on or before July 10, 1986, the qualifying percentage equals the percentage of total depreciation costs (determined without regard to capitalized decommissioning costs) with respect to the nuclear power plant that remains to be recovered for ratemaking purposes as of the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund that relates to such nuclear power plant.

(ii) In the case of a nuclear power plant that began commercial operations on or before July 10, 1986 (other than a plant described in paragraph (b)(5)(i) of this section (*i.e.,* a plant that began such operations, and whose estimated useful life was adjusted, before July 18, 1984)), if a taxpayer requests a schedule of ruling amounts for such nuclear power plant on or before July 10, 1987, the estimated period for which the nuclear decommissioning fund to which the nuclear power plant relates is to be in effect for purposes of paragraph (d)(4)(ii) of § 1.468A-3T begins on the later of—

(A) The first day of the taxable year that includes the date that the nuclear power plant began commercial operations; or

(B) The first day of the taxable year that includes July 18, 1984.

(6) *Limitation on payments to a nuclear decommissioning fund*—(i) The limitation on payments to a nuclear decommissioning fund (see section 468A (b) and paragraph (b) of § 1.468A-2T) for a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, shall be determined under paragraph (b)(6)(ii) of this section if—

(A) The electing taxpayer receives a ruling amount applicable to such taxable year after the deemed payment deadline date for such taxable year; and

(B) The requirements of paragraph (b)(6)(iii) of this section are satisfied.

(ii) If the limitation on payments to a nuclear decommissioning fund for a taxable year is determined under this paragraph (b)(6)(ii), the maximum amount of cash payments made (or deemed made) to the nuclear decommissioning fund during such taxable year shall not exceed the sum of—

(A) The amount determined under section 468A (b) and paragraph (b) of § 1.468A-2T (*i.e.,* the lesser of the cost of service amount or the ruling amount) after application of the transitional rules contained in paragraph (b) (4) and (5) of this section; and

(B) The amount of after-tax earnings that would have accumulated to the date of actual payment to the nuclear decommissioning fund if the amount described in paragraph (b)(6)(ii) (A) of this section had been contributed to the nuclear decommissioning fund on the deemed payment deadline date for such taxable year.

In determining the after-tax earnings that would have accumulated to the date of payment, an electing taxpayer must use the after-tax rate of return of the nuclear decommissioning fund that was used in determining the schedule of ruling amounts.

(iii) In order to compute the payment limitation under paragraph (b)(6)(ii) of this section, an electing taxpayer must—

(A) Indicate on the Election Statement for the taxable year that the amount of the deductible payment is greater than the amount determined under section 468A (b) and paragraph (b) of § 1.468A-2T because paragraph (b) (6) of § 1.468A-8T applies; and

(B) Not claim any interest under section 6611 with respect to any overpayment of tax that is attributable to a deduction allowed with respect to such payment (see paragraph (b)(7) of this section).

(iv) The following example illustrates the application of the principles of paragraph (b)(6) of this section:

Example. X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X. On September 15,

1986. X receives a schedule of ruling amounts from the Internal Revenue Service that includes a ruling amount of $1,000,000 for the 1985 taxable year. For purposes of this example, assume that the cost of service amount applicable to the nuclear decommissioning fund for the 1985 taxable year is also $1,000,000 and that the after-tax rate of return of the nuclear decommissioning fund that was used in determining the schedule of ruling amounts is 10 percent compounded semi-annually. On September 15, 1986, X makes a contribution of $1,050,000 to a nuclear decommissioning fund established by X. Under paragraph (b)(6)(ii) of this section, this contribution does not exceed the limitation on payments for the 1985 taxable year and the entire amount of the contribution is deductible for such year. The additional $50,000 deductible payment that is allowed under this paragraph (b)(6) reflects the foregone earnings of the fund for the six-month period beginning on the deemed payment deadline date for the 1985 taxable year (March 15, 1986) and ending on the date of the contribution (September 15, 1986).

(7) *Denial of interest on overpayment.* If a deduction is allowed by reason of paragraph (b)(2) of this section for the amount of any payment made after the 15th day of the third calendar month after the close of the taxable year to which such payment relates, no interest shall be allowed or paid under section 6611 with respect to any overpayment attributable to such deduction for any period before the date the amended return claiming the deduction is filed.

PART 602—[AMENDED]

Par. 4. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table—

"§ 1.468A-3T * * * 1545-0954", "§ 1.468A-4T * * * 1545-0954", "§ 1.468A-6T * * * 1545-0954", "§ 1.468A-7T * * * 1545-0954", and "§ 1.468A-8T * * *1545-0954".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: June 30, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-15616 Filed 7-9-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1142-86]

Delegation of Authority—Payments

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends § 0.149 of Subpart X, Part 0 of Title 28, Code of Federal Regulations to delegate to the bureau heads, the Director of the Executive Office for United States Attorneys, and the Assistant Attorney General for Administration the authority to: (a) Approve waivers of the Department of the Treasury maximum limitation on routine payments of cash from imprest funds, and (b) approve requests to place imprest funds in depositary cash demand withdrawal accounts and establish the maximum amount of each account.

This order also amends §§ 0.148 and 0.149 Subpart X, Part 0 of Title 28, Code of Federal Regulations by adding the Director, Executive Office for United States Attorneys, to the delegations of authority for designating employees to certify vouchers and requesting Department of the Treasury designation of disbursing employees (including cashiers).

This is being done to provide the public with an accurate statement of the Department's structure.

EFFECTIVE DATE: June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Kamal J. Rahal, Director, Finance Staff, Office of the Comptroller, Justice Management Division, Department of Justice, Washington, DC 20530, (202-633-5538).

SUPPLEMENTARY INFORMATION: Department of the Treasury, Treasury Financial Manual, Part 4, Chapter 3000, delegates to agency heads the authority to approve routine payments of cash from imprest funds in excess of the general limitation imposed by the Department of the Treasury, and approve requests to place imprest funds in depositary cash demand withdrawal accounts and establish the maximum amount of each account. This order redelegates these authorities. Previously, such authorities were retained by the Department of the Treasury. The adding of the Director, Executive Office for United States Attorneys, to the delegations of authority for designating employees to certify vouchers and requesting Department of the Treasury designations of disbursing officers (including cashiers) eliminates the need for the Assistant Attorney General for Administation to include the redelegation of these authorities to the Director in future redelegations. Such authorities are now redelegated to the Director, Executive Office of the United States Attorneys, by the Assistant Attorney General for Administration in Order OBD 2110.12.

This regulation is exempt from the requirements of Executive Order No. 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have a significant economic impact on a substantial number of small entities because its effect is internal to the Department of Justice.

List of Subjects in 28 CFR Part 0

Government employees, Organization and functions (Government agencies), Authority delegations (Government agencies), and Intergovernmental relations.

By virtue of the authority vested in me as Attorney General by 28 U.S.C. 509, 510 and 530 and 5 U.S.C. 301, 28 CFR is hereby amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103; 15 U.S.C. 644(k); 18 U.S.C. 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d) 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. App. 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.148 is revised to read as follows:

§ 0.148 Certifying officers.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of the Federal Prison Industries, Inc., the Commissioner of the Immigration and Naturalization Service, the Administrator of the Drug Enforcement Administration, Assistant Attorney General for the Office of Justice Programs, the Director of the United States Marshals Service, and the Director of the Executive Office for United States Attorneys, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department are authorized to designate employees to certify vouchers.

3. Section 0.149 is revised to read as follows:

§ 0.149 Cash payments.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of the Federal Prison Industries, Inc., the Commissioner of the Immigration and Naturalization Service, the Administrator of the Drug Enforcement Administration, the Assistant Attorney General for the Office of Justice Programs, the Director of the United States Marshals Service, and the Director of the Executive Office for United States Attorneys, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department, are authorized to:

(a) Request Department of the Treasury designation of disbursing employees (including cashiers),

(b) Approve waivers of the Department of the Treasury maximum limitation on routine payments of cash from imprest funds, and

(c) Approve requests to place imprest funds in depositary cash demand withdrawal accounts and establish the maximum amount of each account.

Guidelines are to be promulgated by each component for the establishment and maintenance of such accounts in accordance with the provisions set forth in the Treasury Financial Manual, Volume I, Part 4, Chapter 3000. Existing authorizations to request designations of disbursing employees shall remain in effect until terminated by the official who by this section would be authorized to request such designations.

Dated: June 30, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-15524 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making several interpretative clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20. These changes and additions are intended to remove ambiguities and to make the guidelines more comprehensive. Further, the Parole Commission is amending the provisions at 28 CFR 2.37 to facilitate and expedite cooperation between the Commission and law enforcement officials.

EFFECTIVE DATE: August 11, 1986.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION:

A. The Interim Rules and Their Purposes

In each of the following instances, the final rules being issued by the Parole Commission were preceded by the publication of an interim rule, with request for public comment.

1. On March 30, 1983, the U.S. Parole Commission published in the **Federal Register** (48 FR 13165) an interim rule, with request for public comment, that added a new subsection to its paroling policy guidelines, 28 CFR 2.20, to clarify its policy concerning the application of the guidelines to be used in probation revocation cases. Per section (j) (1) and (2), in probation revocation cases, the Commission considers the original federal offense and any new criminal conduct on probation (federal or otherwise) in assessing the offense severity except where probation has been revoked on a complex sentence (i.e., a committed sentence of more than six months followed by a probation term). In such complex sentences, the cases will be considered for guideline purposes under the Commission's reparole guidelines, 28 CFR 2.21.

2. On September 29, 1983, the U.S. Parole Commission published in the **Federal Register** (48 FR 44529) an interim rule, with request for comment, that made several interpretative clarifications, revisions and additions to the Offense Behavior Severity Index of 28 CFR 2.20. These amendments were, for the most part, editorial and served to clarify the offense examples and/or make the index more comprehensive by adding new offense examples. Among these amendments were the following: Offense Example 222 was revised for clarity as were Offense Examples 301(b), 331, 613, and 616; Offense Examples 901, 911, 921 and 931 of Chapter 9 were amended to clarify the consideration of an offender's role in illicit drug offenses; new Offense Example 321 was added to cover purse snatching, new Offense Example 335 to cover criminal copyright offenses and new Offense Example 617 to provide guidance on rating failure to appear in a misdemeanor proceeding; Offense Example 618 was added concerning contempt of court, as were Offense Example 1131 covering sexual exploitation of children, and Offense Example 1161 as regards money laundering; the definitions contained in Chapter 13 were revised and expanded; Offense Example 612 was revised to remove a potential inconsistency with another offense example; cross references were added to Offense Examples 614 and 615; and Offense Example 1101 was revised by adding a statutory reference that had been previously omitted due to clerical error.

3. On March 31, 1982, the U.S. Parole Commission published in the **Federal Register** (47 FR 13521) an interim rule with request for comment, that amended 28 CFR 2.37 (a) and (b), the rules governing the disclosure of information concerning parolees. Prior to these amendments, approval by a Commissioner was required to disclose information to persons who might be exposed to harm through contact with certain parolees. Such disclosure may not be made upon approval of the probation officer supervising the case. Formerly, approval by the Commission was required to provide lists of names of parolees entering a jurisdiction to local law enforcement agencies; such disclosure may now be provided by the appropriate Chief Probation Officer. Additionally, the rule was clarified to state explicitly that information about parolees may be disclosed to law enforcement agencies where necessary for public protection or for the enforcement of the conditions of parole.

B. Public Comment

The Washington Legal Foundation telephoned the Parole Commission to note its support of the interim rule containing the addition of 28 CFR 2.20(j). No public comment was received as regards the several changes and additions made to the Offense Behavior Severity Index per the interim rule published on September 29, 1983.

However, a significant number of responses were received concerning the disclosure of information concerning parolees pursuant to 28 CFR 2.37. Two sheriff's departments and one state policy chiefs association wrote in support of the rule; each noted that it would enhance investigative ability and aid in law enforcement. The Washington Legal Foundation provided a supportive letter, noting its opinion that the Parole Commission should further modify its rules to require the notification of victims when an offender has been released on parole. Some seventeen Chief Probation Officers provided comments, most expressing complete support with a few recommending some changes in wording that would clear up potential ambiguities. The Executive Director of the Federal Defenders of San Diego, Inc. wrote with suggestions as to needed clarifications and recommended that parolees themselves receive a specific notice when such disclosures