

6.25(b)(1)(ii)96, and welcomes proposals as to future implementation dates.

C. Eliminate the Three-Year Rule, While Retaining the Five-Year Rule

Under this option, FAS would amend the Regulation to delete § 6.25(b)(1)(i). This action would eliminate the three-year rule, while retaining the five-year rule, which appears in § 6.25(b)(1)(ii). Per the five-year rule, a licensee could surrender more than 50 percent of its historical licensed amount for two of five consecutive years without penalty. The five-year rule may be viewed as giving licensees two years in which to adjust to changed market conditions.

D. Eliminate the Five-Year Rule, While Retaining the Three-Year Rule

Under this option, FAS could amend the Regulation to delete § 6.25(b)(1)(ii). This action would eliminate the five-year rule, while retaining the three-year rule, which appears in § 6.25(b)(1)(i). Per the three-year rule, a licensee could surrender more than 50 percent of a historical license amount for two years without penalty and not be subjected to license reduction if more than 50 percent of that license were surrendered in the next two years. This also may be viewed as giving licensees time to adjust to changed market conditions.

Signed at Washington, DC, on October 3, 1997.

Christopher E. Goldthwait,

Acting Administrator.

[FR Doc. 97-26928 Filed 10-14-97; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 616, 618, and 621

RIN 3052-AB63

Loan Policies and Operations; Leasing; General Provisions; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) through the Farm Credit Administration Board (Board) issues a proposed rule to amend its regulations that provide Farm Credit System (Farm Credit or System) institutions, including the Farm Credit Leasing Services Corporation (FCL), regulatory guidance concerning leasing activities. The proposed rule clarifies leasing authorities of System institutions and addresses issues regarding leasing raised by System

institutions and FCA examiners. The proposed rule is also intended to provide clear and concise regulations pertaining to the System's leasing activities and clarify what existing regulations are applicable to leasing activities.

DATES: Comments should be received on or before December 15, 1997.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, or sent by facsimile transmission to FAX number (703) 734-5784. Comments may also be provided by electronic mail addressed to "reg-comm@fca.gov" on the internet. Copies of all communications received will be available for examination by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Robert G. Magnuson, Policy Analyst, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or
James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: System leasing operations continue to evolve to meet the demands of agricultural and aquatic producers, cooperatives, and rural utilities. Several System institutions have inaugurated new leasing programs to meet the increased demands for leasing and provide customers with more options for financing the expansion of agricultural operations. In addition, the FCL has experienced substantial growth since 1990 because of increased demand for leases by agricultural and aquatic producers and their cooperatives.

The System's statutory leasing powers were granted to supplement its lending authorities. The leasing provisions of the Farm Credit Act of 1971, as amended (Act), remain separate authorities, however, and do not parallel the rules for lending in all respects. The proposed regulations are intended to clarify which lending regulations are applicable to leasing activities and how the rules applicable to leasing differ from those governing lending transactions. In addition, this

proposal provides specific guidance for the FCL.

The FCL was chartered in 1983 as a service corporation under section 4.25 of the Act. The FCL was initially organized and owned by 14 of the 37 then existing System banks to acquire and lease assets and provide related services to eligible customers of the System. Today, it is owned by all eight of the System banks. As a service corporation, it derives its leasing authorities from the authorities of its stockholder banks that operate under titles I and III of the Act.

FCA's regulations currently address the leasing activities of System banks, associations, and the FCL by defining "loans" as including leases in some, but not all regulatory provisions and by generally providing that service corporations are subject to the regulations applicable to their organizing banks. This approach has conveyed the FCA's view that leasing activities should ordinarily follow the rules for lending and that the FCL should be governed by the same rules as other System lessors. This approach, while having the virtue of simplicity, has not always proved satisfactory. It does not account for the ways in which lease transactions differ from loan transactions, nor does it reflect differences between loans and leases in the Act. The proposed regulations would apply rules uniformly to all System institutions that conduct leasing activities under the same title(s) of the Act.

The existing leasing regulations in §§ 618.8050 and 618.8060 will be deleted upon the promulgation of final leasing regulations in part 616. Technical changes are made to §§ 614.4710 and 621.9 to conform with the below amendments. A discussion of the proposed amendments follows.

I. Leasing Authorities

1. Authority and Lessee Eligibility

Proposed § 616.6100 implements sections 1.11(c)(2), 2.4(b)(4), and 3.7(a) of the Act, which grant express leasing authorities to various System institutions. Proposed § 616.6100(a) addresses the authority of Farm Credit Banks (FCBs), agricultural credit banks (ACBs), Federal land credit associations (FLCAs), agricultural credit associations (ACAs), and the FCL to lease facilities under section 1.11(c)(2) of the Act. Similarly, proposed § 616.6100(b) reflects the equipment leasing authority of: (1) FCBs, ACBs, and the FCL under section 1.11(c)(2) of the Act; and (2) ACAs and production credit associations (PCAs) under section

2.4(b)(4) of the Act. Proposed § 616.6100(a) and (b) reflect the statutory authority of FCBs, ACAs, PCAs, FLCAs, ACBs, and the FCL to make leases to: (1) Bona fide farmers, ranchers, or aquatic producers and harvesters; (2) processing and/or marketing operations; and (3) farm-related service businesses.

Section 1.11(c)(2) of the Act specifies that System banks may only lease facilities or equipment to persons eligible for credit under titles I or II of the Act for use in their operations. Section 2.4(b)(4) of the Act, however, specifies that associations may only lease equipment to stockholders for use in their operations. In accordance with these provisions, the scope of leasing activity by System banks and associations to bona fide farmers, ranchers, and aquatic producers and harvesters under proposed § 616.6100 is restricted to those assets used in the eligible lessee's operations.

Proposed § 616.6100(c) provides that the banks for cooperatives (BCs, ACBs, and the FCL) are authorized to lease equipment to cooperatives, rural electric, telecommunication, and cable television utilities, water and waste treatment facilities, and other entities that comply with the requirements of § 613.3100(b), (c), and (d). As discussed above, the Act grants PCAs the authority to lease only equipment, and FLCAs the authority to lease only facilities, but these terms are not defined in the Act and are not always clearly distinguishable from each other. Equipment is ordinarily considered to be movable personal property. Facilities include property that is attached, often permanently, to real estate. The FCA acknowledges that certain agricultural property may have attributes of both equipment and facilities. For example, center-pivot irrigation systems may be fairly viewed as either equipment or a facility. Recognizing that agricultural "equipment" and "facilities" may in some instances overlap, the proposed rule does not attempt to provide a specific regulatory definition of equipment and facility. Instead, proposed § 616.6100(d) requires each institution to document that the leased equipment or facility is authorized to be leased under its leasing authorities. While the FCA expects each System institution involved in lending and leasing to have the necessary expertise to make such a determination, it will review these determinations as part of FCA's routine examination process.

2. Purchase and Sale of Interests in Leases

The current regulatory requirements for transactions involving interests in loans are in §§ 614.4325 and 614.4330. These regulations have been in effect since 1992 and establish the necessary guidance and parameters for institutions to follow for loan participations. Although the FCA believes that analogous requirements should apply to the purchase and sale of lease interests, a definition of a participation in a lease is needed.

The FCA's current regulations on loan purchases and sales do not differentiate participations in leases from participations in loans. FCA regulations define "loan" for purposes of subpart H of part 614 as "any extension of credit or similar financial assistance of the type authorized under the Act, such as leases * * * and other similar transactions." A "loan participation" is defined as "a fractional undivided interest in the principal amount of a loan that is sold by a lead lender to a participating institution in accordance with the requirements of § 614.4330 of this subpart." Although the definition of a "loan" in § 614.4325(a)(3) specifically includes "leases," the definition of a "loan participation" in § 614.4325(a)(4) does not, by its terms, address the very different structure of a lease.

In leases, there is no separately identified "principal" and "interest." Instead, the lessor receives a stream of lease payments, and a purchase price (if a purchase option is exercised) or the return of the leased asset (if a purchase option is not exercised). Since leases are structured differently than loans, the FCA proposes a definition of a "lease participation" that addresses the different structure of a lease transaction and provides sufficient flexibility to cover lease situations that are analogous to a "fractional undivided interest in the principal amount" of a loan. Viewed from the lessor's perspective, a lease has two primary components, the stream of lease payments and the residual value. These two components of a lease, lease payments and residual value, do not correspond neatly to the concepts of interest, principal, and collateral in a loan transaction. Because each of these components of a lease has distinct characteristics and risks, the FCA believes that it is appropriate to consider interests in leases to be lease participations when they represent a fractional undivided interest in the whole of either or both of these two components. Accordingly, the FCA proposes to define a lease participation in § 616.6000(d) as a fractional

undivided interest in: (1) All of the lease payments; (2) the residual value of all of the property leased; or (3) all of the lease payments and the residual value of all of the property leased.

Other than the new definition of participation in § 616.6000(d), the proposed lease participation regulations contained in § 616.6110 closely parallel most of the provisions of §§ 614.4325 and 614.4330 governing loan participations, except for the provisions concerning "collateral" or other loan specific concepts.

Amendments to the Act in 1992 and 1994 granted System institutions authority to participate in financing provided to similar entities. The regulations implementing this recent authority for loans are found in § 613.3300 of this chapter. The FCA believes that participations in leases made to similar entities are also authorized by the recent amendments to the Act. The proposed regulations address similar entity lease participations for the first time. New provisions concerning purchasing interests in leases made to similar entities are proposed at § 616.6110(g). The proposed provisions are generally parallel to the provisions of § 613.3300 that apply to loan participations. Proposed § 616.6110(g) identifies the terminology changes necessary to apply the regulation to similar entity lease participations.

The proposed lease participation regulations set forth in § 616.6115 apply the provisions of § 614.4330 with minor changes in terminology to lease participations.

3. Out-of-Territory Leases

Farm Credit institutions seeking to provide loan services to borrowers outside their respective chartered territories are required to coordinate such activities with other Farm Credit institutions offering similar lending services in those territories. Proposed § 616.6120 provides that a Farm Credit bank or association that conducts leasing activities outside its chartered territory is subject to the same requirements that § 614.4070 imposes on out-of-territory loans.

As a service corporation owned by the eight System banks, the FCL is chartered to do business nationwide. Therefore, it is not subject to out-of-territory requirements. The proposed regulations do not require other Farm Credit institutions to notify or obtain concurrence from the FCL with respect to out-of-territory leases. The FCA believes this is appropriate, because the FCL does not have exclusive leasing authority in a particular geographic

territory but provides leasing services concurrently with other System institutions.

II. Lease Operations

1. Leasing Policies and Underwriting Standards

Proposed § 616.6200 would require System institutions engaged in leasing to adopt written policies and underwriting standards governing such activity to ensure that all risks associated with leasing are properly managed. There are many similarities between the credit risk of a loan and the payment risk of a lease. In each case, the borrower's or lessee's ability to make the contractual payments is a primary concern. Therefore, some aspects of the primary payment analysis required of a lessor are similar to the analysis appropriate for a lender making a loan. The most significant difference is that in leasing, not only is there the risk associated with the lessee's ability to service its contractual lease obligation, but there is the additional risk associated with establishing the appropriate residual values on the equipment or facility and the ultimate remarketing of the leased property. Therefore, from a safety and soundness perspective, System institutions engaged in leasing need to have adequate policies and procedures that address both loan and lease underwriting to ensure prudent management of both activities.

From a payment risk perspective, the proposed rule requires System institutions engaged in leasing to comply with the minimum loan underwriting standards in part 614 regarding the minimum amount of financial information required of the applicant since the risks are very similar for both loans and leases. The loan underwriting regulations¹ would require written policies and procedures to address underwriting standards such as the minimum supporting credit information required, credit analysis procedures, and repayment capacity of the applicant.

In addition to requiring institutions to exercise due diligence in reviewing the applicant's ability to make payments as required under part 614, the proposed rule also requires institutions engaged in leasing to adopt policies and underwriting standards that address the unique risks associated with lease transactions. These additional risks include things such as the establishment

of residual values of the leased property, the types of equipment leased, remarketing of leased property, tax treatment of lease transactions, and liability associated with ownership. The proposed rule provides only a minimum framework. The complexity and depth of the policies and underwriting standards should be consistent with the current or planned leasing activity and the institution's risk-bearing ability.

2. Investment in Leased Assets

Proposed § 616.6210 authorizes an institution to purchase property to lease if the acquisition is consistent with the type of leasing being conducted or planned in the future. The purpose of this provision is to prohibit System institutions from speculating in the acquisition of property or facilities.

3. Lending and Leasing Limits

The FCA believes that a consistent approach should be applied to financial risks in all System institutions, including the FCL, to properly limit any concentration of risk. Limits on the amount of financing (whether in the form of loans or leases) a System institution can provide to any one customer protect against unnecessarily large risks to an institution's capital. The proposed regulatory changes would limit an institution's exposure to risk from a single lessee or borrower, and prescribe consistent standards for leases in all types of System institutions.

Section 616.6220 of the proposed regulations refers to the lending and leasing limit regulations in subpart J of part 614. The proposed regulations would amend subpart J in order to make it clear that the lending limits apply to all leases made by System banks and associations. The FCA proposes to modify the title of subpart J to be "Lending and Leasing Limits," and to make conforming changes throughout the subpart. The FCA believes all System institutions should have a single limit that applies to all types of financial obligations. Both loans and leases should be measured against this limit when calculating how much risk an institution can absorb from a single customer. Likewise, all loans and leases to a single borrower should be attributed to that customer when calculating the total risk against the institutions' lending and leasing limit.

In § 614.4350(a) the definition of "borrower" would be amended to clarify that, for the purposes of this subpart, the term "borrower" includes any customer to whom an institution has made a lease or a commitment to make a lease. In § 614.4350(c) the definition of "loan" is proposed to be

amended to include all types of leases (operating, financing, and lease interests.)

In §§ 614.4352 through 614.4355, proposed changes to clarify that a System institution is prohibited from making a lease or a loan if the consolidated amount of all loans and leases to a single customer exceeds a specific percentage of the institution's lending and leasing limit base.

A new § 614.4356 is proposed that prescribes standard leasing limits for the FCL. The proposed regulation prohibits the FCL from making leases to a single customer that exceed 25 percent of the FCL's leasing limit base. This requirement is similar to the risk exposure allowed for other System institutions.

In proposed § 614.4358(a)(1), outstanding lease balances are added to the items included in the computation of obligations. In § 614.4358(b), the FCA proposes to add a new paragraph to address certain exclusions from the lending and leasing limits regarding participations or interests sold in leases. The proposed regulation at § 614.4358(b)(5) allow interests in leases sold, including participation interests, to be excluded from leases to a customer subject to the lending and leasing limit when the sale agreement meets specific requirements. This exclusion is based on the premise that the institution originating the lease retains some interest in the lease, whether it is in the lease payments or residual value. To the extent that such an interest is retained, the originating institution may exclude that portion of the lease payments or residual interests in which it no longer has a legitimate ownership interest. In § 614.4360, the FCA proposes to add a new paragraph (d) to clarify that all leases, except those that are permitted under § 614.4361, must be in compliance with the limits at all times.

4. Portfolio Limitations

Under proposed § 616.6230, the restrictions in sections 1.11(a)(2) and 2.4(a)(1) of the Act would apply to leases that FCBs, ACBs, direct lender associations, and the FCL make to agricultural or aquatic producers who supply less than 20 percent of the throughput to a processing and/or marketing operation. More specifically, leases by Farm Credit banks and direct lender associations to customers who supply less than 20 percent of the throughput used in a processing and/or marketing operation would be subject to the 15-percent portfolio ceiling in § 613.3010(b)(2). Furthermore, proposed § 616.6230(b) places this same 15-percent portfolio limitation on the FCL

¹ Final loan underwriting regulations are currently under consideration by the FCA. See the proposed rule published in the *Federal Register* on April 15, 1996 (61 FR 16403).

for its leases made to processing and/or marketing operations eligible under § 613.3010.

5. Stock Purchase Requirements

The Act authorizes FCBs to lease facilities and equipment to “persons eligible for credit.” The Act authorizes PCAs and BCs, respectively, to lease equipment to “stockholders,” but does not prescribe any minimum stock requirements for leases. Accordingly, the FCA concludes that lessees who lease equipment from PCAs, ACAs, BCs, or ACBs under titles II and III must be stockholders.

Because the minimum stock purchase requirement under section 4.3A(c)(1)(E) does not apply to leases, the FCA has determined that the purchase of a single share is sufficient to satisfy the stock requirement. Institutions may satisfy the minimum stock requirement by counting outstanding shares stockholders already own in the institution making the lease. The minimum stock requirement in proposed § 616.6240(a) does not apply to the FCL due to its stockholders being System banks, and not its lease customers. The FCA also proposes that the disclosure requirements for equities issued as a condition of obtaining a lease are the same as disclosure requirements for equities issued as a condition of obtaining a loan as required under § 615.5250 (a) and (b) of this chapter.

6. Disclosure Requirements

The FCA has concluded that the borrower rights provisions of the Act do not apply to leases, because the borrower rights provisions of the Act explicitly refer to “loans,” but not leases. Significantly, lessees have no ownership rights in the leased equipment or facilities during the term of the lease, and thus, many of the borrower rights provisions such as those pertaining to restructuring or right of first refusal are not applicable to leasing.

However, proposed § 616.6250(a) does require that lease applicants be provided, at a minimum, a copy of all lease documents signed by the lessee, not later than the time of lease closing. In addition, proposed § 616.6250(b) requires a System institution to render its decision on the lease application in as expeditious a manner as is practical. The proposed rule also requires a System institution to provide prompt written notice of its decision to the applicant.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 616

Agriculture, Banks, banking, leasing.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 621

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, it is proposed that parts 614, 618 and 621 be amended and part 616 be added to chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

2. The heading of subpart J is revised to read as follows:

Subpart J—Lending and Leasing Limits

3. Section 614.4350 is amended by revising paragraphs (a) and (c) to read as follows:

§ 614.4350 Definitions.

* * * * *

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity (except a Farm Credit System association or other financing institution, as defined in § 614.4540) to which an institution has made a loan or

a commitment to make a loan either directly or indirectly. For the purposes of this subpart, the term “borrower” includes any customer to which an institution has made a lease or a commitment to make a lease.

* * * * *

(c) *Loan* means any extension of, or commitment to extend, credit authorized under the Act whether it results from direct negotiations between a lender and a borrower or is purchased from or discounted for another lender, including participation interests. The term “loan” includes loans and leases outstanding, obligated but undisbursed commitments to lend or lease, contracts of sale, notes receivable, other similar obligations, guarantees, and all types of leases. An institution “makes a loan or lease” when it enters into a commitment to lend or lease, advances new funds, substitutes a different borrower or lessee for a borrower or lessee who is released, or where any other person’s liability is added to the outstanding loan, lease or commitment.

* * * * *

§ 614.4351 [Amended]

4. Section 614.4351 is amended by adding the words “and leasing” between the words “lending” and “limit base” each place they appear in the heading and the entire section.

§ 614.4352 [Amended]

5. Section 614.4352 is amended by adding the words “and leasing” between the words “lending” and “limit base” in paragraphs (a) and (b)(1), and by adding the words “and leasing” between the words “lending” and “limits” in paragraph (b)(2).

§ 614.4353 [Amended]

6. Section 614.4353 is amended by adding the words “and leasing” between the words “lending” and “limit base.”

§ 614.4354 [Amended]

7. Section 614.4354 is amended by adding the words “and leasing” between the words “lending” and “limit base.”

§ 614.4355 [Amended]

8. Section 614.4355 is amended by adding the words “and leasing” between the words “lending” and “limit base” in the introductory paragraph, and by removing the word “lending” in the headings of paragraphs (a) and (b).

§§ 614.4356–614.4360 [Redesignated]

9. Subpart J is amended by redesignating § 614.4356 through

§ 614.4360 as § 614.4357 through § 614.4361, and by adding a new § 614.4356 to read as follows:

§ 614.4356 Farm Credit Leasing Services Corporation.

The Farm Credit Leasing Services Corporation may enter into lease agreements if the consolidated amount of all leases and undisbursed commitments to a single lessee or any related entities does not exceed 25 percent of its leasing limit base.

10. Newly designated § 614.4358 is amended by adding the words “and leasing” between the words “lending” and “limit” in the introductory text of paragraphs (a) and (b); by adding the words “lease balances outstanding” after the word “loans” the first place it appears in paragraph (a)(1); by removing the reference “§ 614.4358” and adding in its place the reference “§ 614.4359” in paragraph (a)(3); by redesignating existing paragraph (b)(5) as (b)(6); and by adding new paragraph (b)(5) to read as follows:

§ 614.4358 Computation of obligations.

(b) * * *

(5) Interests in leases sold, including participation interests, when the sale agreement meets the following requirements:

(i) The interest sold must be a fractional undivided interest in all the lease payments, the residual value of all the leased property, or both;

(ii) The interest must be sold without recourse; and

(iii) The agreement under which the interest is sold must provide for the sharing of all payments on a pro rata basis according to the percentage interest in the lease.

* * * * *

§ 614.4359 [Amended]

11. Newly designated § 614.4359 is amended by adding the words “and leasing” between the words “lending” and “limit(s)” in paragraphs (a) introductory text, (b), and (c); by removing the reference “§ 614.4356” and adding in its place, the reference “§ 614.4357” in paragraph (a)(1)(iii), and by removing the reference “§ 614.4358” and adding in its place, the reference “§ 614.4359” in the heading for column two in Table 1.

12. Newly designated § 614.4360 is amended by adding the words “and leasing” between the words “lending” and “limit” in the heading and in paragraphs (a), (b), (c), and (d); by revising the reference “§ 614.4360” and adding in its place, the reference “§ 614.4361” in paragraph (a); by removing the reference

“§ 614.4359(b)(3)” and adding in its place, the reference “§ 614.4360(b)(3)” in paragraph (c); and by redesignating paragraph (d) as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 614.4360 Lending and leasing limit violations.

* * * * *

(d) All leases, except those that are permitted under the provisions of § 614.4361, reading “effective date of this subpart” in § 614.4361(a) and “effective date of these regulations” in § 614.4361(b) as “effective date of this amendment,” shall be in compliance with the lending and leasing limit on the date the lease is made, and at all times thereafter.

* * * * *

§ 614.4361 [Amended]

13. Newly designated § 614.4361 is amended by adding the words “and leasing” between the words “lending” and “limit(s)” in each place they appear in paragraphs (a) and (b), and by removing the reference “§ 614.4359” and adding in its place, the reference “§ 614.4360” in paragraph (b).

Subpart O—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

§ 614.4710 [Amended]

14. Section 614.4710 is amended by adding the words “and leasing” between the words “lending” and “limits” in the last sentence of the introductory paragraph and in paragraphs (a)(2) and (a)(3).

15–16. A new part 616 is added to read as follows:

PART 616—LEASING

Subpart A—Leasing Authorities

Sec.

616.6000 Definitions.

616.6100 Authority and lessee eligibility.

616.6110 Purchase and sale of interests in leases.

616.6115 Lease participations.

616.6120 Out-of-territory leasing.

Subpart B—Leasing Operations

616.6200 Leasing policies and underwriting standards.

616.6210 Investment in leased assets.

616.6220 Leasing limits.

616.6230 Portfolio limitations.

616.6240 Stock purchase requirements.

616.6250 Disclosure requirements.

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.9, 3.10, 3.20, 3.28, 4.3, 4.3A, 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.3, 7.6, 7.8, 7.12, 7.13 of the Farm Credit Act (12

U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2130, 2131, 2141, 2149, 2154, 2154a, 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279a-3, 2279b, 2279c-1, 2279f, 2279f-1).

Subpart A—Leasing Authorities

§ 616.6000 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Interests in leases* means ownership interests in any aspect of a lease transaction, including servicing rights.

(b) *Lead lessor* means an institution having a direct contractual relationship with a lessee to make a lease, which institution sells or assigns an interest or interests in such lease to one or more other lessors.

(c) *Lease* means any contractual obligation to own and lease, or lease with the option to purchase, equipment or facilities.

(d) *Lease participation* means, with respect to a lease that is sold by a lead lessor to a participating institution in accordance with the requirements of § 616.6100, a fractional undivided interest in:

(1) All of the lease payments;

(2) The residual value of all of the property leased; or

(3) All of the lease payments and the residual value of all of the property leased.

(e) *Participating institution* means an institution that purchases a lease participation originated by another lessor.

(f) *Sale with recourse* means a sale of a lease or an interest in a lease in which the seller:

(1) Retains some risk of loss from the transferred asset for any cause except the seller's breach of usual and customary warranties or representations designed to protect the purchaser against fraud or misrepresentation; or

(2) Has an obligation to make payments to any party resulting from:

(i) Default on the lease by the lessee or guarantor or any other deficiencies in the lessee's performance;

(ii) Changes in the market value of the assets after transfer;

(iii) Any contractual relationship between the seller and purchaser incident to the transfer that, by its terms, could continue even after final payment, default, or other termination of the assets transferred; or

(iv) Any other cause, except the retention of servicing rights alone shall not constitute recourse.

§ 616.6100 Authority and lessee eligibility.

(a) *Facility leases.* Farm Credit Banks, agricultural credit banks, Federal land credit associations, agricultural credit associations, and the Farm Credit Leasing Services Corporation may own and lease, or lease with option to purchase, to any person or entity that is eligible to borrow under §§ 613.3000, 613.3010, or 613.3020 of this chapter, facilities needed in the operations of that person or entity.

(b) *Equipment leases.* Farm Credit Banks, agricultural credit banks, production credit associations, agricultural credit associations, and the Farm Credit Leasing Services Corporation may own and lease, or lease with option to purchase, to any person or entity that is eligible to borrow under §§ 613.3000, 613.3010, or 613.3020 of this chapter, equipment needed in the operations of that person or entity.

(c) *Equipment leases under title III of the Act.* Agricultural credit banks, banks for cooperatives, and the Farm Credit Leasing Services Corporation may own and lease, or lease with option to purchase, to cooperatives and other entities that comply with the requirements of § 613.3100 (b), (c), and (d) of this chapter, equipment needed in the operations of those cooperatives or other entities.

(d) *Documentation.* Each institution shall adequately document that the leased asset is within its statutory authority to lease equipment or facilities.

§ 616.6110 Purchase and sale of interests in leases.

(a) *Authority to purchase and sell interests in leases.* Leases and interests in leases may only be sold in accordance with each institution's leasing authorities, as set forth in § 616.6100. No Farm Credit System institution may purchase from an institution that is not a Farm Credit System institution any interest in a lease, unless the interest is a participation interest that qualifies under the institution's leasing authority, as set forth in § 616.6100, and meets the requirements of § 616.6115.

(b) *Policies.* Each Farm Credit System institution that is authorized to sell or purchase interests in leases under this subpart shall exercise that authority in accordance with a policy adopted by its board of directors that addresses the following matters:

(1) The types of purchasers to which the institution is authorized to sell interests in leases;

(2) The types of leases in which the institution may purchase or sell an

interest and the types of interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of interests in leases;

(4) Such limitations on the aggregate lease payments and/or residual amount of interests in leases that the institution may purchase from a single institution as are necessary to diversify risk, and such limitations on the aggregate amounts the institution may purchase from all institutions as are necessary to assure that service to the territory is not impeded;

(5) Provision for the identification and reporting of leases in which interests are sold or purchased;

(6) Requirements for providing and securing in a timely manner adequate financial and other information needed to make an independent judgment; and

(7) Any limitations or conditions to which sales or purchases are subject that the board deems appropriate, including arbitration.

(c) *Purchase and sale agreements.* Agreements to purchase or sell an interest in a lease shall, at a minimum:

(1) Identify the particular lease(s) to be covered by the agreement;

(2) Provide for the transfer of lessee information on a timely and continuing basis;

(3) Identify the nature of the interest(s) sold or purchased;

(4) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(5) Contain any terms necessary for the appropriate administration of the lease and the protection of the interests of the Farm Credit System institution.

(d) *Independent judgment.* Each institution that purchases an interest in a lease shall make a judgment on the payment ability of the lessee that is independent of the originating or lead lessor and any intermediary seller or broker prior to the purchase of the interest and prior to any servicing action that alters the terms of the original agreement, which judgment shall not be delegated to any person(s) not employed by the institution. A Farm Credit System institution that purchases a lease or any interest therein may use information, such as appraisals or inspections, furnished by the originating or lead lessor, or any intermediary seller or broker; however, the purchasing Farm Credit System institution shall independently evaluate such information when exercising its independent judgment. The independent judgment shall be documented by a payment analysis that considers factors set forth in § 616.6200 and is independent of the originating

institution and any intermediary seller or broker. The payment analysis shall consider such financial and other lessee information as would be required by a prudent lessor and shall include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions shall adopt procedures to ensure that the interests of their respective shareholders are protected in participation between such institutions.

(e) *Limitations.* The aggregate interests in lease payments or residual values of leases purchased from a single lead lessor and the aggregate interests in lease payments or residual values in leases purchased from other institutions shall not exceed the limits set in the institution's policy.

(f) *Sales with recourse.* When a lease or interest in a lease is sold with recourse, it shall be accorded the following treatment:

(1) The lease shall be considered, to the extent of the recourse or guaranty, a lease by the purchaser to the seller, as well as a lease from the seller to the lessee, for the purpose of determining whether total leases to a lessee are within the lending or leasing limits established in subpart J of part 614.

(2) The amount of the lease subject to the recourse agreement shall be considered a lease sold with recourse for the purpose of computing permanent capital ratios.

(g) *Similar entity lease transactions.* The provisions of § 613.3300 of this chapter that apply to interests in loans made to similar entities shall apply to interests in leases made to similar entities. In applying these provisions, the term "loan" shall be read to include the term "lease" and the term "principal amount" shall be read to include the term "lease amount."

§ 616.6115 Lease participations.

Agreements to purchase or sell a lease participation interest shall be subject to the provisions of § 616.6110, and, in addition, shall satisfy the requirements of this section.

(a) *Participation agreements.* Agreements to purchase or sell a participation interest in a lease shall, in addition to meeting the requirements of § 616.6110(c), at a minimum:

(1) Define the duties and responsibilities of the participating institution and the lead lessor, and/or the servicing institution, if different from the lead lessor.

(2) Provide for lease servicing and monitoring of the servicer;

(3) Set forth authorization and conditions for action in the event of lessee distress or default;

- (4) Provide for sharing of risk;
- (5) Set forth conditions for the offering and acceptance of the lease participation and termination of the agreement;
- (6) Provide for sharing of fees, and costs between participating institutions;
- (7) Provide for a method of resolution of disagreements arising under the agreement between two or more institutions;
- (8) Specify whether the contract is assignable by either party; and
- (9) Provide for the issuance of certificates evidencing an undivided interest in a lease.

(b) *Retention requirement.* No participation interest may be purchased from an institution that is not a Farm Credit System institution unless the servicing institution has an ownership interest in the lease payments and/or residual amount equal to the lesser of 10 percent of the lease payments and/or residual amount or such lesser amount as represents the servicing institution's leasing limit, which ownership interest cannot be assigned separately from the servicing rights.

(c) *Intrasystem participations.* Leases participated between or among Farm Credit System institutions shall meet the lessee eligibility, membership, lease term, lease amount, and stock purchase requirements of the originating lessor.

§ 616.6120 Out-of-territory leasing.

The out-of-territory consent and notification requirements of § 614.4070 of this chapter shall apply to leases. Institutions shall obtain consent from at least one institution that, at the time the lease is executed, offers similar leasing services in the territory. Institutions are not required to obtain concurrence from or provide notification to the Farm Credit Leasing Services Corporation when making out-of-territory leases.

Subpart B—Leasing Operations

§ 616.6200 Leasing policies and underwriting standards.

The board of each institution engaged in lease underwriting shall set forth written policies and procedures governing such activity that reflect prudent lease practices that control risk and comply with all applicable laws and regulations. Any leasing activity shall comply with the requirements under the lending policies and loan underwriting standards in part 614 of this chapter. Institutions engaged in the making, purchasing, or syndicating of leases also must establish written policies and procedures that address the additional risks associated with leasing. Written underwriting policies and

procedures shall address the following, if applicable:

- (a) Financial condition, capacity and integrity of the applicant;
- (b) Repayment capacity of the applicant;
- (c) Appropriateness of the lease amount, purpose, and terms and conditions;
- (d) Establishment of a prudent residual value at the inception of the lease and the related process of estimating the leased asset's market value during the lease term;
- (e) Types of equipment and facilities the institution will lease;
- (f) Remarketing of leased property and associated risks;
- (g) Property tax and sales tax reporting;
- (h) Title and ownership of leased assets;
- (i) Title and licensing for motor vehicles;
- (j) Liability associated with ownership, including any environmental hazards or risks;
- (k) Insurance requirements for both the lessor and lessee;
- (l) Classification of leases in accordance with generally accepted accounting principles; and
- (m) Tax treatment of lease transactions and associated risks.

§ 616.6210 Investment in leased assets.

An institution may acquire property to be leased, if the acquisition of the property is consistent with the leasing then conducted by the institution or is consistent with a business plan for expansion of the institution's existing leasing business or for entry into the leasing business.

§ 616.6220 Leasing limits.

All leases made by Farm Credit System institutions shall be subject to the lending and leasing limits prescribed in subpart J of part 614 of this chapter.

§ 616.6230 Portfolio limitations.

(a) Leases that Farm Credit banks and direct lender associations make under § 616.6100 (a) or (b) to processing or marketing operations shall be subject to the requirements of § 613.3010(b) of this chapter, reading the term "loan" to include the term "lease" and the term "borrower" to include "lessee."

(b) Processing and/or marketing leases that the Farm Credit Leasing Services Corporation makes to eligible lessees who supply, on a regular basis, less than 20 percent of the throughput shall be subject to the requirements of § 613.3010 (b)(1) and (b)(3) of this chapter, reading the term "lease" in the place of the term "loan."

§ 616.6240 Stock purchase requirements.

(a) Each System institution making an equipment lease under titles II or III of the Act shall require the lessee to purchase at least one share of stock in accordance with its bylaws, unless the lessee already owns stock in the institution making the lease. This provision does not apply to the Farm Credit Leasing Services Corporation.

(b) The disclosure requirements of § 615.5250 (a) and (b) of this chapter shall apply to stock purchased as a condition for obtaining a lease.

§ 616.6250 Disclosure requirements.

(a) Each System institution shall furnish to each lessee a copy of all lease documents signed by the lessee in connection with the lease, not later than the time of lease closing.

(b) Each System institution shall render its decision on a lease application in as expeditious a manner as is practical. Upon reaching a decision on a lease application, the institution shall provide prompt written notice of its decision to the applicant. Where the lessor makes an adverse decision on a lease application, the notice shall include the specific reasons for the institution's action.

PART 618—GENERAL PROVISIONS

17. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart C—Leasing

§§ 618.8050 and 618.8060 Subpart C [Removed and Reserved]

18. Subpart C, consisting of §§ 618.8050 and 618.8060, is removed and reserved.

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

19. The authority citation for part 621 continues to read as follows:

Authority: Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11).

Subpart C—Loan Performance and Valuation Assessment

§ 621.7 [Amended]

20. Section 621.7 is amended by removing the reference "§ 614.4358(a)(2)" and adding in its place, the reference "§ 614.4359(a)(2)" in paragraph (a)(2)(iii).

Dated: October 8, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97-27146 Filed 10-14-97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 25

[REG-209823-96]

RIN 1545-AU25

Guidance Regarding Charitable Remainder Trusts; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of time and locations of public hearing; teleconferencing

SUMMARY: This document changes the time and location of the public hearing on the proposed regulations regarding charitable remainder trusts under section 664 of the Internal Revenue Code and special valuation rules of interests in trusts under section 2702. In addition, this document announces that the Washington, DC location for the public hearing will have teleconferencing equipment and that there will be a remote teleconference site in Los Angeles, CA.

DATES: The public hearing will be held on November 18, 1997, beginning at 1 p.m. (ET), 10 a.m. (PT). Additional requests to speak and outlines of oral comments must be received by November 3, 1997.

ADDRESSES: The Washington, DC site for the public hearing is room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. The Los Angeles, CA remote teleconference site is the Federal Building, 5th Floor, Room 5003, 300 N. Los Angeles Street, Los Angeles, CA.

Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:R [REG-209823-96], Room 5226, Washington, D.C., 20044.

FOR FURTHER INFORMATION CONTACT: Evangelista Lee of the Regulations unit, Assistant Chief Counsel (Corporate), (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing, appearing in the **Federal Register** on Friday, April 18, 1997, (62 FR 19072), announced that a public hearing on the proposed regulations relating to charitable remainder trusts

and special valuation rules of transfers of interests in trusts would be held on Tuesday, September 9, 1997, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building 1111 Constitution Avenue, NW, Washington, DC. Subsequent to receiving a request to teleconference the hearing to Los Angeles, CA, the IRS published a notice in the **Federal Register** on Tuesday, August 19, 1997, (62 FR 44103) announcing that the hearing was postponed to afford interested persons the opportunity to request that the IRS teleconference the hearing to other locations outside Washington, DC.

The date, time, and addresses of the teleconference public hearing are set forth above. Attendees will be admitted beyond the lobby of the Internal Revenue Building in Washington, DC after 12:30 p.m. (ET), and to the teleconference site in Los Angeles, CA after 9:30 a.m. (PT).

There is limited seating capacity at both the Washington, DC and Los Angeles sites. In particular, it should be noted that no more than 12 people may be accommodated at any one time in the teleconference room in Los Angeles. Seating at both sites will be made available based on the order of presentations, and IRS personnel will be present to assist speakers in using the teleconference equipment.

The IRS will distribute for no charge at the hearing an agenda showing the scheduling of speakers. Testimony will begin in Los Angeles and will conclude with presentations by speakers in Washington, DC.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97-27138 Filed 10-14-97; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 157-0050b; FRL-5907-6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP). The revision concerns the Operating Permits Program

rule revision submitted by the California Air Resources Board (CARB) on behalf of the Santa Barbara County Air Pollution Control District (Santa Barbara or District) pursuant to Clean Air Act (CAA) sections 110 and 112(l).

In the final rules section of this **Federal Register**, the EPA is approving the states's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed action, no further activity is contemplated in relation to this proposal. If EPA receives adverse comments, the direct final approval will be withdrawn and all public comments received will be addressed in a subsequent final action based on this proposal. EPA will not institute a second public comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 14, 1997.

ADDRESSES: Written comments on this action should be addressed to: John Walser, Permits Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approvals are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Permitting Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; California Air Resource Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 94105; Santa Barbara County Air Pollution Control District, 26 Castilian Drive B-23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: John Walser (telephone 415/744-1257), Permits Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: EPA is proposing to approve the following rules into the SIP: Rule 370—Potential to Emit—Limitations for Part 70 sources.