Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 273

[INS No. 1809–96]

RIN 1115–AE59

Suspension of Privilege To Transport Aliens to the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service or INS) regulations by allowing the Service to suspend a commercial airline's privilege to transport aliens to the United States if the airline brings in passengers with fraudulent documents contrary to regulation and at a significantly higher rate than the industry standard. This rule is necessary to ensure that airlines prevent the boarding and transport of aliens who use fraudulent documents in an attempt to gain entry to the United States.

Initially, an offending carrier will be fined under section 273 of the Immigration and Nationality Act (Act) for transporting aliens with fraudulent documents at a rate significantly above the industry standard. If the carrier's performance does not improve after the imposition of fines, the Immigration and Naturalization Service will issue a warning letter stating that the Service may cancel the carrier's contracts. If the carrier continues to transport aliens with fraudulent documents, the Service will issue a notice of intent to suspend the carrier's privilege to transport aliens to the United States. If the carrier still transports aliens with fraudulent documents, the Service will suspend the carrier's privilege to transport aliens.

DATES: Written comments must be submitted on or before December 22, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, attention: Public Comment Clerk, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1809–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Una Brien, Director, National Fines Office, Inspections Division, Immigration and Naturalization Service, 1400 Wilson Blvd., Suite 210, Arlington, VA 22209, telephone (202) 305–7018.

SUPPLEMENTARY INFORMATION: Section 124(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, 110 Stat. 3009, amended section 212(f) of the Immigrant and Nationality Act (the Act) by authorizing the Attorney General to suspend a commercial airline's privilege to transport aliens to the United States if the airline brings in passengers with fraudulent documents. The Attorney General has delegated to the Commissioner of the INS her authority to issue regulations. This rule proposes to add a new § 273.7 to define the steps the Service will take to suspend a commercial airline's privilege, if necessary. This is supported by Articles 4 and 5 of the U.S. Government Model Open Skies Agreement. It also amends § 103.1(f)(3)(iii) by adding an appeal to the Administrative Appeals Office (AAO) of a decision by the Executive Associate Commissioner for Field Operations to suspend an airline's privilege of transporting some or all aliens to the United States.

Section 212(f) of the Act allows the president to suspend the admission of any class of aliens if their entry would be detrimental to the interests of the United States. In IIRIRA, Congress provided that: ''Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.''

It should be noted that the Service has other means available to encourage airlines to comply with the Act by preventing the transport of improperly documented aliens to the United States. Specifically, a carrier is subject to monetary penalties under section 273 of the Act for transporting to the United States an alien which is not in possession of a valid passport or visa, as required. It has long been the Service's policy not to impose a fine against a carrier that transports aliens with fraudulent documents unless the quality of the fraud is exceedingly poor and could have reasonably been detected by carrier personnel at the port-of-embarkation.

In recent years, the Service has been working closely with the air transport industry to provide training to carriers in screening passengers for proper documentation. Administrative fines for bringing in aliens who have destroyed their documents *en route* and arrive in the United States without passports or visas dropped from approximately 3,000 cases in Fiscal Year 1992 to approximately 1,200 cases in Fiscal Year 1995. The primary reason for the decrease in the number of aliens without documents being brought to the United States was the passage in 1990 of legislation which increased the fine imposed on a carrier for the transportation of improperly documented aliens from $1,000 to $3,000 for each violation of section 273(a) of the Act. As a result, carriers, seeking to avoid fines, began document training programs for their agents at overseas ports-of-embarkation. It is anticipated that imposition of fines for bringing in aliens with reasonably detectable fraudulent documents will similarly reduce the frequency of such occurrences.

Prior to December 1994, the Service, by statute, was permitted to remit or refund fines imposed under section 273 of the Act only if the carrier could demonstrate that it did now know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that valid passport or visa was required. Section 209(a)(6) of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416, 108 Stat. 5312, Oct. 25, 1994), added subsection (e) to section 273 to the Immigration and Nationality Act. This new subsection

gave the Service the ability to reduce a fine if a carrier can demonstrate that it screened passengers in accordance with standards prescribed by the Attorney General, or that circumstances exist that the Attorney General determines would justify reduction. In a final rule published in the **Federal Register** on April 30, 1998, at 63 FR 23643, the Service provided procedures a carrier must undertake for the proper screening of passengers at the port-of-embarkation to become eligible for fines reductions, refunds, or waivers. These procedures are considered voluntary.

The provisions, enacted in IIRIRA, allowing the Service to suspend an airline's privilege to transport aliens to the United States would be a last resort, and it is anticipated that it would rarely be used. Generally, once the Service imposes significant monetary penalties against a carrier, the carrier will take corrective action by improving document screening standards, training check-in agents, and upgrading security measures. If fining the carrier proved to be ineffective, the Service could, with reasonable notice, cancel the carrier's Visa Waiver Pilot Program (VWPP), Transit-without-Visa (TWOV), and/or preinspection contracts. If a carrier continued to transport aliens with fraudulent documents to the United States at a significantly higher rate than the industry standard, despite the imposition of fines and the cancellation of contracts, the Service could invoke its authority to suspend a carrier's privilege to transport aliens to the United States. To the extent required under applicable bilateral air services agreements, the United States would pursue consultations with the governments of implicated airlines relative to any potential suspension of a carrier's privilege to transport aliens to the United States.

When it is noted that a commercial airline transports to the United States, at a rate that significantly exceeds the industry standard, aliens with altered or counterfeit documents that should have been identified as deficient by the use of reasonable diligence,[1] and the airline has made insufficient effort to stop the transport of such aliens despite the imposition of fines pursuant to section 273 of the Act, the Service will issue a warning letter. The letter will notify the airline that the number or percentage of passengers with fraudulent documents brought to the United States by the airline is significantly above the industry standard. The letter will also described the circumstances that have prompted the Service to issue the letter and what the carrier must do to comply with Service regulations regarding document screening. The Service will also offer to provide training in the detection of fraudulent documents. The letter will further state that if, within 120 days from the date of the letter, the carrier has not brought its fraudulent document violation rate to an acceptable level compared to the industry standard, the Service may cancel the carrier's VWPP, TWOV, and/or preinspection contracts. Within the 120 days the carrier must bring its fraudulent document violation rate to an acceptable level compared to the industry standard. The carrier may use this 120-day period to train its employees and improve document screening standards in order to reduce the rate at which it transports aliens with fraudulent documents. If the carrier does not reduce its fraudulent document rate to an acceptable level, the Service may take action to cancel with the airline in addition to imposing fines under section 273 of the Act.

If the Service cancels some or all of the airline's contracts, the Service will also inform the airline that it must reduce its fraudulent document violation rate to an acceptable level within 60 days of the cancellation of its contracts, and warn the airline that if it does not achieve this reduction, the Service may take action to suspend the airline's privilege to transport aliens to the United States.

The Service is requesting comments on whether the level at which sanctions are triggered should be given a more precise definition. The Service considered using a numerical formula to calculate the industry standard and setting a level above which sanctions would be invoked. Comments on this or alternative approaches are welcome.

Other criteria for suspending an airline's privilege to transport aliens to the United States were also considered, but not adopted. For example, consideration was given to suspending the privilege if a carrier brought in a number of aliens with fraudulent documents on one flight that was significantly above the industry standard, or if over 10 percent of the alien passengers on any one flight arrived with fraudulent documents, or if a carrier regularly or systematically transported aliens with fraudulent documents. For example, a carrier might operate a 300–400 seat aircraft and bring 30, 40, or 50 fraudulently documented aliens to the United States. However, smaller carriers might operate a 10-seat aircraft and transport 9 aliens with fraudulent documents. Or a carrier might bring in aliens with fraudulent documents on a daily or almost daily basis.

After the contracts are canceled, if the carrier still does not lower its fraudulent document violation rate to an acceptable level within a 60-day period, the Service may issue a notice of intent to suspend the carrier's privilege to transport some or all aliens to the United States. The Service will forward a copy of this notice to the Office of Aviation Programs and Policy of the Department of State (DOS), requesting that DOS contact the appropriate foreign government to the extent required under applicable bilateral air services agreements.

The carrier may submit written representations to the Service stating why the Service should not suspend the carrier's privilege to transport aliens to the United States and may request an interview with the Service. If, within 30 days of the issuance of the notice of intent to suspend, the carrier still does not bring its fraudulent document violation rate to an acceptable level, the Service may suspend the carrier's privilege to transport some or all aliens to the United States or to a particular Port-of-Entry within the United States or from a particular foreign port-of-embarkation. Any Service decision to suspend the carrier's privilege to transport some or all aliens to the United States will take into consideration any consultations between governments under applicable bilateral air services agreements. The carrier will be fined under section 721 of the Act if it continues to transport aliens to the United States in violation of the suspension order.

The carrier may appeal the Service's decision to the Administrative Appeals Office (AAO). The AAO will adjudicate the appeal as expeditiously as possible.

In order to have its privilege to transport aliens to the United States reinstated, the airline must demonstrate improved document screening and personnel-training standards as defined in 8 CFR 273.3. The carrier must submit evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States. This evidence shall be submitted to the Executive Associate Commissioner for Field Operations for consideration. Evidence may include, but is not limited to, the following: (1) Information regarding the carrier's document screening training program, including attendance of the carrier's personnel in any Service, DOS, or other

[1] What is ''reasonable diligence'' (within the meaning of section 273 of the Immigration and Nationality Act) is a factual matter determined upon the particular facts and circumstances of each individual case; what may be reasonable diligence in one case may not be so in another, *Matter of S.S. ''Florida,''* 3 I&N Dec. 111 (BIA 1947; A.G. 1948).

training programs, the number of employees trained, and a description of the training program; (2) information regarding the date and number of improperly documented passengers bound for countries other than the United States and 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. The evidence submitted should indicate that the carrier has achieved substantial compliance with INS screening standards in order to improve screening of its passengers. If the Executive Associate Commissioner for Field Operations is satisfied that the carrier has achieved substantial compliance with INS screening standards, he will issue a notice to the carrier reinstating its privilege to transport aliens and enter into contracts pursuant to section 233 of the Act.

It should be noted that this action suspends only the carrier's authorization to bring aliens to the United States. It does not suspend landing rights and it does not suspend authority to bring U.S. citizens or aliens to the United States who are not subject to the order, or to transport persons out of the United States.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factor: Aliens with fraudulent documents make up approximately 4 percent of the total number of aliens found to be inadmissible at airports of entry. The Service anticipates rarely having to use this provision. In the past 4 years, the Service has warned only two carriers that it might take action to fine then if the carrier did not cease bringing aliens to the United States with fraudulent documents. Neither of these carriers was fined. Although the economic impact on a carrier whose privilege is suspended will be significant, it is not expected that a substantial number of small entities will be affected.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulations proposed, herein, will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

This proposed rule does not impose any new reporting or recordkeeping requirements. The evidence requirements for reinstatement contained in § 273.7(j) are not considered an information collection as defined in 5 CFR 1320.3(e). As previously discussed, the Service has warned only two carriers that it might take action if the carrier did not cease bringing aliens to the United States with fraudulent documents.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegation (Government agencies), Freedom of Information, Privacy, Reporting, and recordkeeping requirements, Surety bonds.

8 CFR Part 273

Administrative practice and procedure, Aliens, Carriers, Penalties.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

2. Section 103.1 is amended by:

a. Removing the period at the end of paragraph (f)(3)(iii)(MM) and inserting a ''; and'' in its place, and by

b. Adding a new paragraph (f)(3)(iii)(NN), to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(NN) Suspension of a carrier's privilege to transport some or all aliens to the United States under § 272.7 of this chapter.

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PART 273—CARRIER RESPONSIBILITIES AT FOREIGN PORTS OF EMBARKATION; REDUCING, REFUNDING, OR WAIVING FINES UNDER SECTION 273 OF THE ACT; SUSPENSION OF PRIVILEGE TO TRANSPORT ALIENS TO THE UNITED STATES

3. The heading for part 273 is revised as set forth above.

4. The authority citation for part 273 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1323; 8 CFR part 2.

5. Section 273.7 is added to read as follows:

§ 273.7 Warning of intention to suspend a commercial airline's privilege to transport aliens to the United States.

(a) *Transporting aliens with fraudulent documents.* When a commercial airline transports to the United States, at a rate that significantly exceeds the industry standard, aliens who, upon arrival at a U.S. Port-of-Entry, are found to be in possession of fraudulent documents that, in the opinion of the Service, the airline should have detected, and the imposition of fines under 8 CFR 280.1 has not resulted in a satisfactory reduction in the airline's violation rate, the Executive Associate Commissioner for Field Operations may issue a warning letter notifying the carrier that:

(1) The number or percentage of passengers brought to the United States with fraudulent documents is significantly above the industry standard, demonstrating that the violation rate for the subject carrier over a stated period of time has exceeded the industry standard, and stating the difference between the industry standard and the carrier's violation rate;

(2) The Service is available to provide training to carrier personnel in the detection of fraudulent documents pursuant to section 235A(b) of the Act;

(3) The Service requires the rate of fraudulent document violations for the subject carrier to decrease to an acceptable rate within 120 days of the date of service of the warning letter; and

(4) If 120 days after the date of the warning letter the carrier's fraudulent document violation rate is not an acceptable rate, the Executive Associate Commissioner for Field Operations may cancel the carrier's contracts (Forms I–775, I–425, and I–426) pursuant to section 233 of the Act.

(b) *Canceling contracts.* (1) If the carrier's fraudulent document violation rate is not at an acceptable level within 120 days of service of the warning letter, the Service may cancel some or all contracts entered into with the carrier pursuant to section 233 of the Act.

(2) The service will inform the carrier that if, within 60 days of the date of cancellation of the contracts, the carrier can demonstrate that it has reduced its fraudulent document rate to an acceptable level, the carrier may request to become signatory to contracts with the Service in accordance with section 233 of the Act. The Service will also warn the carrier that if the carrier cannot demonstrate that it has reduced its fraudulent document rate to an acceptable level within 60 days of the cancellation of the contracts, the Service may take action pursuant to paragraph (c) of this section.

(c) *Notice of intent to suspend.* (1) If 60 days after the Service cancels a carrier's contract pursuant to paragraph (b)(1) of this section, the carrier has not reduced its violation rate to an acceptable level, the Service may issue a notice of intent to suspend the carrier's privilege to transport some or all aliens to the United States or to a particular Port-of-Entry within the United States or from a particular foreign port-of-embarkation. The Service will forward a copy of this notice to the Office of Aviation Programs and Policy, Department of State, EB/TRA/AVP, Washington, DC 20520, with a cover letter requesting that the Department of State (DOS) contact the appropriate foreign government to the extent required under applicable bilateral air services agreements. The United States shall pursue consultations with the government of an implicated airline relative to any potential suspension of a carrier's privilege to transport aliens to the United States. The Service shall not take further action against the airline until DOS has indicated, in writing, that it has no objection to the Service proceeding with the suspension.

(2) The carrier may, within 30 days of the date of service of the notice of intent to suspend, submit written representations under oath supported by documentary evidence setting forth reasons why the carrier's privilege to transport aliens to the United States should not be suspended. The carrier may also, at the time of filing these representations, request in writing, an interview before the Executive Associate Commissioner for Field Operations, or his designee, in support of the written representations.

(d) *Allegations denied.* If the carrier denies the allegations in the notice of intent to suspend, then the carrier shall, in its answer, provide all information or evidence on which the answer is based.

(e) *Interview requested.* (1) If in its answer to the warning letter the carrier requests an interview, the carrier shall be given notice of the date set for the interview.

(2) A summary of the information provided by the carrier at the interview shall be prepared and included in the record, along with all other evidence relied on in the adjudication. In the discretion of the Executive Associate Commissioner for Field Operations, the interview may be recorded.

(f) *Decision.* The decision will take into consideration any consultations between governments under applicable bilateral air service agreements.

(1) *Privilege not suspended.* If the carrier demonstrates the required improvement in its fraudulent document violation rate within 30 days of the issuance of the notice of intent to suspend, the Executive Associate Commissioner for Field Operations will notify the carrier that the Service will not, at this time, suspend the privilege of the airline to transport aliens to the United States.

(2) *Privilege suspended.* If the carrier admits the allegations in the notice of intent to suspend, or if it does not demonstrate, within the 30-day period, the required improvement in its fraudulent document violation rate, the Executive Associate Commissioner for Field Operations may issue a notice to the carrier, suspending the privilege of the carrier to transport some or all aliens to the United States or to a particular Port-of-Entry within the United States or from a particular foreign port-of-embarkation until such time as the Service has certified that the carrier has substantially complied with the screening standards set forth in § 273.3. This notice will summarize evidence relied on, including evidence submitted by the carrier and other evidence that the Service has and give reasons for the suspension. The notice will also inform the carrier that it will be fined under section 271 of the Act if it continues to transport aliens to the United States in violation of a final administrative suspension order.

(g) *Appeal of decision to suspend.* The decision to suspend a carrier's privilege to transport aliens may be appealed to the Service's Administrative Appeals Office (AAO) pursuant to § 103.1(f)(3)(iii)(NN) of this chapter. If the decision is appealed, the suspension will not take place until after the appeal is adjudicated by the AAO.

(h) *Reinstatement.* If a carrier's privilege to transport aliens is suspended in accordance with paragraph (f)(2) of this section, the carrier may have its privilege reinstated by providing evidence that satisfies the Executive Associate Commissioner for Field Operations that it has implemented improved document screening standards as described in § 273.3. The carrier must submit evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States. Such evidence may include but is not limited to:

(1) Information regarding the carrier's document screening training program, including attendance of the carrier's personnel in any Service, DOS, or other training programs; the number of employees trained; and a description of the training program;

(2) Information regarding the date and number of improperly documented

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.

[FR Doc. 98–28459 Filed 10–22–98; 8:45 am]

BILLING CODE 4410–10–M

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 reproposed rule addresses the comments received on the proposed rule and streamlines the regulations where appropriate. The reproposed 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:

John J. Hays, Policy Analyst, Office of Policy and Analysis, 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: 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 reproposed part 616 and note the new section numbers as part of our discussion of the reproposed 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 reproposed 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 reproposed 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 reproposed rule does not differentiate between ''participation'' interests in leases and other types of lease interests that can be purchased and sold. Reproposed § 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 reproposed 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 reproposed 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). Reproposed § 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. Reproposed § 616.6100 would incorporate relevant provisions from proposed § 616.6115. The following information explains how we combined these provisions: