

passengers bound for countries other than the United States intercepted by the carrier at the port(s) of embarkation, including, but not limited to, the passenger's name, date of birth, passport nationality, passport number, other travel document information, reason boarding was refused, the country of destination, and port of embarkation; and

(3) Any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

Dated: October 15, 1998.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

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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:** Reproposed rule; request for comment.

**SUMMARY:** The Farm Credit Administration (FCA) through the Farm Credit Administration Board (Board) seeks additional comment on a rule to amend its regulations that provide Farm Credit System (System) institutions regulatory guidance concerning leasing activities. The repropose rule addresses the comments received on the proposed rule and streamlines the regulations where appropriate. The repropose rule provides clear and concise regulations pertaining to the System's leasing activities and clarifies existing regulations that apply to leasing.

**DATES:** Please submit your comments on or before December 7, 1998.

**ADDRESSES:** You may send us your comments via electronic mail to "regcomm@fca.gov" or through the Pending Regulations section of the FCA's interactive website at "www.fca.gov." You may also mail or deliver your comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, or send them by facsimile transmission to FAX number (703) 734-5784. You may review copies

of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

#### FOR FURTHER INFORMATION CONTACT:

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or

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#### SUPPLEMENTARY INFORMATION:

On October 15, 1997, the FCA published a proposed rule that would replace the existing regulatory guidance relating to System institutions' leasing activities (62 FR 53581). The Farm Credit Leasing Services Corporation (FCL) and AgriBank, FCB (AgriBank) provided specific comments on the proposed rule. Ag Credit Agricultural Credit Association and AgFirst, Farm Credit Bank submitted general comments. After considering the four comment letters received, we revised the proposed rule and now seek additional comment. We have renumbered all sections in the repropose part 616 and note the new section numbers as part of our discussion of the repropose amendments.

#### 1. Authority and Lessee Eligibility

As originally proposed, § 616.6100(a), (b), and (c) generally restated sections 1.11(c)(2), 2.4(b)(4), and 3.7(a) of the Farm Credit Act of 1971, as amended (Act). Because it is unnecessary to restate the Act in our regulations, we have omitted these paragraphs. The repropose rule designates the remaining paragraph (d) as § 616.6400 and requires that an institution document that the lease of equipment or facility is authorized under its leasing authorities. In the repropose rule, § 616.6100 results from the redesignation of § 616.6110, discussed below.

#### 2. Purchase and Sale of Interests in Leases

The existing definition of a "loan" in § 614.4325(a)(3) includes leases and generally applies the loan purchase and sale rules to leases. This approach has proven unsatisfactory because the interests in a loan and lease are different; a lease cannot be divided into a principal amount and interest payments. The proposed rule intended to accommodate these differences by providing a new definition tailored to leases. We proposed 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.

AgriBank and the FCL raised technical concerns with the proposed approach. AgriBank suggested a clarification to the definition of "interests in leases" in proposed § 616.6000(a). The FCL recognized the difficulty of treating lease interests in the same manner as loan interests and requested further clarification. After considering these comments, we have concluded that a different and simpler approach is needed. The repropose rule does not differentiate between "participation" interests in leases and other types of lease interests that can be purchased and sold. Repropose § 616.6100 (§ 616.6110 in the proposed regulation), would authorize a System institution to purchase from any lessor any interest (including a participation interest) in a lease for equipment or facilities used in the operations of eligible borrowers. Specifically, the repropose rule would:

(1) Eliminate the distinctions concerning the authority to purchase "lease interests" and "lease participation interests";

(2) Eliminate cross-title restrictions on the purchase of lease interests; and

(3) Eliminate the retention requirement concerning the purchase of lease interests from outside the System. At present, this provision requires that the servicer of the lease have at least a 10-percent ownership interest in the lease in order for a System institution to purchase an interest from a non-System lessor. We conclude that requiring the servicer to have an ownership interest is not necessary to manage risk and is not required by law.

The repropose rule omits as no longer necessary the definition of a lease participation in proposed § 616.6000(d) and the definition of a participating institution in proposed § 616.6000(e). Repropose § 616.6000(b) would define "lease" to include only those leases for equipment or facilities that are used in the operations of persons eligible to borrow under part 613 of this chapter.

Eliminating the distinctions between "lease interests" and "participation interests" enables us to shorten the regulation by eliminating proposed § 616.6115. Repropose § 616.6100 would incorporate relevant provisions from proposed § 616.6115. The following information explains how we combined these provisions:

- We rewrote paragraph (a) of § 616.6100, as repropoed, to allow System institutions to purchase leases and interests in leases. The definition of "lease" would continue to limit the types of leases in which System institutions can purchase an interest, that is, leases of equipment or facilities used in the operations of eligible borrowers.

- We clarified that paragraph (b) of § 616.6100, as repropoed, would reflect that the policy requirement applies only if an institution buys or sells interests in leases.

- We removed paragraph (b)(1) of proposed § 616.6110, because there are no restrictions limiting to whom a System institution may sell interests in leases. We renumbered and clarified paragraphs (b)(2) through (b)(7) in repropoed § 616.6100.

- We restructured paragraph (c), which contained requirements roughly parallel to § 614.4325(d) requirements applicable to loans, to incorporate requirements contained in proposed § 616.6115(a) and to add a provision concerning transactions through agents.

- We did not change paragraph (d).

- We removed paragraph (e) of proposed § 616.6110 because it duplicates a provision in § 616.6100(b).

- We redesignated paragraphs (f) and (g) as paragraphs (e) and (f) without change.

AgriBank also suggested adding language to the regulation that would permit lease transactions through agents parallel to loan transactions permitted by § 614.4325(h). We agree that lease transactions through agents should be permitted on the same basis as § 614.4325(h) permits for loans.

Repropoed § 616.6100(c)(8) incorporates the rules contained in § 614.4325(h). This provision would require a written agency agreement and periodic review of the agency relationship. If a funding bank serves as an association's agent, the agency agreement must provide for termination of the agreement upon 60-days notice to the bank. In addition, the agreement must provide that an association can require repurchase of the interest in a lease if the interest does not comply with either the agency agreement or the association's underwriting standards. Finally, a technical change is necessary in order to delete the term "lease" from the § 614.4325(a)(3) definition of a "loan" for purposes of subpart H, since that subpart would no longer apply.

### 3. Customer Choice of Lease Provider

Proposed § 616.6120 would have required an institution making out-of-territory leases to obtain the

concurrence of at least one institution offering similar leasing services in the territory. Upon reconsideration, we are deleting this requirement from the repropoed regulation in order to provide System institutions with additional flexibility to make leases beyond their designated territory. The repropoed rule would not require a System lessor to satisfy any notice or concurrence requirements in order to serve lessees beyond the lessor's territory. The repropoed regulation is now § 616.6200.

### 4. Leasing Policies, Procedures, and Underwriting Standards

The proposed § 616.6200 would have required a System institution engaged in leasing to adopt a written policy (or policies) and underwriting standards. One provision of the proposed regulation would have required that a System lessor adopt written policies and procedures that require management to establish a prudent residual value at the inception of the lease. The FCL agreed with proposed § 616.6200 in general, but requested that we delete the word "prudent" as a modifier of the phrase "residual value" in proposed § 616.6200(d). We have eliminated the term "prudent" from proposed § 616.6200(d) and from the introductory text of § 616.6200 because it is unnecessary and the written policies and procedures must reflect lease practices that control risk. We have clarified in the repropoed regulation that policies must address the appropriateness of all terms and conditions, including the residual value. We also make a clarifying change to proposed § 616.6200 to replace the general reference to part 614 with the specific reference to the requirements of § 614.4150. To ensure that the list in proposed § 616.6200 does not duplicate any requirement of § 614.4150, we have omitted proposed § 616.6200(a) and (b) and redesignated the remaining paragraphs. The repropoed rule is now § 616.6300.

### 5. Investment in Leased Assets

We received no comments on the proposed provision concerning investment in leased assets, § 616.6210, which would authorize an institution to purchase property to lease if the acquisition of such property is consistent with the type of leasing being conducted or planned in the future. The repropoed rule is now § 616.6500.

### 6. Lending and Leasing Limits

We received one comment on the proposal to make leases and loans to a single borrower subject to a "lending

and leasing limit." This provision would limit an institution's exposure to risk from a single borrower. The FCL sought clarification of the provision that allows certain interests sold to be excluded from computing the total loans and leases to a borrower. Proposed § 614.4358(b)(5) would have excluded interests in leases sold if the sale agreement met three specific requirements. The third requirement, the subject of the FCL's comment, is that 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. The FCL commented that it is unclear how § 614.4358(b)(5)(iii) applies when the participation interest is solely the residual value. We revised the repropoed rule in response to this comment. The pro rata sharing requirement would apply only to lease payments.

We have made these additional changes to implement the leasing and lending limit regulations in subpart J of part 614 include:

- We clarified that the definition of "borrower" includes, for the purposes of subpart J, any customer to whom an institution has made a lease or a commitment to make a lease. See § 614.4350(a).

- We expanded the definition of "loan" to include all types of leases (operating, financing, and lease interests). See § 614.4350(c).

- The repropoed rule would prohibit a System institution from making a lease or a loan if the consolidated amount of all loans and leases to a single borrower exceeds a specific percentage of the institution's lending and leasing limit base. See §§ 614.4352 through 614.4355.

- The repropoed rule would prohibit the FCL from making leases to a single lessee or any related entities that exceed 25 percent of the FCL's "lending and leasing limit base." See § 614.4356.

- We added the outstanding lease balances to the items included in the computation of obligations. See § 614.4358(a)(1).

- All leases, except those that are permitted under § 614.4361, must comply with the leasing and lending limits at all times. See § 614.4360(d).

### 7. Portfolio Limitations

Proposed § 616.6230 would have limited leases made by Farm Credit Banks (FCBs), agricultural credit banks (ACBs), production credit associations (PCAs), Federal land credit associations and agricultural credit associations (ACAs), and the FCL to processing and marketing operations of agricultural or aquatic producers who supply less than

20 percent of the throughput. That provision would have included low-throughput processing and marketing leases in computing loan portfolio restrictions contained in sections 1.11(a)(2) and 2.4(a)(1) of the Act. Loans and leases made to borrowers who supply less than 20 percent of the throughput used in a processing or marketing operation would have been subject to the 15-percent portfolio ceiling in § 613.3010(b). Proposed § 616.6230(b) would have imposed this 15-percent portfolio limitation on the FCL for leases it makes to processing or marketing operations.

Upon reconsideration, we have concluded that the Act does not impose portfolio limitations on leases to processing and marketing operations. In the absence of a statutory requirement or a safety and soundness concern, we do not believe such a limitation on leasing activity is necessary. Therefore, we have not included proposed § 616.6230 in the repropoed rule.

### 8. Stock Purchase Requirements

We read the Act to impose a stock purchase requirement in connection with some leases, but not others. The Act authorizes FCBs to lease facilities and equipment to "persons eligible for credit." In contrast, the Act authorizes PCAs and Banks for Cooperatives (BCs) to lease equipment only to "stockholders," but does not prescribe any minimum stock purchase requirement. Therefore, lessees who lease equipment from PCAs, ACAs, BCs, or ACBs under titles II or III of the Act must be stockholders.

Because cooperatives operate on a one-person, one-vote basis, the number of shares of stock does not affect membership rights. Therefore, the purchase of a single share of stock is sufficient to satisfy the stockholder requirement. Institutions may also satisfy the stock requirement by counting outstanding shares stockholders already own. The stock requirement in the repropoed rule would not apply to the FCL because its stockholders are System banks, rather than its lease customers. The disclosure requirements for equities issued as a condition to obtain a lease would be the same as disclosure requirements for equities issued as a condition to obtain a loan as required under § 615.5250(a) and (b) of this chapter.

AgriBank inquired whether System institutions could issue participation certificates to lessees, rather than stock. Because both stock and participation certificates satisfy the membership requirements of the Act, the FCA has allowed System institutions to use

either one. We inserted the phrase "or one participation certificate" into the repropoed rule after the phrase "at least one share of stock," in order to clarify that an institution may issue one participation certificate to satisfy the stock purchase requirement if authorized by the institution's bylaws. The repropoed rule is now § 616.6700.

### 9. Disclosure Requirements

The proposed rule contained two disclosure requirements. Proposed § 616.6250(a) would have required that lease applicants be provided, not later than the time of lease closing, a copy of all lease documents signed by the lessee. In addition, proposed § 616.6250(b) would have required a System institution to render its decision on the lease application in as expeditious a manner as is practical and provide prompt written notice of its decision to the applicant.

The FCL questioned what constitutes "lease closing." The FCL submits that if the term means lease commencement, this provision could pose a problem for System lessors because it is an industry practice for leases to commence on delivery and acceptance of the equipment by the lessee, while the paperwork may not be finalized until later. The FCL recommended that we omit the phrase "not later than the time of lease closing" or alternatively, replace it with the phrase "within a reasonable time following lease closing." The repropoed rule is revised to require that copies be provided to a lessee within a reasonable time following lease closing.

The FCL and AgriBank opposed the proposed requirement to provide notice of adverse action on applications. The FCL contends that requiring System lessors to provide notice of adverse action would increase administrative costs and result in an uneven playing field compared to System competitors. The FCL suggested, as an alternative, the adoption of a threshold similar to that contained in Federal Reserve Board Regulation M, which only applies to consumer leases of less than \$25,000. AgriBank recommended that the FCA eliminate entirely the requirement to provide notice of adverse action because the requirement would go beyond current legal and regulatory requirements for other lessors.

The FCA has deleted this requirement in the repropoed rule. However, the reproposal continues to require that an institution provide written notice of its decision on the application. While the FCA believes little additional burden would result from providing the reason(s) for adverse action, it is not

required by law. The FCA continues to believe that providing such a notice is a good business practice. The repropoed rule is now § 616.6800.

The existing leasing regulations in §§ 618.8050 and 618.8060 will be deleted upon the effective date of the final rule. The repropoed rule also makes conforming technical changes to §§ 614.4710 and 621.7.

### 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, parts 614, 618 and 621 are proposed to be amended and part 616 is proposed to 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, 2097, 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, 2279c-1, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

### Subpart H—Loan Purchases and Sales

#### § 614.4325 [Amended]

2. Section 614.4325 is amended by removing the word "leases," from paragraph (a)(3).

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

## Subpart J—Lending and Leasing Limits

4. 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 that complies with the criteria in section 1.7(b) of the Act and the regulations in subpart P of this part) 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 whom 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]

5. 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 in the entire section.

### § 614.4352 [Amended]

6. 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]

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

### § 614.4354 [Amended]

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

### § 614.4355 [Amended]

9. 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]

10. Sections 614.4356 through 614.4360 are redesignated as §§ 614.4357 through 614.4361; and a new § 614.4356 is added to read as follows:

### § 614.4356 Farm Credit Leasing Services Corporation.

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

11. 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 “and 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 paragraph (b)(6); and by adding a new paragraph (b)(5) to read as follows:

### § 614.4358 Computation of obligations.

\* \* \* \* \*

(b) \* \* \*

(5) Interests in leases sold when the sale agreement provides that:

(i) The interest sold must be:

(A) An undivided interest in all the lease payments or the residual value of all the leased property; or (B) A fractional undivided interest in the total lease transaction;

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

(iii) The sharing of all lease payments must be on a pro rata basis according to the percentage interest in the lease payments.

\* \* \* \* \*

### § 614.4359 [Amended]

12. Newly designated § 614.4359 is amended by adding the words “and leasing” between the words “lending”

and “limit” 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.

13. 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 removing 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); 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]

14. Newly designated § 614.4361 is amended by adding the words “and leasing” between the words “lending” and “limits” 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 Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

### § 614.4710 [Amended]

15. 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).

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

## PART 616—LEASING

Sec.

616.6000 *Definitions.*

616.6100 *Purchase and sale of interests in leases.*

- 616.6200 *Out-of-territory leasing.*  
 616.6300 *Leasing policies, procedures, and underwriting standards.*  
 616.6400 *Documentation requirements.*  
 616.6500 *Investment in leased assets.*  
 616.6600 *Leasing limits.*  
 616.6700 *Stock purchase requirements.*  
 616.6800 *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).

## PART 616—LEASING

### § 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, but not limited to, servicing rights.

(b) *Lease* means any contractual obligation to own and lease, or lease with the option to purchase, equipment or facilities used in the operations of persons eligible to borrow under part 613 of this chapter.

(c) *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 that the retention of servicing rights alone shall not constitute recourse.

### § 616.6100 Purchase and sale of interests in leases.

(a) *Authority to purchase interests in leases.* A Farm Credit System institution may purchase leases and interests in leases.

(b) *Policies.* Each Farm Credit System institution that sells or purchases interests in leases shall do so only in accordance with a policy adopted by its board of directors that addresses the following:

(1) 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;

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

(3) Such limitations on the aggregate lease payments and 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;

(4) Identification and reporting of leases in which interests are sold or purchased;

(5) Requirements for securing from the selling lessor in a timely manner adequate financial and other information concerning the lessee needed to make an independent judgment; and

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

(c) *Purchase and sale agreements.* Each agreement 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) Specify the rights and obligations of the parties and the terms and conditions of the sale;
- (5) Contain any terms necessary for the appropriate administration of the lease, including lease servicing and monitoring of the servicer and authorization and conditions for action in the event of lessee distress or default;
- (6) Provide for a method of resolution of disagreements arising under the agreement;
- (7) Specify whether the contract is assignable by either party; and
- (8) In the case of lease transactions through agents, comply with the provisions of § 614.4325(h) of this chapter, reading the term "lease" or "leases" in place of the term "loan" or "loans," as applicable.

(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 § 616.6300. 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) *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 and 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 capital ratios.

(f) *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."

### § 616.6200 Out-of-territory leasing.

A System institution may make leases outside its chartered territory. A System institution making out-of-territory leases is not required to provide notification to, or obtain concurrence from, other System institutions.

**§ 616.6300 Leasing policies, procedures, and underwriting standards.**

The board of each institution engaged in lease underwriting shall set forth a written policy (or policies) and procedures governing such activity that reflect lease practices that control risk and comply with all applicable laws and regulations. Any leasing activity shall comply with the lending policies and loan underwriting requirements in § 614.4150 of this chapter. An institution 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 policies and procedures shall address the following, if applicable:

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

**§ 616.6400 Documentation requirements.**

Each institution shall adequately document that any asset it leases is within its statutory authority.

**§ 616.6500 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.

**§ 616.6600 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.

**§ 616.6700 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 or one participation certificate 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 (or participation certificates) purchased as a condition for obtaining a lease.

**§ 616.6800 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, within a reasonable time following 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.

**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****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 20, 1998.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*  
[FR Doc. 98–28480 Filed 10–22–98; 8:45 am]

BILLING CODE 6705–01–P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1 and 301**

[REG–102023–98]

RIN 1545–AW14

**Partnership Returns Required on Magnetic Media**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the requirements for filing partnership returns on magnetic media under section 6011(e) of the Internal Revenue Code. The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The proposed regulations affect partnerships with more than 100 partners. This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written comments must be received by January 21, 1999. Requests to speak (with outlines of oral comments) at the public hearing scheduled for January 13, 1999, must be received by December 23, 1998.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG–102023–98), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–102023–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the “Tax Regs” option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Bridget E. Finkenaur, 202–622–4940;