obtained from the Central Flow Control Facility (Telephone No. (202) 382–6866).

C. A departure reservation from the St. Louis area is required and must be obtained from the St. Louis FSS (Telephone No. (314) 532–1011).

D. Flight plans may only be filed after receiving a reservation but must be filed at least 4 hours prior to the proposed departure time.

E. Flight plans for flight from the St. Louis area should be filed with the St. Louis FSS between the hours of 1100 and 0300 GMT.

5. Each person receiving a reservation number under this rule must include it in the remarks section of the appropriate flight plan as filed with ATC.

Issued in Washington, DC, on September 17, 1982.

B. Keith Potts,

Acting Director, Air Traffic Service.

[FR Doc. 82-26424 Filed 9-24-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 357

Revision of Annual Report of Carriers by Pipeline: Form P

[Docket No. RM82-5-000; Order No. 260]

September 21, 1982.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: By this rule the Federal Energy Regulatory Commission (Commission) revises Form P, the annual report filed by oil pipeline companies and the related regulations at 18 CFR § 357.2, and redesignates the form as FERC Form No. 6. In creating new FERC Form No. 6, the Commission deletes some schedules entirely and deletes portions of other schedules previously included in Form P. These revisions are made as part of the Commission's ongoing program to review all of its reporting requirements and to eliminate those requirements that are not necessary to the performance of the Commission's responsibilities.

DATE: The final rule is effective October 27, 1982. It applies to reports filed on or before March 31, 1983, and all reports thereafter.

ADDRESS: Copies of FERC Form No. 6 are available at: Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, N.E., Room 1000, Washington, D.C. 20426 (202) 357–8055.

FOR FURTHER INFORMATION CONTACT:

Elaine Dawson, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 3405N, Washington, D.C. 20426, (202) 357–9190

Yvonne Owens, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 6006–B, Washington, DC 20426, (202) 357–9104

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) is revising Form P, "Annual Report of Carriers by Pipeline", redesignating it as FERC Form No. 6, "Annual Report of Oil Pipeline Companies",[1] and revising the related regulations at 18 CFR § 357.2. These revisions are part of the Commission's ongoing program to review and evaluate all of the information it collects for regulatory purposes and to eliminate any unnecessary reporting requirements. This rulemaking reduces the data collected in the old Form P by about 20 percent.

I. Background

A. History of Form P

In 1977, the responsibility to regulate oil pipeline companies was transferred to the Commission from the Interstate Commerce Commission (ICC).[2] In accordance with the transfer of authority, the Commission was delegated the responsibility under section 1 of the Interstate Commerce Act (49 U.S.C. § 1) to regulate the rates and charges for transportation of oil by pipeline and establish valuation of those pipelines, and under section 20 of that Act to require pipelines to file annual reports of information that is necessary to the Commission's exercise of its statutory responsibilities.[3]

Form P was originally developed by the ICC to collect information on an annual basis, to enable it to carry out its regulation of oil pipelines under the Interstate Commerce Act.[4] Many of the schedules in Form P were modeled after schedules in annual reports that were filed by other common carriers other than oil pipelines and, therefore, some of the information collected on Form P is unnecessary for the Commission's regulation of oil pipeline companies.

B. Summary of Notice of Proposed Rulemaking

On December 4, 1981, the Commission issued a Notice of Proposed Rulemaking to amend Form P and the related regulations at 18 CFR § 357.2. The proposed revisions to Form P included the following: (1) redesignating Form P as FERC Form No. 6, "Annual Report of Oil Pipeline Companies"; (2) eliminating information requirements from several schedules; (3) consolidating and clarifying the instructions in the form; (4) adding one new schedule entitled, "Statement of Changes in Financial Position", and (5) eliminating the following schedules entirely:

Title of schedule	Schedule No. in form P
Guaranties and Suretyships	110
Compensating Balances and Short-term Borrowing Arrangements	205
Special Deposits	206
Notes Receivable	210
Accounts Receivable	212
Companies Controlled Through Nonreporting Intermediaries	223
Sinking and Other Funds	225
Rental Expense of Lessee	243
Minimum Rental Commitments	244
Lessee Disclosure	245
Lease Commitments—Present Value	246
Income Impact—Lessee	247
Notes Payable	250
Accounts Payable	252
Long-Term Debt Changes During the Year	261
Security for Long-Term Debt	262
Stock Liabilities for Conversion of Securities of Other Companies	272
Abstracts of Terms and Conditions of Leases	342
Rentals	420
Abstracts of Leasehold Contracts	422
Compensation of Officers, Directors, etc	562

[1] FERC Form No. 6 (reproduced as *Appendix B* of the final rule) will not be printed in the **Federal Register**. A summary of the data required in the new form No. 6, however, is included as Appendix A of this rule. Copies of this final rule, including all appendices, are available at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, N.E., Room 1000, Washington, D.C. 20426, (202) 357–8055. Blank copies of the form may be obtained, after October 1982, from the National Energy Information Center, Energy Information Administration.

[2] Section 402(b) of the Department of Energy Organization Act (DOE Act) (42 U.S.C. § 7172) provides that: "[t]here are hereby transferred to and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline."

[3] The Secretary of Energy delegated to the Federal Energy Regulatory Commission the authority under the Interstate Commerce Act which was formerly vested in the ICC, as that statute relates "to the transportation of oil pipeline to the extent that such * * * [statute is] not transferred to, and vested in, FERC by Section 402(b) of the DOE Act * * *" (Delegation Order No. 0204–1, October 1, 1977).

[4] The filing of Form P had been required by § 1241.61 of the ICC's regulations (49 CFR § 1241.61). The Form P filings were required to be submitted to this Commission after passage of the DOE Act, under the authority of the ICC regulations. By Order No. 119, "Regulation of Interstate Oil Pipelines", Docket No. RM81–8, (issued December 19, 1980), 46 *Fed. Reg.* 9043 (January 28, 1981), the Commission transferred, among other things, the regulations requiring the filing of Form P to Title 18 of the Code of Federal Regulations. Thus, 49 CFR § 1241.61 was transferred to 18 CFR § 357.2.

Title of schedule	Schedule No. in form P
Competitive Bidding—Clayton Antitrust Act	[1] 595

[1] The deletion of Schedule 595 in no way affects the requirement for carriers to file a statement of competitive bidding transactions pursuant to the requirements in 49 CFR Part 1010.

The Commission stated in the notice that Form P could be revised to eliminate data without impairing the Commission's ability to regulate the rates and charges for transportation of oil by pipeline and to establish valuation of the pipelines. The Commission estimated that these revisions could reduce pipelines' reporting burden by about 20 percent.

II. Summary and Analysis Of Comments

In response to the Notice of Proposed Rulemaking, the Commission received twelve comments, all from jurisdictional oil pipeline companies.[5] In general, they agreed with the proposed revisions and supported the efforts of the Commission to reduce the reporting burden on oil pipelines. They offered several suggestions to further reduce and improve of the proposed form. These suggestions fall under three categories: general issues and procedures in filing the form, the format of the form, and comments to specific schedules of the form.

A. General Issues and Procedures

Commenters made certain suggestions respecting five general matters for the form. These were: (1) the complete elimination of the form, (2) classification of the respondents to the form, (3) reduction in the filing burden, (4) effective date of the final rule to revise the form, and (5) publication of statistics from the form.

1. *Complete Elimination of the Form.* One commenter questioned the need to gather information required in the annual report and proposed to eliminate Form P altogether as a step to decontrol oil pipelines.

The Commission will continue to collect data from oil pipeline companies because the Commission's responsibility to regulate rates and charges for transportation of oil by pipeline and to establish the valuation of any such pipelines continues under the DOE Act and the Interstate Commerce Act. Furthermore, this rulemaking eliminates from the form all but the most essential data that the Commission needs in the annual filing to effectively regulate oil pipelines. These changes should reduce the respondents' reporting burdens as compared to the old Form P.

2. *Classification of Respondents.* Another commenter proposed that companies be classified according to the amount of their assets or revenues so that companies below a minimum size (approximately $25,000,000) should not be required to file. As an alternative, the commenter suggested that small companies should only be required to submit the basic financial statements and not the detailed schedules as well.

The Commission believes some type of classification for oil pipelines may be worthy of consideration in the future. However, this matter beyond the scope of this rule, and the Commission is not prepared to consider it at this time. [6]

3. *Reduction in Filing Burden.* One commenter asserted that, while the changes proposed by the Commission should reduce the preparation time for the report, somewhat, the Commission's estimate of a burden reduction of 20 percent appeared very optimistic. Another commenter also observed that, while the proposed changes will reduce the number of schedules in the report by one-third and the number of pages by nearly one-half, this will not necessarily result in a commensurate reduction in the task of preparing the report.

The Commission realizes that not all of the oil pipelines will realize a 20 percent reduction in burden; some will realize less, others more. The basis for determining the estimated burden reduction was derived from the total number of elements of information deleted or simplified. The actual burden reduction for filing companies cannot be measured more accurately until the Commission gains experience with the new form. However, the Commission and the commenters were in agreement that there would probably be at least some reduction in the overall burden.

4. *Effective Date.* One commenter urged the Commission to revise Form No. 6 in sufficient time so that companies could use the new form to file data for the year ending December 31, 1981 (due March 31, 1982).

The Commission realized from the outset that it would be virtually impossible to make the proposed changes in time to file data for the year ending December 31, 1981. The comment period in this rulemaking ended February 2, 1982, leaving only a few weeks to complete work on the final rule at the Commission, obtain approval from the Office of Management and Budget for collection of the form under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520), print the new form, and circulate it to filing companies before the reporting deadline of March 31, 1982. The Commission, therefore, proposed, and now makes final, the new Form No. 6 effective for the calendar year 1982 and each year thereafter, and the filings of the form are due on March 31st of each year. The first filing of the new form will be March 31, 1983.

5. *Publication of Statistics.* Three commenters suggested that the Commission compile and publish statistics from the Form No. 6 reports, similar to the transport statistics that were previously published by the Department of Energy. The commenters said that these publications would be useful to the public. Although the Commission understands this need, the Commission will not publish these statistics. Pursuant to section 205 of the DOE Act, the publication of such statistical compilations is within the responsibility of the Energy Information Administration. The Commission's publication of these statistics could be viewed as an inappropriate use of administrative resources. However, the completed forms, which would include these statistical data, will be available for review by the public at the Commission.

B. Format of the Form

The commenters discussed three matters related to the format of the form. These were: (1) the name of the form, (2) the identification of the pages in the form, and (3) the reporting of dollar amounts in the form.

One commenter suggested that the name of the form not be changed. However, the Commission believes that changing the form's name to "Annual Report of Oil Pipeline Companies" will more accurately describe the report from the standpoint of the Commission's regulatory responsibilities. In addition, the form's new designation of "FERC Form No. 6" will conform the report more closely to the Commission's reporting requirement classification system.

One commenter proposed that page numbers for the new form be in numerical sequence without use of

[5] ARCO Pipe Line Company, Buckeye Pipeline Company, Four Corners Pipe Line Company, Getty Oil Company, Mid-America Pipeline Company, Mobil Pipe Line Company, Shell Pipe Line Company, Sohio Pipe Line Company, Sonat Oil Transmission Inc., Texas Pipe Line Company, Union Alaska Pipeline Company, and Williams Pipe Line Company.

[6] The Commission is reluctant to make any determinations respecting reclassification before the resolution of the issues in the *Williams Pipe Line Company* case (Docket No. OR79–1) currently pending before the Commission. The changes to the Form P in this rulemaking are made for the purpose of reducing reporting burdens, and eliminating the filing of data that are unnecessary to the Commission, regardless of the outcome of the *Williams* case.

alphabetical designations and that the page numbers appear at the bottom of each page rather than the upper right corner. Other commenters suggested that the reference page numbers be retained in the Table of Contents because they are helpful to the use of the report.

The Commission has organized the schedules to which the pages refer to correspond to the account numbers in the Uniform System of Accounts and has eliminated all the alphabetical designations for the pages in the report. In addition to the other changes, the Commission has decided to replace its system of separate schedule numbers and reference page numbers with a system in which the schedule numbers and page numbers are the same. The page numbers are centered at the bottom of each page. The schedules will continue to be identified in a "Table of Schedules" at the beginning of the report.

One commenter proposed that, whenever possible, pipelines should be permitted to round reported dollar amounts to the nearest thousand dollars. The Commission has decided that it will continue to require reporting of dollar amounts on the basis of whole dollars, *i.e.*, rounding cents to the nearest dollar. One reason is that rounding dollars to the nearest thousand may inaccurately reflect the operations of smaller companies. In addition, dollar amounts are rounded to the nearest dollar in other Commission filings, including oil company evaluation reports and reports from companies that have both oil and natural gas operations. The Commission believes that this practice should continue here to establish a useable cross-reference between the various filings and reports.

As part of its format revisions, the Commission has also consolidated all of the definitions used in Form No. 6 in the General Instructions. The Commission has revamped most of the instructions in the form and increased the space for reporting data in the schedules. The Commission believes that all of these changes will make the form easier to use by the companies and will provide better data to the Commission.

C. Particular Schedules in the Form

1. *Schedules 120 and 121—Statement of Changes in Financial Position (New).* The four commenters who discussed this new schedule all favored its addition to the form. They agreed that the requested data would assist the Commission in analyzing operations of the individual pipelines and that the schedule would add only a minimal reporting burden.

2. *Schedule 104—Principal General Officers (Old Schedule 103).* One commenter proposed that column (b) of Schedule 103 entitled, "Department or departments over which jurisdiction is exercised" should be eliminated because officers could have corporate-wide functions rather than only the narrowly-defined departmental responsibilities. The Commission agrees with this comment and has eliminated column (b). The old description is too narrow and, as such, could result in burdensome reporting.

3. *Schedules 230 and 231—Data Pertaining to Federal Income and Other Taxes on the Comparative Balance Sheet (on Old Schedule 200).* One commenter proposed that "Comparative Balance Sheet Statement Notes" (on old Schedule 200) be revised to include a new category for cumulative tax savings from depreciation provided by the recently enacted tax legislation. [7] Another commenter recommended updating some sections on that statement (particularly those relating to deferred taxes) to make them correspond to changes occasioned by the new tax laws.

The Commission agrees with these suggestions and has accordingly provided a line item for ACRS—Accelerated Cost Recovery System-Economic Recovery Tax Act of 1981 in the new Schedules 230 and 231, "Analysis of Federal Income and Other Taxes Deferred".

4. *Schedules 208 and 209—Securities, Advances, and Other Intangibles, Owned or Controlled Through Nonreporting Carrier and Noncarrier Subsidiaries (Old Schedule 224).* Two commenters objected to the Commission's requirement of Schedule 224, claiming that the information reported on this schedule is not necessary to the Commission's regulatory responsibilities. One of these commenters also suggested that the Commission obtain this information directly from a company, as needed, rather than impose a reporting burden on all companies.

The Commission disagrees. The data in this schedule are used to compare the operations of the various companies and to determine historical trends of the industry. The Commission has, however, deleted from this schedule all but essential information to minimize, as much as possible, the reporting burden on companies that respond to it. Furthermore, as revised, the schedule should provide no burden to companies that are not utilizing an intermediary holding company.

5. *Schedules 214 and 215—Depreciation Base and Depreciation Rates (Old Schedule 231).* One commenter proposed that the instructions in Schedule 231 be clarified. The commenter stated that the schedule requires the balancing of the depreciation base with the total assets as of December 31st listed on Schedule 230. However, many companies base their depreciation on the prior month's balance (i.e., November) so that the correct balance for computing December's depreciation would, in fact, be the November ending balance. The commenter added that a reconciling process is needed to include the December data in order to comply with the instructions on Schedule 231.

The Commission has decided to retain the method of reporting of this information in new Schedules 214 and 215 because the information is designed to correspond to data in other subsidiary reporting schedules in the form and to the balance sheet. A revision to these schedule would, therefore, require corresponding changes to the other schedules and the resulting data reported would not be as useful to the Commission as it is in the current format. The Commission does also not feel that reconciling process poses a significant burden for the reporting companies.

6. *Schedule 220—Other Deferred Charges (Old Schedule 240).* Two commenters said that the information in this schedule is not necessary for the performance of the Commission's regulatory responsibilities. One of the commenters suggested that the Commission should obtain information on deferred charges directly from particular companies, as needed, rather than from all companies in an annual report. Two commenters suggested that the schedule require disclosure only of individual items over $100,000, and one commenter requested that the Commission permit items smaller than $100,000 to be grouped for reporting purposes.

The Commission has decided to retain this schedule because it is the only source of information on deferred charges that the Commission receives from all reporting companies. The Commission uses the data on the schedule for comparisons among the various companies, and for decisionmaking in its rate proceedings. The Commission, however, agrees with the suggestion respecting the threshold, and, accordingly has raised the reporting minimum for deferred charges

[7] Economic Recovery Tax Act of 1981, 26 U.S.C. § 1, *et seq.*

from $20,000 to $100,000. The data reported with a higher threshold should be sufficient for Commission purposes and the new threshold should further reduce respondent burdens.

7. *Lease Information—Deleted (Old Schedule Nos. 243, 244, 245, 246 and 247).* Two commenters approved of the elimination of the schedules pertaining to accounting for leases: Schedules 243 (Rental Expense of Leasee), 244 (Minimum Rental Commitments), 245 (Lessee Disclosure), 246 (Lessee Commitments, Present Value), and 247 (Income Impact-Lessee). They recommended, however, that the Commission continue to use generally accepted accounting principles in the regimen of oil pipeline accounting and financial reporting.

The Commission notes that the elimination of these schedules will not change the Commission's oil pipeline accounting procedures.

8. *Schedule 336—Interest and Dividend Income Information (Old Schedule 345).* Two commenters suggested that information reported on this schedule is not necessary for the performance of the Commission's regulatory responsibilities. One of the commenters suggested that the Commission obtain the information collected on this schedule on a case-by-case basis rather than impose a reporting burden on all companies.

The Commission believes the continued reporting of information on this schedule in the current format is necessary. This is because the Commission uses the information to compare interest and dividend income for all of the reporting companies, and to make decisions in rate proceedings.

9. *Schedules 600 and 601—Statistics of Operations (Old Schedule 400).* One commenter objected to this schedule because it requires too many details of deliveries into and out of pipeline systems, that are unnecessary for the Commission's regulatory purposes. The commenter, therefore, recommended that only the totals of these deliveries continue to be required. The commenter said that these revisions would save it an estimated 40 hours in the preparation of the annual report.

The Commission has decided to retain this schedule in its current format at this time because the Commission uses the data to determine any fluctuations in the companies' operation and maintenance expenses as a basis for field audits. However, the Commission may reconsider the requirement to report these data in a future revision of the form.

10. *Schedules 602 and 603—Miles of Pipeline Operated at Close of Year (Old Schedule 410).* Two commenters stated that a significant portion of the information reported on this schedule is already provided in the Form ACV 1, "Statement of Property Changes Other Than Land and Rights-of-Way", and in ACV–4, "Summary of Cost of Reproduction New and Cost of Reproduction New Less Depreciation". The commenter, therefore, suggested that this schedule be deleted. Another commenter also recommended the deletion of the schedule because it is not useful to the Commission and is burdensome to pipeline companies. In the alternative, the company suggested the eliminaton of the detailed information concerning gathering, crude oil, and refined products.

The Commission notes that the Forms ACV 1 and 4 are currently under review, as are other important pipeline proceedings. Until these matters are resolved, the Commission believes that it should continue to collect the data currently required on this schedule. In the future, the Commission may reconsider the requirement to report the data on this schedule.

11. *Schedule 350—Employees and Their Compensation (Old Schedule 561).* Two commenters objected to this schedule, stating that it collects data that are not necessary to the performance of the Commission's regulatory responsibilities. The commenters suggested that the Commission could obtain this detailed information from a company, as needed, rather than impose the reporting burden on all companies.

The Commission will continue collecting this information because it is used by the Commission to develop historical trends in the industry respecting employee services and the related costs reported each year. In addition, the Commission uses these data to evaluate the companies' labor costs projections as part of their justifications for a tariff increase.

12. *Schedule 351—Payments for Service Rendered by Other Than Employees (Old Schedule 563).* Two commenters objected to this schedule because it allegedly collects data that are not necessary for the performance of the Commission's regulatory responsibilities. They suggested that the information could be obtained directly from a company, when needed, rather than from all companies in an annual reporting requirement. As an alternative, one of the commenters suggested that the reporting minimums for service payments be raised to $100,000.

The Commission has decided to continue to collect this information because it enables the Commission to develop historical trends of services provided by reporting companies and to determine which costs should be included in a company's cost-of-service. The Commission will not raise the threshold because it would result in the loss of too many important data respecting payments smaller than $100,000.

III. Certification of No Significant Economic Impact

The Regulatory Flexibility Act (RFA), (5 U.S.C. §§ 601–612) requires certain statements, descriptions, and analyses of proposed and final rules that will have "a significant economic impact on a substantial number of small entities".

Of the 138 oil pipeline companies required to file the annual report, only about 25 companies have annual operating revenues below $1 million. The Commission does not consider this to be a substantial number of small entities. Moreover, this rule, if promulgated, should result in an overall reduction in the filing burden on all oil pipeline companies, both large and small, because most of the revisions either delete or consolidate the schedules presently included in the annual report, and clarify and simplify the requirements for filing the report. Therefore, under section 605(b) of the RFA, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Summary of Changes

The Commission has adopted the changes to the new Form No. 6 that were proposed in the notice,[8] except as modified by the revisions in response to the comments, discussed above. A summary of all of the changes to the form is attached at Appendix A.

The Commission has also adopted the changes to its regulations at § 357.2 that were proposed in the notice, and, in addition, makes certain nonsubstantive revisions. These revisions include identifying the form by its title in the body of the regulations, making an editorial change to the requirements of "when to file", and making minor reorganizational changes to the regulations.

V. Effective Date

This final rule is effective 30 days after the date of its publication in the **Federal Register.** It applies to reports to be filed on or before March 31, 1983, and for reports filed thereafter.

[8] *See* Part I of this final rule.

(Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352; E.O. 12009, 3 CFR 142 (1978); Interstate Commerce Act, 49 U.S.C. § 1, et seq.)

List of Subjects in 18 CFR Part 357

Pipelines, Uniform system of accounts.

In consideration of the foregoing, the Commission amends Form P and redesignates the form as FERC Form No. 6 as discussed above and as set forth in *Appendix B* which is not printed in the **Federal Register** and amends Part 357 of Subchapter R, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective thirty days after publication in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

Section 357.2 is revised to read as follows:

§ 357.2 FERC Form No. 6, Annual report of oil pipeline companies.

Every carrier by pipeline subject to the provisions of section 20 of the Interstate Commerce Act must file with the Commission copies of FERC Form No. 6, "Annual Report of Oil Pipeline Companies" pursuant to the General Instructions set out in that form. This report must be filed on or before March 31st of each year for the previous calendar year, beginning with the year ending December 31, 1982.

BILLING CODE 6717-01-M

FERC FORM NO. 6 REVISIONS (Formerly P)

Title	Old Schedule Page No.	New Schedule Page No.	Retained-				Deleted Complete Schedule	Explanation
			As Is	Changed Threshold	Revised Instructions	Deleted Columns		
Cover (Data now titled - Identification)	–	1			X			Information moved from cover to separate page.
Notice (New title - Instructions for Filing the FERC Form No. 6)	–	i-iv			X			To clarify instructions and consolidate definitions on pages throughout old form.
Table of Contents (New title - List of Schedules)	–	2,3			X			Title change. Format change. Renumbered schedules and added a column, "Remarks" to indicate "N/A."
Identity of Respondent (New title - General Information)	101	101	X					
Directors	102	105			X	X		Revised instructions and deleted columns (c), (d), (e), and (f).
Principal General Officers	103	104			X	X		Deleted columns (b) and (d).
Corporate Control Over Respondent	108	102	X					
Stockholders Report	108A	3			X			Instructions moved to i. Non-filing to be reported at bottom of List of Schedules (new page 3).
Voting Powers and Elections (New Title- Voting Powers and Security Holders)	109	106,107				X		Column (e) and (f) merged. Spread to a two-page schedule to allow more space.
Guaranties and Suretyships	110	–					X	
Comparative Balance Sheet Statement	200	110-113	X		X			Expanded to a multiple page schedule to give more space. Federal taxes data moved to new 230 and 231. Notes (pension costs, political fund, marketable securities) moved to new 122 and 123.
Income Statement	300	114	X					Old lines 30 thru 32 moved to new schedule 122. Old lines 33 thru 40 moved to new schedule 231.
Analysis of Federal Income and Other Taxes Deferred	300A	230,231			X			Added line for ACRS-Accelerated Cost Recovery System—Economic Recovery Tax Act of 1981. Moved notes on taxes from old schedule, page 200.
Working Capital	302	117	X					
Notes and Remarks (new title – Notes to Financial Statements)	–	122,123			X			Moved and relocated to incorporate all notes applicable to the basic financial statements (new schedules 110 thru 121).
Unappropriated Retained Income Statement	305	119	X					
Dividend Appropriations of Retained Earnings	306	119				X		Deleted columns (b) and (c).
Compensating Balances and Short-Term Borrowing Arrangement	205	–					X	
Statement of Changes in Financial Position	–	120,121						Schedule added to allow for a more complete financial presentation of the financial condition of the pipelines to compensate for the loss of deleted data.
Special Deposits	206	–					X	

FERC FORM NO. 6 REVISIONS (Formerly P)

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Notes Receivable	210	–					X	
Receivables from Affiliated Companies	211	200	X					
Accounts Receivable	212	–					X	
General Instructions Concerning Returns in Schedules 220 and 221	–	201			X			Moved definitions to new pages i thru iv.
Investments in Affiliated Companies	220	202,203			X	X		Deleted columns (e) thru (h), (j) and (l).
Investments in Common Stocks of Affiliated Companies	220A	204	X					
Other Investments	221	206,207			X	X		Deleted columns (d) thru (g), (i) and (k).
Companies Controlled Directly by Respondent Other Than Thru Title of Securities	222	205	X					
Companies Controlled Thru Nonreporting Intermediaries	223	–					X	
Securities, Advances, and Other Intangibles Owned or Controlled Thru Nonreporting Carriers and Noncarrier Subsidiaries	224	208,209				X		Deleted columns (c), (e) and (g).
Sinking and Other Funds	225	–					X	
Carrier Property	230	211-213	X					Instructions placed on separate page 211.
Depreciation Base and Rates – Carrier	231	214	X					Instructions placed on separate page 211.
Depreciation Base and Rates – System	231a	215	X					
Accrued Depreciation – Carrier Property	232	216	X					
Accrued Depreciation – System Property	232A	217	X					
Amortization Base and Reserve	233	218	X					
Noncarrier Property	234	219	X					
Other Deferred Charges	240	220		X				Raised from $20,000 to $100,000 threshold for grouping minor items.
Rental Expense of Lessee	243	–					X	
Minimum Rental Commitments	244	–					X	
Lessee Disclosure	245	–					X	
Lease Commitments – Present Value	246	–					X	
Income Impact-Lessee	247	–					X	
Notes Payable	250	–					X	
Payables to Affiliated Companies	251	225	X					
Accounts Payable	252	–					X	
Long-Term Debt Payable Within One Year	253	–					X	Except column (1) relocated to new schedule 226 and 227.
Long-Term Debt Payable After One Year	260	226,227			X	X		Deleted columns (d) thru (h). Added one from above.

FERC FORM NO. 6 REVISIONS (Formerly P)

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Long-Term Debt Changes During the Year	261	–					X	
Security for Long-Term Debt	262	–					X	
Capital Stock	270	250,251				X		Deleted columns (n), (o), (p), (r), (s), and (u). Revised heading for column (v) to read "Book Value."
Capital Stock Changes During the Year	271	252,253			X			Revise title headings for column (d) and (i) to read, "Number of Shares."
Stock Liability for Conversion of Securities of Other Companies	272	–					X	
Additional Paid-in Capital	274	254	X					
Appropriated Retained Income	275	118	X					
Operating Revenue Accounts	310	301	X					
Operating Expense Accounts	320	302,303	X					
Pipeline Taxes (Other Than Income Taxes)	330	304	X					
Income From Noncarrier Property	340	335				X		Deleted column (d).
Abstracts of Terms and Conditions of Leases	342	–					X	
Interest and Dividend Income	345	336	X					
Miscellaneous Items in Income and Retained Income Accounts for the Year	360	337	X					
Statistics of Operations	400	600,601	X					
Miles of Pipeline Operated at End of Year Year	410	602,603	X					
Rentals	420	–					X	
Abstracts of Leasehold Contracts	422	–					X	
Employees and Their Compensation	561	350	X					
Compensation of Officers, Directors, Etc.	562	–					X	
Payments for Services Rendered by Other Than Employees	563	351	X					
Important Changes During the Year	591	108,109	X					
Competitive Bidding – Clayton Antitrust Act	595	–					X	
Verification, Oath, Supplemental Oath	–	1			X			Deleted requirement for Notary and Supplemental Oath
Memoranda (for use of Commission only)	–	–					X	
Index	–	Index			X			

[FR Doc. 82-26405 Filed 9-24-82; 8:45 am]
BILLING CODE 6717-01-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 221

[Docket No. R-82-979]

Mutual Mortgage Insurance and Rehabilitation Loans

Correction

In FR Doc. 82-19112, beginning on page 30750 in the issue of Thursday, July 15, 1982, make the following corrections:

1. On page 30752, in the third column, the part heading should read "Part 203—Mutual Mortgage Insurance and Rehabilitation Loans".

2. On page 30753, in the third column, the line above paragraph 6., should read: "**§§ 203.444 through 203.456 [Removed]**".

3. On page 30754, in the second column, the line above paragraph "13." should read "**§ 221.251 [Amended]**".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7836]

Income Tax; Taxable Years Beginning After December 31, 1953; State and Local Government Deferred Compensation Plans

AGENCY: International Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to deferred compensation plans maintained by State and local governments and rural electric cooperatives. Changes to the applicable tax law were made by the Revenue Act of 1978. The regulations would provide the public with the guidance needed to comply with that Act, and would affect State and local governments and rural electric cooperatives that maintain deferred compensation plans, and employees whose compensation is deferred under the plans.

EFFECTIVE DATES: The regulations are generally effective for taxable years beginning after December 31, 1978. However, the rules relating to the tax treatment of participants in ineligible plans under § 1.457-3 are effective for taxable years beginning after December 31, 1981. In addition, the transitional rules of § 1.457-4 are effective for taxable years beginning after December 31, 1978, and before January 1, 1982.

FOR FURTHER INFORMATION CONTACT: Charles K. Kerby, III of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, (Attention: CC:EE-176-78) (202-566-3422) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 457 of the Internal Revenue Code of 1954 (45 FR 85077). The amendments were proposed to conform the regulations to section 131 of the Revenue Act of 1978 (92 Stat. 2779). A public hearing on the proposed regulations was held on May 5, 1981. After consideration of all comments regarding the proposed amendments, these amendments are adopted (as revised) by this Treasury decision.

Exclusion From Income by Individuals

Under section 131 of the Revenue Act of 1978, employees and independent contractors who provide services for a State or local government or a rural electric cooperative that maintains an eligible deferred compensation plan may exclude from gross income compensation deferred under the plan until it is paid or otherwise made available.

General Plan Requirements

In order to be an eligible plan, the plan must provide that compensation deferred under the plan for any year may not exceed 33⅓% of the participant's includable compensation (in general, gross salary less any amount excludable from gross income) or $7,500, whichever is less. A plan may, however, inlcude a limited "catch-up" provision for any, or all, of the last three taxable years of a participant ending before the participant attains normal retirement age under the plan. Under the catch-up provision, a participant may defer an additional amount equal to any deferral limitations not utilized for prior taxable years after December 31, 1978, in which the participant was eiligible to participate under the plan and was subject to the normal deferral limitations. The amount that can be deferred under the catch-up provision is, however, limited to $15,000. The final regulations make clear that a plan may not permit the catch-up provision to be used more than once, whether or not the participant rejoins the plan or joins a new plan, and whether or not the catch-up is utilized in one or all three of the applicable taxable years. Under the final regulations, normal retirement age is expanded to include a limited range of ages at the option of the participant.

An individual may be a participant in more than one eligible plan. If an individual participates in two or more plans that are maintained by the same employer, any amount deferred under one plan reduces the amount that may be deferred under another, so that the total deferred under all the plans does not exceed the amount which could be deferred under a single plan. If an individual participates in two or more plans maintained by different employers, the maximum amount excludable from the gross income of the participant for a taxable year on account of amounts deferred under the plans cannot exceed $7,500, or, as applicable, the maximum permitted under the "catch-up rules.

If a participant in an eligible plan also has amounts contributed by the same employer for the purchase of a tax-sheltered annuity under Code section 403(b), the maximum amount that may be deferred under the eligible plan is reduced by the amount contributed for the purchase of the annuity contract. If the employer contributing amounts for the purchase of the annuity contract and the employer maintaining the eligible plan are different employers, the maximum deferral permitted under the eligible plan is not reduced by the amount contributed for the purchase of the annuity contract. However, the maximum amount excludable from the participant's gross income on account of amounts deferred under the eligible plan of the one employer is reduced to take into account amounts excludable under section 403(b) on account of contributions by the other employer for the purchase of the annuity contract. In general, in any case in which an individual is both a participant in an eligible plan and is an employee for whom amounts are contributed toward the purchase of an annuity contract under section 403(b), the deferral of compensation under the eligible plan will reduce the amount excludable from gross income under section 403(b), without regard to whether it is a single employer or different employers maintaining the eligible plan and contributing amounts for the purchase of the annuity contract.

Plan Distribution Requirements

An eligible plan is considered to provide a retirement benefit for the participant. Consistent with this view, the proposed regulations prescribed detailed rules limiting the period within which amounts deferred may be paid to the participant and limiting the manner in which distributions could be made to the participant's beneficiary. Commentators objected to the rules prescribed as much too complex and not justified in the case of governmental deferred compensation plans. Upon reconsideration, these rules are withdrawn and the more general incidental benefit rules applicable to qualified pension plans are substituted therefore.

Although the proposed regulations provided that distributions under an eligible plan need not commence until the year in which a participant attains age 70½, the final regulations may require the commencement of distributions at an earlier date if the plan does not specify a normal retirement age or if it specifies a normal retirement age under age 70½. It is not intended that this change adversely affect any eligible plan participant who, in reliance on the proposed regulations, made an irrevocable election to defer the distribution of amounts deferred under the plan until the year in which he or she attains age 70½. Accordingly, an eligible plan need not modify the distribution commencement date of any participant who made such an election prior to October 27, 1982.

PLan to Plan Transfers

The proposed regulations under § 1.457–2(k) prohibited transfers of amounts deferred between different eligible plans. After consideration of the comments received in opposition to this prohibition, the final regulations permit an eligible plan to provide for the transfer of amounts between eligible plans, so long as the entities sponsoring the plans are located in the same State, the plan provides for the automatic transfer of such amounts, and the new plan accepts such amounts.

Pre-1979 Deferred Amounts

The proposed regulations indicated that amounts deferred under an agreement or arrangement in taxable years beginning before January 1, 1979, were not to have the provisions of section 457 apply. The final regulations make clear that amounts deferred under a State deferred compensation plan before 1979 are subject to section 457 if made a part of an eligible plan.

Amounts Made Available

At the behest of commentators, the provisions illustrating when amounts will be made available have been clarified to confirm that redirection of past deferrals as well as current deferrals into different investment modes will not result in those amounts being made available. Other provisions and more examples have been added to further illustrate when amounts will be considered made available, in the case of participants and beneficiaries.

Comments were received urging that participants be permitted to retain the right to accelerate payments once payments have commenced. The final regulations, through examples, reject this suggestion and provide that deferrals under such arrangements will be considered made available. However, in keeping with past practice, payments already commenced will be permitted to be accelerated upon an unforeseeable emergency.

Commentators further urged that the distribution of *de minimis* accounts be expressly permitted in order to accommodate those who have reconsidered participation in the plan shortly after beginning participation. In the absence of any authority in the statute or legislative history to provide for this arrangement, the regulations do not adopt this suggestion. The right to withdraw such amounts from the plan will be considered to make the amounts deferred made available to the participant. Furthermore, a plan that provides for such an arrangement will contravene the payment requirements under § 1.457–2(h)(1) and will not be considered an eligible plan.

Regular Retirement Plan of a State

At the time that the proposed regulations were published in the Federal Register, comments were invited with respect to whether regulations could appropriately be promulgated that would exclude unfunded regular retirement plans of a State for the purpose of section 457(e)(1) notwithstanding the limited exceptions provided by section 457(e)(2), and, if so, under what circumstances. Many helpful comments were received on this issue. Nevertheless, in the absence of statutory authority to provide for the exclusion of such plans from section 457(e)(1) and without clearer legislative guidance as to what form this exclusion should take, it has been decided that it is inappropriate to provide for this exclusion through regulations. Consequently, deferrals under an unfunded regular retirement plan of a State will be considered to be made under an ineligible plan, and not excludable from income under section 457(a).

Transitional Rules

All plans to which section 457 applies will have until January 1, 1982, to satisfy the requirements for classification as an eligible State deferred compensation plan. However, for taxable years beginning after December 31, 1978, and before January 1, 1982, transitional rules provide that any amount of compensation deferred under a plan of deferred compensation, regardless of whether the plan is an eligible plan, is excludable from the gross income of the participant until paid or otherwise made available to the participant. However, the maximum amount that may be excluded from gross income for any year is $7,500 or 33⅓% of the participant's includible compensation. Under the transitional rules, increased deferrals under the limited "catch-up" provision are permitted only if the plan is an eligible plan.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of this regulation was Ray K. Kamikawa of the Employee Plans and Exempt Organizations 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 regulation, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Exclusions.

26 CFR 1.401–0—1.425–1

Income taxes, Deferred compensation, Pension plans.

26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

Adoption of Amendments to the Regulations

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Paragraph (a)(2) of § 1.101–1 is amended by deleting "or" at the end of subdivision (i), deleting the period at the end of subdivision (ii) and inserting in lieu thereof "; or", and by adding a new subdivision (iii) to read as follows:

§ 1.101–1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.

(a) * * *

(2) *Cross reference.* * * *

(iii) Under eligible State deferred compensation plans described in section 457(b), see paragraph (c) of § 1.457–1.

* * * * *

Par. 2. Paragraph (b)(2) of § 1.101–2 is amended by deleting the period at the end of subdivision (iii) and inserting in lieu thereof a semicolon, and by adding a new subdivision (iv) to read as follows:

§ 1.101–2 Employees' death benefits.

* * * * *

(b) * * *

(2) *Cross references.* * * *

(iv) Under eligible State deferred compensation plans described in section 457 (b), see paragraph (c) of § 1.457–1.

* * * * *

Par. 3. Paragraph (d)(1) of § 1.403 (b)–1 is amended by revising subdivision (ii) and the flush paragraph which follows it to read as follows:

§ 1.403(b)–1 Taxability of beneficiary under annuity purchased by a section 501(c)(3) organization or public school.

* * * * *

(d) *Exclusion allowance*—(1) *In general.* * * *

(i) * * *

(ii) The aggregate of (*a*) the amounts which have been contributed by the employer for annuity contracts for such employee and which were excludable from the gross income of the employee for any taxable year prior to the taxable year for which the exclusion allowance is being determined, and (*b*) the amounts of compensation excludable from the gross income of the employee under section 457(a) (relating to eligible State deferred compensation plans) for any prior taxable year that is taken into account as a year of service under paragraph (f) of this section. Compensation deferred under an eligible State deferred compensation plan shall be taken into account as described in subdivision (ii) of this subparagraph even if the entity sponsoring the eligible plan is not the employer purchasing the annuity contract with respect to which the employee's exclusion allowance is to be determined. See paragraph (e) of this section for the definition of an employee's includible compensation in respect of a taxable year and paragraph (f) of this section for rules for computing an employee's total number of years of service for an employer.

* * * * *

Par. 4. The following new §§ 1.457–1, 1.457–2, 1.457–3 and 1.457–4 are added in the appropriate place.

§ 1.457–1 Compensation deferred under eligible State deferred compensation plans.

(a) *Year of inclusion in gross income*—(1) *In general.* For taxable years beginning after December 31, 1978, section 457(a) provides that amounts deferred (within the meaning of § 1.457–1(d)(3)) under an eligible State deferred compensation plan that satisfies the requirements of § 1.457–2 (an "eligible plan") are includible in gross income only for the taxable year in which paid or otherwise made available to the participant or beneficiary under the plan.

(2) *Maximum deferral; in general.* Under section 457(c)(1), the exclusion from gross income described in this paragraph (a) does not apply to compensation deferred under one or more eligible plans to the extent that the compensation so deferred during a participant's taxable year exceeds the greater of—

(i) $7,500, or,

(ii) As applicable, the sum of the plan ceilings determined under § 1.457–2(f), to the extent such sum does not exceed $15,000.

(3) *Maximum deferral; exclusions under section 403(b) taken into account.* Under section 457(c)(2), for a participant's taxable year for which an amount is contributed to an annuity contract described in section 403(b) (including a custodial account described in section 403(b)(7)) on behalf of the participant, subparagraph (2) of this paragraph (a) is applied by substituting—

(i) For $7,500, an amount equal to $7,500, less the amount excludable from the participant's gross income under section 403(b) for the taxable year,

(ii) For the sum of the plan ceilings determined under § 1.457–2(f), an amount equal to the sum of the plan ceilings determined under § 1.457–2(f), less the amount excludable from the participant's gross income under section 403(b) for the taxable year, if such amount is not taken into account under such § 1.457–2(f), and

(iii) For $15,000, an amount equal to $15,000, less the amount excludable from the participant's gross income under section 403(b) for the taxable year.

(b) *Amounts made available to participant or beneficiary.*—(1) *In general.* For purposes of section 457(a) and this section, amounts deferred under an eligible plan will not be considered made available to the participant or beneficiary if under the plan the participant or beneficiary may irrevocably elect, prior to the time any such amounts become payable, to defer payment of some or all of such amounts to a fixed or determinable future time. In addition, amounts deferred (including amounts previously deferred) under an eligible plan will not be considered made available to the participant solely because the participant is permitted to choose among various investment modes under the plan for the investment of such amounts whether before or after payments have commenced under the plan.

(2) *Examples.* Further examples of when amounts deferred will or will not be considered as being made available to the participant or beneficiary are provided below:

Example (1). (i) C, an individual, is a participant in an eligible State deferred compensation plan that provides the following:

(A) The total of the amounts deferred under the plan is payable to the participant in 120 substantially equal monthly installments commencing on the date 30 days after the participant attains normal retirement age under the plan (age 65), unless the participant elects, within the 90 day period ending on the date the participant attains normal retirement age, to receive a single sum payment of the deferred amounts. The single sum payment is payable to a participant on the date the first of the monthly payment would otherwise be payable to the participant.

(B) If a participant separates from the service of the State before attaining normal retirement age, the total of the amounts deferred under the plan is payable to the participant in a single sum payment on the date 90 days after the date of the separation, unless, before the date 30 days after the separation, the participant elects not to receive the single sum payment. The election is irrevocable. If the participant makes the election, the total of the amounts deferred under the plan is payable to the participant as described in (A), either in monthly installments or, at the election of the participant, in a single sum payment.

(ii) On June 6, 1982, C, a calendar year taxpayer aged 59, separates from the service of the State. On June 18, 1982, C elects not to receive the single sum payment payable on account of the separation. Because of C's election, no amount deferred under the plan is considered made available in 1982 by reason of C's right to receive the single sum payment.

(iii) On February 6, 1988, C attains age 65. C did not, within the 90 day period elect the single sum payment that is payable in lieu of the monthly installments. Amounts deferred under the plan are includible in C's gross income as they are paid to C in the monthly installments. No amount is considered made available by reason of C's right to elect the single sum payment.

Example (2). Assume the same facts as in example (1), except that the plan provides that notwithstanding that monthly installments have commenced under the plan, as described in (i)(A), the participant may, without restriction, elect to receive all or any portion of the amount remaining payable to the participant. The total of the amounts deferred under the plan is considered made available in 1988.

Example (3). Assume the same facts as in example (1), except that the plan provides that once monthly installment payments have commenced under the plan, as described in (i)(A), the participant may accelerate the payment of the amount remaining payable to the participant upon the occurrence of an unforeseeable emergency as described in § 1.457–2(h)(4) in an amount not exceeding that described in § 1.457–2(h)(5). No amount is considered made available to C on account of C's right to accelerate payments upon the occurrence of an unforeseeable emergency.

Example (4). Under an eligible plan of which individual D is a participant, normal retirement age is age 65 at which time payments must begin. Payments may begin earlier upon a separation from the service. Under the plan, a participant who separates from the service before age 65 or the participant's beneficiary (if the separation is due to the participant's death) may elect to defer the distribution of the amounts deferred until the year in which the participant attains or would have attained age 65. This election may be made only prior to the time any payments commence and once made may not be revoked. If such an election is made, the participant, former participant, or beneficary need not elect the method of payment, or if one is elected may change the method elected, until the date 30 days preceding the date upon which payments are to commence. No amount is considered made available by reason of D's right to defer the distribution of the amounts deferred until age 65, nor on account of D's right to delay the election of the method of payout. Similarly, if D dies at age 60, no amount is considered made available to D's beneficiary by reason of the beneficiary's right to defer the distribution of the amounts deferred until the year in which D would have attained age 65, nor on account of the beneficiary's right to delay the election of the method of payout.

Example (5). Under an eligible plan of which individual E is a participant, the maximum that may be deferred in any taxable year is 33⅓% of includible compensation, not to exceed $7,500. The plan does not provide for a catch-up deferral under section 457(b)(3). In one taxable year, E elects to have amounts deferred in excess of the limitation provided for under the plan. The amounts deferred in excess of the limitation will be considered to have been made available to E in the taxable year in which deferred.

Example (6). Assume the same facts as in example (5), except that E's employer also contributes amounts for the purchase of an annuity contract under section 403(b). In one taxable year, E has amounts contributed for the annuity within the limitations of section 403(b)(2), and also has amounts deferred under the eligible plan for the same year. The aggregate of the amounts contributed for the annuity contract and the amounts deferred under the plan exceed the deferral limitations under the plan. The excess deferrals will be considered made available to E in the year in which the amounts were deferred.

Example (7). Under an eligible plan of which F is a participant, amounts deferred have been invested in a money market investment fund. The plan then transfers the amounts deferred to a life insurance company for the purchase of life insurance contracts as an investment medium. However, the entity sponsoring the plan (1) retains all of the incidents of ownership of the contracts, (2) is the sole beneficiary under the contracts, and (3) is under no obligation to transfer the contracts or to pass through the proceeds of the contracts to any participant or a beneficiary of any participant. The movement of the amounts deferred to the life insurance company (whether or not made at the request of any plan participant) will not be considered to make the amounts available to the plan's participants. The cost of current life insurance protection under the life insurance contracts will not be considered made available to the plan's participants.

(c) *Life insurance proceeds and death benefits paid under eligible plan.* No amount received or made available under an eligible plan is excludable from gross income under section 101(a) (relating to life insurance contracts) or section 101(b) (relating to employees' death benefits).

(d) *Definitions.* For purposes of §§ 1.457–1 through 1.457–4:

(1) *Participant.* "Participant" means an individual who is eligible under § 1.457–2(d) to defer compensation under the plan.

(2) *Beneficiary.* "Beneficiary" means a beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant.

(3) *Amounts deferred.* "Amount(s) deferred" under an eligible plan means compensation deferred under the plan, plus income attributable to compensation so deferred. Income attributable to compensation deferred under an eligible plan includes gain from the disposition of property. The term "amounts deferred" includes amounts deferred in taxable years beginning before January 1, 1979, if such amounts were deferred under a plan described in § 1.457–2(b), and such amounts were made a part of an eligible plan.

§ 1.457–2 Eligible State deferred compensation plan defined.

(a) *In general.* For purposes of §§ 1.457–1 through 1.457–4, an "eligible State deferred compensation plan" (sometimes referred to as "eligible plan") is a plan satisfying the requirements of paragraphs (c) through (k) of this section.

(b) *Plan.* For purposes of this section and § 1.457–3, the term "plan" includes any agreement or arrangement between a State (within the meaning of paragraph (c) of this section) and a participant or participants, under which the payment of compensation is deferred, but only if such agreement or arrangement is not described in § 1.457–3(b).

(c) *State.* The plan must be established and maintained by a State. For this purpose, the term "State" includes:

(1) The 50 states of the United States and the District of Columbia;

(2) A political subdivision of a State;

(3) Any agency or instrumentality of a State or political subdivision of a State;

(4) An organization that is exempt from tax under section 501(a) and engaged primarily in providing electrical service on a mutual or cooperative basis; and

(5) An organization that is described in section 501(c)(4) or (6) and exempt from tax under section 501(a) and at least 80% of the members of which are organizations described in subparagraph (4).

Where it appears in this § 1.457–2, the term "State" means the entity described in this paragraph (c) that sponsors the plan.

(d) *Participants.* The plan must provide that only individuals who perform services for the State, either as an employee of the State or as an independent contractor, may defer compensation under the plan.

(e) *Maximum deferrals*—(1) *In general.* The plan must provide that the amount of compensation that may be deferred under the plan for a taxable year of a participant shall not exceed an amount specifed in the plan (the "plan ceiling"). Except as described in paragraph (f) of this section, a plan ceiling shall not exceed the lesser of:

(i) $7,500, or

(ii) 33⅓% of the participant's includible compensation for the taxable

year, reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State.

(2) *Includible compensation.* For purposes of this section, a participant's includible compensation for a taxable year includes only compensation from the State that is attributable to services performed for the State and that is includible in the participant's gross income for the taxable year. Accordingly, a participant's includible compensation for a taxable year does not include an amount payable by the State that is excludable from the employee's gross income under section 457(a) and § 1.457–1 or under section 403(b) (relating to annuity contracts purchased by section 501(c)(3) organizations or public schools), section 105(d) (relating to wage continuation plans) or section 911 (relating to citizens or residents of the United States living abroad). A participant's includible compensation for a taxable year is determined without regard to any community property laws.

(3) *Compensation taken into account at its present value.* For purposes of subparagraph (1) of this paragraph, compensation deferred under a plan shall be taken into account at its value in the plan year in which deferred. However, if the compensation deferred is subject to a substantial risk of forfeiture (as defined in section 457(e)(3)), such compensation shall be taken into account at its value in the plan year in which such compensation is no longer subject to a substantial risk of forfeiture.

(f) *Limited catch-up*—(1) *In general.* The plan may provide that, for 1 or more of the participant's last 3 taxable years ending before the participant attains normal retirement age, the plan ceiling is an amount not in excess of the lesser of:

(i) $15,000, reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State, or

(ii) The amount determined under subparagraph (2) of this paragraph.

(2) *Underutilized limitations.* The amount determined under this subparagraph (2) is the sum of:

(i) The plan ceiling established under paragraph (e)(1) of this section for the taxable year, plus

(ii) The plan ceiling established under paragraph (e)(1) of this section for any prior taxable year or years, less the amount of compensation deferred under the plan for such prior taxable year or years. A prior taxable year shall be taken into account under subdivision (ii) of this subparagraph (2) only if (A) it begins after December 31, 1978, (B) the participant was eligible to participate in the plan during all or any portion of the taxable year, and (C) compensation deferred (if any) under the plan during the taxable year was subject to a plan ceiling established under paragraph (e)(1) of this section. A participant will be considered eligible to participate in the plan for a taxable year if the participant is described in paragraph (d) of this section for any part of that taxable year. A prior taxable year includes a taxable year in which the participant was eligible to participate in an eligible plan sponsored by a different entity, provided that the entities sponsoring the plans are located within the same State as that term is used in § 1.457–2(c)(1).

(3) *Restriction on limited catch-up.* The plan shall not provide that a participant may elect to have the limited catch-up provision of this paragraph (f) apply more than once, whether or not the limited catch-up is utilized in less than all of the three taxable years ending before the participant attains normal retirement age, and whether or not the participant or former participant rejoins the plan or participates in another eligible plan after retirement. For example, if the participant elects to utilize the limited catch-up only for the one taxable year ending before normal retirement age, and, after retirement at that age, the participant renders services for the State as an independent contractor or otherwise, the plan may not provide that the participant may utilize the limited catch-up for any of the taxable years subsequent to retirement.

(4) *Normal retirement age.* For purposes of this paragraph (f), normal retirement age may be specified in the plan. If no normal retirement age is specified in the plan, then the normal retirement age is the later of the latest normal retirement age specified in the basic pension plan of the State, or age 65. A plan may define normal retirement age as any range of ages ending no later than age 70½ and beginning no earlier than the earliest age at which the participant has the right to retire under the State's basic pension plan without consent of the State and to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age in the State's basic pension plan. The plan may further provide that in the case of a participant who continues to work beyond the ages specified in the preceding two sentences, the normal retirement age shall be that date or age designated by the participant, but such date or age shall not be later than the mandatory retirement age provided by the State, or the date or age at which the participant separates from the service with the State.

(g) *Agreement for deferral.* The plan must provide that, in general, compensation is to be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the first day of the month. However, a plan may provide that, with respect to a new employee, compensation is to be deferred for the calendar month during which the participant first becomes an employee, if an agreement providing for such deferral is entered into on or before the first day on which the participant becomes an employee.

(h) *Payments under the plan*—(1) *In general.* The plan may not provide that amounts payable under the plan will be paid or made available to a participant or beneficiary before the participant separates from service with the State, or, if the plan provides for payment in the case of an unforeseeable emergency, before the participant incurs an unforeseeable emergency.

(2) *Separation from service; general rule.* An employee is separated from service with the State if there is a separation from the service within the meaning of section 402(e)(4)(A)(iii), relating to lump sum distributions, and on account of the participant's death or retirement.

(3) *Separation from service; independent contractor*—(i) *In general.* An independent contractor is considered separated from service with the State upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the State, if the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration will not constitute a good faith and complete termination of the contractual relationship if the State anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, a State is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to again contract for the services provided under the expired contract, and neither the State nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, a State is considered to intend to again contract for the services provided under an expired contract, if

the State's doing so is conditioned only upon the State's incurring a need for the services, or the availability of funds or both.

(ii) *Special rule.* Notwithstanding subdivision (i), if, with respect to amounts payable to a participant who is an independent contractor, a plan provides that—

(A) No amount shall be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the State (or, in the case of more than one contract, all such contracts expire), and

(B) No amount payable to the participant on that date shall be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the State as an independent contractor or an employee,

the plan is considered to satisfy the requirement described in subparagraph (1) that no amounts payable under the plan will be paid or made available to the participant before the participant separates from service with the State.

(4) *Unforeseeable emergency.* For purposes of this paragraph (h), an unforeseeable emergency is, and if the plan provides for payment in the case of an unforeseeable emergency must be defined in the plan as, severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent (as defined in section 152(a)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved—

(i) Through reimbursement or compensation by insurance or otherwise,

(ii) By liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or

(iii) By cessation of deferrals under the plan.

Examples of what are not considered to be unforeseeable emergencies include the need to send a participant's child to college or the desire to purchase a home.

(5) *Emergency withdrawals.* Withdrawals of amounts because of an unforeseeable emergency must only be permitted to the extent reasonably needed to satisfy the emergency need.

(i) *Distributions of deferrals*—(1) *Commencement of distributions.* A plan is not an eligible plan unless under the plan the payment of amounts deferred will commence not later than the later of—

(i) 60 days after the close of the plan year in which the participant or former participant attains (or would have attained) normal retirement age (within the meaning of § 1.457–2(f)(4)), or

(ii) 60 days after the close of the plan year in which the participant separates from service (within the meaning of §§ 1.457–2(h) (2) and (3)) with the State.

A plan is not other than an eligible plan merely because, prior to October 27, 1982, the distribution of amounts deferred under the plan may commence no later than the close of the participant's taxable year in which the participant attains age 70½.

(2) *Limitations on distributions.* Distributions must be made primarily for the benefit of participants (or former participants). Thus, the schedule selected by the participant for payments of benefits under the plan must be such that benefits payable to a beneficiary are not more than incidental. For example, if provision is made for payment of a portion of the amounts deferred to a beneficiary, the amounts payable to the participant or former participant (as determined by use of the expected return multiples in § 1.72–9, or, in the case of payments under a contract issued by an insurance company, by use of the mortality tables of such company), must exceed one-half of the maximum that could have been payable to the participant if no provision were made for payment to a beneficiary.

(3) *Distributions to beneficiaries.* A plan is not an eligible plan unless the plan provides that, if the participant dies before the entire amount deferred is paid to the participant, the entire amount deferred (or the remaining part of such deferrals if payment thereof has commenced) must be paid to a beneficiary over—

(i) The life of the beneficiary (or any shorter period), if the beneficiary is the participant's surviving spouse, or

(ii) A period not in excess of 15 years, if the beneficiary is not the participant's surviving spouse.

(j) *Administration of plan.* A plan is not an eligible plan unless all amounts deferred under the plan, all property and rights to property (including rights as a beneficiary of a contract providing life insurance protection) purchased with the amounts, and all income attributable to the amounts, property, or rights to property, remain (until paid or made available to the participant or beneficiary under the plan) solely the property and rights of the State (without being restricted to the benefits under the plan) subject to the claims of the general creditors of the State only. However, nothing in this paragraph (j) prohibits a plan's permitting participants to direct, from among different modes under the plan, the investment of the above amounts (see § 1.457–1(b)).

(k) *Plan-to-plan transfers.* The plan may provide for the transfer of amounts deferred by a former participant to another eligible plan of which the former participant has become a participant if the following conditions are met—

(1) The entities sponsoring the plans are located within the same State (as that term is used in § 1.457–2(c)(1)),

(2) The plan receiving such amounts provides for the acceptance of the amounts, and

(3) The plan provides that if the participant separates from service in order to accept employment with another such entity, payout will not commence upon separation from service, regardless of any other provision of the plan, and amounts previously deferred will automatically be transferred.

(l) *Effect on plan when not administered in accordance with paragraphs (c) through (k).* A plan that is administered in a manner which is inconsistent with one or more of the requirements of paragraphs (c) through (k) of this section ceases to be an eligible plan on the first day of the first plan year beginning more than 180 days after the date of written notification by the Internal Revenue Service that the requirements are not satisfied, unless the inconsistency is corrected before the first day of that plan year.

(m) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. A, born on June 1, 1917, is a participant in an eligible State deferred compensation plan providing a normal retirement age of 65. The plan provides limitations on deferrals up to the maximum permitted under § 1.457–2 (e) and (f).

For 1979, A, who will be 62, is scheduled to receive a salary of $20,000 from the State. A desires to defer the maximun amount possible in 1979. The maximum amount that A may defer under the plan is the lesser of $7,500, or 33⅓% of A's includible compensation (generally the equivalent of 25 percent of gross compensation). Accordingly, the maximum that A may defer for 1979 is $5,000 [$5,000 = $20,000 × .25]. Although A's taxable year 1979 is one of A's last 3 taxable years before the year in which A attains normal retirement age under the plan, A is not able to utilize the catch-up provisions of § 1.457–2(f) in 1979 because only taxable

years beginning after December 31, 1978, may be taken into account under those provisions.

Example 2. Assume the same facts as in example 1. In A's taxable year 1980, A receives a salary of $20,000, and elects to defer only $1,000 under the plan. In A's taxable year 1981, A again receives a salary of $20,000 and elects to defer the maximum amount permissible under the plan's catch-up provisions prescribed under § 1.457–2(f). The applicable limit on deferrals under the catch-up provision is the lesser of $15,000 or the sum of the normal plan ceiling for 1981, plus any underutilized deferrals for any taxable year before 1981. Thus, the maximum amount that A may defer in 1981 is $9,000, the normal plan ceiling for 1981, $5,000, plus the under-utilized deferrals for 1980, $4,000.

Example 3. Assume the same facts as in examples 1 and 2. In A's taxable year 1982, the year in which A will attain age 65, normal retirement age under the plan, A desires to defer the maximum amount possible under the plan. For 1982 the normal limitations of § 1.457–2(e) are applicable, and the maximum amount that A may defer is $5,000, assuming that A's salary for 1982 was again $20,000. The plan's catch-up provisions prescribed under § 1.457–2(f) are not applicable because 1982 is not a year ending before the year in which A attains normal retirement age.

§ 1.457–3 Tax treatment of participants where plan is not an eligible plan.

(a) *In general.* If a State (within the meaning of § 1.457–2(c)) provides for a deferral of compensation (after the effective date described in paragraph (c)) under any agreement or arrangement described in § 1.457–2(b) that is not an eligible plan within the meaning of § 1.457–2—

(1) Compensation deferred under the agreement or arrangement shall be includible in the gross income of the participant of beneficiary for the first taxable year in which there is no substantial risk of forfeiture (within the meaning of section 457(e)(3)) of the rights to such compensation,

(2) Earnings credited on the compensation deferred under the agreement of arrangement shall be includible in the gross income of the participant or beneficiary only when paid or made available, provided that the interest of the participant or beneficiary in the assets (including amounts deferred under the plan) of the entity sponsoring the plan is not senior to the entity's general creditors, and

(3) Amounts paid or made available under the plan to a participant or beneficiary shall be taxable to the participant or beneficiary under section 72, relating to annuities.

(b) *Exceptions.* Paragraph (a) does not apply with respect to—

(1) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) An annuity plan or contract described in section 402,

(3) A qualified bond purchase plan described in section 405(a),

(4) That portion of any plan which consists of a transfer of property described in section 83, and

(5) That portion of any plan which consists of a trust to which section 402(b) applies.

(c) *Effective date.* This section is effective for taxable years beginning after December 31, 1981. For rules applicable in taxable years beginning after December 31, 1978, and before January 1, 1982, see § 1.457–4.

§ 1.457–4 Transitional rules.

(a) *In general.* Subject to the limitations described in paragraphs (b) and (c) of this section, amounts deferred (within the meaning of § 1.457–1(d)(3)) in taxable years beginning after December 31, 1978, and before January 1, 1982 under a plan described in § 1.457–2(b) (including an eligible plan within the meaning of § 1.457–2, but not including a plan described in section 457(e)(2) and § 1.457–3(b)) shall be includible in gross income only for the taxable year in which paid or otherwise made available to the participant or other beneficiary.

(b) *General limitation.* Except as described in paragraph (c) of this section, and excluding amounts deferred in taxable years beginning before January 1, 1979, compensation deferred under one or more plans described in paragraph (a) of this section is excludable from a participant's gross income under this section for a taxable year only to the extent it does not exceed the lesser of—

(1) $7,500, or

(2) 33⅓% of the participant's includible compensation (within the meaning of § 1.457–2(e)(2)) for the taxable year, reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State (within the meaning of § 1.457–2(c)). For purposes of this paragraph, compensation deferred under a plan shall be taken into account at its value in the plan year in which deferred. However, if the compensation deferred is subject to a substantial risk of forfeiture (as defined in section 457(e)(3)), such compensation shall be taken into account at its value in the plan year in which such compensation is no longer subject to a substantial risk of forfeiture.

(c) *Limited catch-up.* This paragraph (c) applies if all plans described in paragraph (a) of this section in which an individual is a participant are eligible plans within the meaning of § 1.457–2, and the participant's taxable year is a taxable year described in section 457(b)(3) and § 1.457–2(f). In such a case, compensation deferred under the plans for the taxable year is excluded from gross income under paragraph (a) of this section to the extent it does not exceed the amount determined under § 1.457–1(a)(2) or, as applicable, § 1.457–1(a)(3).

(d) *Example.* The provisions of this section may be illustrated by the following example:

Example. A is a participant in a State deferred compensation plan that is not an eligible plan within the meaning of § 1.457–2. The plan provides no limitations on the amount of compensation that may be deferred during any taxable year. For the taxable years 1979, 1980, and 1981 A has includible compensation of $40,000. In each of those years, A has deferred $10,000 of compensation. Under the transitional rules described in this section, $7,500 of A's deferrals in each year will be includible in gross income in the taxable year in which paid or made available to A or A's beneficiary. The remaining $2,500 of each year's deferrals ($10,000 – $7,500) are includible in A's gross income for the deferral year. Thus, $2,500 is includible in A's gross income for each of the taxable years 1979, 1980, and 1981. The tax treatment of amounts deferred by A in taxable years after 1981 is described in § 1.457–3.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Dated: September 14, 1982.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved:

John E. Chapoton,

Assistant Secretary of the Treasury.

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26 CFR Part 1

[T.D. 7835]

Income Tax; Taxable Years Beginning After December 31, 1953; Limitation on Additions to Bank Loss Reserves

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to limitation on additions to bank loss reserves. Changes to the tax law were made by the Economic Recovery Tax Act of 1981. The regulations would provide guidance to commercial banks that compute their bad debt deductions under the percentage of outstanding loans method.