

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 23

[95-21]

RIN 1557-AB45

Leasing

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulation governing the personal property lease financing transactions of national banks. This proposal is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. The proposal revises the regulation to improve its clarity. In addition, the OCC has identified several areas where substantive changes may be appropriate based upon comments received in this rulemaking.

DATES: Comments must be received by November 6, 1995.

ADDRESSES: Comments should be directed to: Communications Division, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95-21. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Morris Morgan, Credit and Management Policy, Chief National Bank Examiner's Office 202/874-5170; Jacqueline Lussier, Senior Attorney, Legislative and Regulatory Activities 202/874-5090, Aline J. Henderson, Senior Attorney, Bank Activities and Structure, Chief Counsel's Office 202/874-5300.

SUPPLEMENTARY INFORMATION:

Introduction

The OCC is proposing to revise 12 CFR part 23, which governs personal

property lease financing transactions by national banks. This proposal is another component of the OCC's Regulation Review Program. The principal goal of the Program is to review all of the OCC's rules with a view toward eliminating provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another important goal is to clarify regulations so that they more effectively convey the standards the OCC seeks to apply.

The OCC first adopted part 23 in mid-1991.¹ The OCC's experience to date suggests that a complete, substantive rewrite of the regulation is not warranted at this time, but that revisions to improve its clarity would be useful. Accordingly, the proposal revises the regulation by shortening and streamlining its text; reorganizing many of its provisions and adding paragraph headings; and conforming its style to that of the OCC's other rules. In addition, the OCC has identified several areas, described in the Discussion section below, where substantive changes may be appropriate based upon the comments received in response to this proposal.

Background

National banks may engage in leasing activities pursuant to two independent sources of authority. First, under 12 U.S.C. 24(Seventh), national banks may engage in personal property lease financing transactions (Section 24(Seventh) Leases) when the lease is the functional equivalent of a loan.² The OCC has interpreted the functional equivalency standard to mean that Section 24(Seventh) Leases must be "net, full-payout leases." Under the current regulation, the net lease requirement means that the lessor national bank may not provide certain enumerated services such as repairs,

¹ 56 FR 28314 (June 20, 1991). The final regulation replaced the OCC's interpretive ruling on lease financing transactions, which had been codified at 12 CFR 7.3400. Much of the substance of this interpretive ruling was retained, however, in the portions of part 23 that apply to Section 24(Seventh) Leases.

² See *M & M Leasing Corp. v. Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), cert. denied, 436 U.S. 956 (1978) (upholding national banks' authority under 12 U.S.C. 24(Seventh) to engage in personal property lease financing transactions if the lease is the functional equivalent of a loan).

maintenance, or insurance in connection with the leased property. The full-payout requirement means that the bank must expect to recover the full acquisition and financing costs of the leasing transaction from sources that include the estimated, unguaranteed residual value of the leased property, but that the bank may rely on estimated residual value only to a limited extent. There is no aggregate limit on a national bank's investment in Section 24(Seventh) Leases.

In 1987, Congress gave national banks a second, explicit source of authority to engage in the personal property lease financing. The Competitive Equality Banking Act (CEBA)³ amended 12 U.S.C. 24 by adding a new paragraph Tenth, which allows national banks to invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, and furniture, for lease financing transactions on a net lease basis. Investment in personal property to be leased under the authority of 12 U.S.C. 24(Tenth) (CEBA Leases) may not exceed 10 percent of a national bank's assets. Although a national bank must expect to recover its full acquisition and financing costs in a CEBA leasing transaction from the same sources as the regulation specifies for a Section 24(Seventh) leasing transaction, CEBA Leases are not subject to a maximum estimated residual value limit.

Both Section 24(Seventh) Leases and CEBA Leases are governed by standards set forth in part 23. The current version of part 23 contains three subparts: subpart A applies to all lease financing transactions; subpart B contains additional requirements applicable only to CEBA Leases; and subpart C contains additional requirements applicable only to Section 24(Seventh) Leases. The proposal retains the three-subpart structure, but revises and reorganizes the rule's provisions to enhance clarity. A derivation table showing these changes appears at the conclusion of this preamble.

The *Discussion* portion of the preamble contains a section-by-section description of the proposed revisions.

³ Pub. L. 100-86, § 108, 101 Stat. 552, 579 (August 10, 1987). See also S. Rep. No. 100-19, 100th Cong., 1st Sess. 43 (1987) (CEBA expanded national banks' leasing authority in order to enable them to respond to customer demand for a broader range of lease financing transactions and to compete with thrift and other nonbank lessors).

Discussion

Subpart A—General Provisions

Authority, Purpose, and Scope (Proposed § 23.1)

Current Section 23.1(a) sets out the authority of national banks to engage in personal property lease financing transactions. The proposal does not change the authority provision, but it adds subsections describing the purpose of part 23 and the scope of its respective subparts. Current 23.1(b), which authorizes a national bank to recover its acquisition and financing costs from rentals, tax benefits, and the residual value of the leased property, is relocated to proposed § 23.3.

Definitions (Proposed § 23.2)

The current regulation does not contain a definitions section. Proposed § 23.2 defines several terms, including "CEBA Lease," "conforming lease," "off-lease property," and "Section 24(Seventh) Lease" for the purpose of making the operative provisions of the regulation shorter and easier to read.

Current § 23.2 contains both a definition of the term "net lease" and operative provisions, including the so-called "distress clauses," which allow a national bank to take reasonable action to protect its interest in leased property, and a provision that allows a national bank to arrange for a third party to provide operational services that the bank is precluded from providing under a net lease. The definition of "net lease" is retained in proposed § 23.2(d) without substantive change; the operative provisions are moved to proposed § 23.4.

Proposed § 23.2(c) contains a definition of the term "full-payout lease." The term is defined as a lease financing transaction in which the unguaranteed portion of the estimated residual value of the leased property⁴ on which a bank relies for recovery of its acquisition and financing costs is no greater than 25 percent of the cost of the leased property to the lessor. This estimated residual value limit is the same as the limit that currently appears at § 23.11(a) of the current regulation. Other, operative provisions of the current regulation that pertain to residual value are retained in subpart C of part 23, as described below.

⁴ The "estimated residual value" is the estimated market value of leased property at the end of the lease term; the "unguaranteed portion" of the estimated residual value is the estimated residual value at the end of the lease term less any portion of the estimated residual value guaranteed by the lessee, the manufacturer, or a third party. See 12 CFR 23.1(b), 23.11.

The purpose of a residual value limit is to ensure that a lessor bank relies primarily on the creditworthiness of the lessee to recover its entire investment in the leased property. When the OCC adopted the current residual value limit in 1979, it selected 25 percent as the level that best protected national banks from the increased risk that results from excessive reliance on residual value.

That amount was based in part on the OCC's experience at that time in examining and supervising banks engaged in Section 24(Seventh) lease financing activities. See 44 FR 22388, 22390 (April 13, 1979) (adoption of interpretive rule establishing estimated residual value limit of 25 percent).⁵

Since then, national banks have been given authority to enter into CEBA Leases, which are not subject to a maximum residual value limit (but are restricted in aggregate amount to 10 percent of a national bank's total consolidated assets). National banks do not appear to be engaged in CEBA leasing to the full extent of their statutory authority, and liberalization of the residual value limit for Section 24(Seventh) Leases may therefore be unnecessary.

The OCC is interested in commenters' views on this question, and specifically invites comment on whether the residual value limit for Section 24(Seventh) Leases should be modified. In addressing this question, commenters may wish to discuss the effect of Financial Accounting Standards Board Statement of Financial Accounting Standard 13, "Accounting for Leases," which, as a practical matter, may affect the extent to which a national bank relies on residual value. Commenters who support a more flexible limit on residual value for Section 24(Seventh) Leases are asked to identify any increased risk that may accompany a new limit and to discuss how the OCC should address that risk.

Recovery of Investment (Proposed § 23.3)

Proposed § 23.3 is the same as current § 23.1(b), which requires that a national bank entering into a lease financing

⁵ In 1979, the regulations promulgated by the Board of Governors of the Federal Reserve System (FRB) that authorized a bank holding company or its subsidiary to engage in lease financing activities limited the reliance placed on residual value to a maximum of 20 percent of the cost of the property. In 1992, the FRB decided to conform its residual value provisions to the OCC's limit for Section 24(Seventh) Leases. The FRB based its decision, in part, on the fact that the OCC had not identified any significant increased risk from permitting reliance on the slightly higher level of 25 percent. See 57 FR 20958, 20959-60 (May 18, 1992) (final regulation; discussion of bases for FRB action). The FRB's regulation appears at 12 CFR 225.25(b)(8).

transaction must reasonably expect to recover its full investment in the leased property as well as its estimated financing costs over the life of the lease from three sources: rentals, estimated tax benefits, and the estimated residual value of the leased property.

As its placement in subpart A of part 23 indicates, the recovery of investment provision applies both to CEBA Leases and to Section 24(Seventh) Leases. The maximum estimated residual value requirement that appears in the definition of the term "full-payout lease," however, applies only to Section 24(Seventh) Leases. Neither the current regulation nor the proposal limits the extent to which a national bank may rely on residual value to recover its acquisition and financing costs in a CEBA Lease transaction.

Net Lease Requirement (Proposed § 23.4)

A new paragraph (a) is added to proposed § 23.4. This paragraph contains an explicit statement of the requirement that national banks may engage in a lease financing transaction, and in activities incidental to the transaction, only if the lease is a net lease. The current rule does not contain a plain statement of this basic requirement. The statement is added for purposes of clarity and completeness; it is not intended to change the requirement.

The incidental activities clause in proposed § 23.4(a) reflects the OCC's long-standing interpretations authorizing national banks to engage in activities incidental to leasing. As the placement of the incidental activities reference within subpart A of part 23 indicates, the OCC takes the position that a national bank may engage in incidental activities with respect both to Section 24(Seventh) Leases and CEBA Leases.

The activities incidental to leasing that the OCC has authorized to date for national banks acting as lessors include:⁶ providing management,

⁶ The OCC has also authorized national banks to engage in incidental activities with respect to lease financing transactions to which the bank is not a party. These activities include acting as finder or performing similar functions as agent or broker. See 12 CFR 7.7200. They also include providing lease consulting services such as financial advice; providing management, brokerage, and finder services; and performing lease servicing for third parties. See, e.g., OCC Interpretive Letter No. 567 (Oct. 29, 1991) reprinted in [1991-92 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,337; Letter from Wallace S. Nathan (Oct. 28, 1985) (unpublished); Letter from Peter Liebesman (June 15, 1981) (unpublished).

Copies of unpublished letters are available in the OCC's public comment file for this rulemaking.

marketing, and administrative services through an operating subsidiary; offering credit life insurance to lessees; and acquiring rights under maintenance contracts associated with purchased leases.⁷ The OCC does not propose to include a list of permissible activities incidental to leasing in part 23.

Commenters are, however, invited to address the desirability of retaining this case-by-case approach and to discuss incidental activities that may be appropriate for OCC consideration. In particular, the OCC is seeking comment on whether it should, on a case-by-case basis, permit national banks to lease real estate when the real estate lease is incidental to a personal property lease financing transaction. This issue may arise, for example, when a bank wishes to lease personalty, such as machinery, that is affixed to the land on which it sits.

The substance of proposed § 23.4(b) is the same as that of current § 23.2(b), (c), and (d), but the text has been revised so that it is shorter and simpler. For example, the provisions specifying the conditions under which a national bank may take appropriate action to protect its interests have been amended so that they no longer require that a change in condition be "unexpected" or that a bank's increased exposure to risk be "significant." As is the case in current § 23.2, proposed § 23.4(b) provides that the actions a national bank may take to salvage or protect its investment under the distress clauses include the actions described in the definition of net lease at § 23.2(d).

Investment in Personal Property (Proposed § 23.5)

Current § 23.3, which governs the acquisition of property to be leased, the disposition of the property at the conclusion of the lease term or upon the lessee's default, and the use of short-term leases, has been moved to proposed § 23.5 with certain clarifying changes. For example, the text of the provision covering bridge or interim leases has been rewritten to state more clearly the current rule that a bank's use of a bridge or interim lease pending the long-term disposition of off-lease property does not extend the off-lease holding period. Property is "off-lease" at the expiration of the lease term or

upon the lessee's default on the lease agreement prior to expiration.

Current § 23.3(b) requires that a national bank dispose of or re-lease off-lease property as soon as practicable, but not later than two years from the date the lease expires. Proposed § 23.5(b) is substantively the same but contains new language to clarify that the two-year holding period runs either from the date the lease expires or from the date of the lessee's default, depending on the reason that the national bank takes possession or control of the leased property.

Both Section 24(Seventh) Leases and CEBA Leases are subject to this holding period limitation for off-lease assets. Property that the bank retains in anticipation of re-leasing must be revalued when it comes off-lease at the lower of current fair market value or book value. Upon the expiration of the two-year period, national banks are required to write-off any remaining book value for off-lease assets.

The OCC has considered whether it should extend the holding period for off-lease property. For example, a longer holding period may be appropriate where markets for particular types of property become depressed, and the two-year period might be insufficient to allow national banks to proceed with the orderly liquidation or re-lease of the property. The OCC, however, lacks empirical data on the experiences national banks have had in attempting to liquidate or re-lease specific kinds of off-lease property within the current holding period and, accordingly, is not now proposing any change.

The OCC would consider modifying the holding period in the final revisions of part 23 if commenters present persuasive reasons, supported by empirical evidence, for doing so. Accordingly, the OCC requests comment on the following issues: (1) Should the holding period for off-lease assets be extended and, if so, should it be extended for all categories of assets or only for particular categories? (2) If the holding period were extended, what is a reasonable additional time period, in general or for particular categories of assets? (3) What evidence supports extension of the holding period? (4) If the holding period were extended, how should the OCC ensure that banks do not use the longer period to retain property for essentially speculative purposes? The OCC invites specific comment on the experiences of national banks in attempting to liquidate or re-lease specific kinds of off-lease personal property that are relevant to the issue of extending the holding period requirement.

Requirement for Separate Records (Proposed § 23.6)

Proposed § 23.6 retains the requirement in current § 23.4 that national banks maintain separate records for CEBA Leases and Section 24(Seventh) Leases. Minor revisions have been made to shorten and clarify the text.

Applicability of Consumer Laws (Current § 23.6; Removed in Proposal)

Current § 23.6 states that nothing in part 23 shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 12 U.S.C. 1667 *et seq.* (CLA). The OCC is proposing to remove this section because other consumer protection laws and regulations may also apply to personal property lease financing, making the cross-reference potentially misleading. Of course, this change does not affect the applicability of the CLA or any other consumer credit laws to national banks' lease financing activities, and national banks must know and comply with the full range of requirements that govern these activities.

Application of Lending Limits; Restrictions on Transactions With Affiliates (Proposed § 23.7)

The proposal continues to subject lease financing transactions to lending limits and transactions with affiliates restrictions, but clarifies that the transactions with affiliates restrictions apply only if the lessee is an affiliate of the lessor bank. The proposal also retains the reservation of the OCC's authority to impose other limits or restrictions. These provisions currently appear at § 23.5; they are relocated in the proposal to § 23.7.

Subpart B—CEBA Leases

Provisions Applicable to CEBA Leases (Proposed §§ 23.8, 23.9, and 23.10)

Proposed §§ 23.8, 23.9, and 23.10 contain the requirements applicable to CEBA Leases, including a statement of the general rule authorizing investment in CEBA Leases, the limits placed on banks' exercise of their CEBA leasing authority, and a transition rule for CEBA Leases entered into after CEBA's enactment but before the effective date of the OCC's final implementing rule. The substance of these provisions is the same as that of current §§ 23.7, 23.8, and 23.9. Minor changes have been made to shorten and clarify the text.

⁷ See Letter from H. Joe Selby, Nov. 24, 1976 (unpublished) (management, marketing, and administrative services through an operating subsidiary); Letter from Peter Liebesman, Jan. 14, 1985 (unpublished) (credit life insurance); Letter from J.T. Watson, May 14, 1975 (unpublished) (rights under maintenance contracts associated with purchased leases).

Subpart C—Section 24(Seventh) Leases
 General Rule (Proposed § 23.11)

Current § 23.10 states the general rule authorizing national banks to engage in lease financing pursuant to 12 U.S.C 24(Seventh). The substance of proposed § 23.11 is the same as this current rule. The reference to incidental activities in the current rule has been deleted as redundant, however, given the treatment of incidental activities in proposed § 23.4. Other, minor revisions have been made to shorten and clarify the text.

Estimated Residual Value (Proposed § 23.12)

Current § 23.11 prescribes not only the residual value limit that applies to Section 24(Seventh) Leases but also certain other provisions that apply to a bank's reliance on or estimate of residual value. First, the amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party that is not an affiliate of the bank may exceed 25 percent of the original cost of the property if the bank has determined that the guarantor has the resources to meet the guarantee and the bank can document its determination. Second, the estimated residual value amounts must be reasonable given the type of property leased and the relevant circumstances, so that realization of the lessor bank's full investment and the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item. Finally, when a bank leases personal property to a government entity, its estimates of residual value may be based on future transactions that it reasonably anticipates will occur.

The estimated residual value limit has been incorporated into a definition of the term "full-payout lease" that appears in proposed § 23.2. The other provisions remain substantively unchanged but have been moved to proposed § 23.12 with minor revisions to shorten and clarify the text.

Transition Rule (Proposed § 23.13)

Current § 23.12 provides that leases executed before June 12, 1979,⁸ are not subject to part 23 and prescribes rules for renewing those leases. Proposed § 23.13 retains these provisions with minor revisions to shorten and clarify the text.

⁸ June 12, 1979, was the effective date of the OCC's final rule amending 12 CFR 7.3400 to reflect the Ninth Circuit's decision in the *M&M Leasing* case.

The OCC welcomes comments on any aspect of the proposed regulation, particularly on those issues specifically noted in this preamble.

DERIVATION TABLE

[This table directs readers to the provision(s) of the current regulation, if any, upon which the proposed revision is based.]

Revised provision	Original provision	Comments
§ 23.1	§ 23.1(a) ...	Modified.
§ 23.2(a), (b), (c)	Added.
§ 23.2(d)	§ 23.2(a) ...	Modified.
§ 23.3	§ 23.1(b) ...	Modified.
§ 23.4(a)	Added.
§ 23.4(b)	§ 23.2 (b), (c), (d).	Modified.
§ 23.5	§ 23.3	Modified.
§ 23.6	§ 23.4	Modified.
§ 23.7	§ 23.5	Modified.
	§ 23.6	Removed.
§ 23.8	§ 23.7	Modified.
§ 23.9	§ 23.8	Modified.
§ 23.10	§ 23.9	Modified.
§ 23.11	§ 23.10	Modified.
§ 23.12	§ 23.11	Modified.
§ 23.13	§ 23.12	Modified.

Regulatory Flexibility Act

It is hereby certified that this proposal, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This proposal, if adopted as a final rule, will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that the requirements of this proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 12 CFR Part 23

National banks, Banking, Leasing, Lease financing transactions.

Authority and Issuance

For the reasons set out in the preamble, part 23 of title 12, chapter I, of the Code of Federal Regulations is

proposed to be amended as set forth below:

1. Part 23 is revised to read as follows:

PART 23—LEASING

Subpart A—General Provisions

- Sec.
- 23.1 Authority, purpose, and scope.
 - 23.2 Definitions.
 - 23.3 Recovery of investment.
 - 23.4 Net lease requirement.
 - 23.5 Investment in personal property.
 - 23.6 Requirement for separate records.
 - 23.7 Application of lending limits; restrictions on transactions with affiliates.

Subpart B—CEBA Leases

- 23.8 General rule.
- 23.9 Lease term.
- 23.10 Transition rule.

Subpart C—Section 24(Seventh) Leases

- 23.11 General rule.
- 23.12 Estimated residual value.
- 23.13 Transition rule.

Authority: 12 U.S.C. 1; 12 U.S.C. 24(Seventh) and 24(Tenth); 12 U.S.C. 93a.

Subpart A—General Provisions

§ 23.1 Authority, purpose, and scope.

(a) *Authority.* A national bank may engage in personal property lease financing transactions pursuant to 12 U.S.C. 24(Seventh) and 12 U.S.C. 24(Tenth).

(b) *Purpose.* The purpose of this part is to set forth standards for personal property lease financing transactions authorized for national banks.

(c) *Scope.* A national bank that enters into a lease under the authority of 12 U.S.C. 24(Seventh) must comply with subparts A and C of this part. A national bank that enters into a lease under the authority of 12 U.S.C. 24(Tenth) must comply with subparts A and B of this part.

§ 23.2 Definitions.

(a) *CEBA Lease* means a personal property lease entered into under the authority of 12 U.S.C. 24(Tenth).

(b) *Conforming lease* means:

(1) A CEBA Lease that conforms with the requirements of subparts A and B of this part; or

(2) A Section 24(Seventh) Lease that conforms with the requirements of subparts A and C of this part.

(c) *Full-payout lease* means a lease financing transaction in which any unguaranteed portion of the estimated residual value relied upon by the bank to yield the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25 percent of the original cost of the property to the lessor.

(d) *Net lease* means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

(1) Servicing, repair, or maintenance of the leased property during the lease term;

(2) Purchasing parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon the lessee's request in accordance with any applicable requirements for maximum estimated residual value;

(3) Loan of replacement or substitute property while the leased property is being serviced;

(4) Purchasing insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or

(5) Renewal of any license or registration for the property unless renewal by the bank is necessary to protect its interest as owner or financier of the property.

(e) *Off-lease property* means personal property that reverts to a national bank's possession or control upon the expiration of a lease or upon the default of the lessee.

(f) *Section 24(Seventh) Lease* means a personal property lease entered into under the authority of 12 U.S.C. 24(Seventh).

§ 23.3 Recovery of investment.

A national bank that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from:

- (1) Rentals;
- (2) Estimated tax benefits; and
- (3) The estimated residual value of the property at the expiration of the term of the lease.

§ 23.4 Net lease requirement.

(a) *General rule.* A national bank may engage in a lease financing transaction and activities incidental to the transaction only if the lease qualifies as a net lease.

(b) *Exceptions*—(1) *Change in conditions.* If, in good faith, a national bank believes that there has been a change in conditions that threatens its financial position by increasing its exposure to loss, then the bank may:

(i) As the owner and lessor under a net lease, take reasonable and appropriate action (including the actions specified in § 23.2(d)) to salvage or protect the value of the property or its interests arising under the lease;

(ii) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual rights, or take any reasonable and appropriate action (including the actions specified in § 23.2(d)) to salvage or protect the value of the property or its interests arising under the lease.

(2) *Provisions to protect the bank's interests.* A national bank may include any provisions in a lease, or make any additional agreements, to protect its financial position or investment in the event of a change in conditions that would increase its exposure to loss.

(3) *Arranging for services by a third party.* A national bank may arrange for any of the services enumerated in § 23.2(d) to be provided to a lessee by a third party at the expense of the lessee.

§ 23.5 Investment in personal property.

(a) *Requirement for written agreement.* A national bank may acquire specific personal property to be leased only after the bank has entered into either:

- (1) A legally binding written agreement that indemnifies the bank against loss in connection with its acquisition of the property; or
- (2) A legally binding written commitment to enter into a conforming lease.

(b) *Two-year holding period.* At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a national bank shall either liquidate the property or re-lease it under a conforming lease as soon as practicable. In any event, liquidation or re-lease shall occur not later than two years from the date of the expiration of the lease or the date of the lessee's default. Property that the bank retains in anticipation of re-leasing must be revalued at the lower of current fair market value or book value before the bank enters into any subsequent lease.

(c) *Bridge or interim leases.* During the two-year holding period allowed by paragraph (b) of this section, a bank may enter into a short-term bridge or interim lease pending the sale of off-lease property or the re-lease of the property under a long-term conforming lease. A short-term bridge or interim lease must be a net lease, but it need not comply with any other requirement of subpart B or C of this part.

§ 23.6 Requirement for separate records.

If a national bank enters into both CEBA Leases and Section 24(Seventh) Leases, the bank's records must

distinguish the CEBA Leases from the Section 24(Seventh) Leases.

§ 23.7 Application of lending limits; restrictions on transactions with affiliates.

A national bank's lease financing transactions are subject to the lending limits prescribed by 12 U.S.C. 84 or, if the lessee is an affiliate of the bank (as defined by 12 U.S.C. 371c), to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c-1. The OCC may also determine that other limits or restrictions apply.

Subpart B—CEBA Leases

§ 23.8 General rule.

Pursuant to 12 U.S.C. 24(Tenth), a national bank may invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture for lease financing transactions, or may become the owner and lessor of tangible personal property by purchasing the property from another lessor in connection with the bank's purchase of the related lease, provided that: the lease is a conforming lease; and the aggregate book value of all tangible personal property held for lease under the authority of 12 U.S.C. 24(Tenth) does not exceed 10 percent of the bank's consolidated assets.

§ 23.9 Lease term.

(a) *Initial term.* A CEBA Lease must have an initial term of not less than 90 days.

(b) *Exception.* The 90-day term requirement prescribed by paragraph (a) of this section does not apply to the acquisition of property subject to an existing lease with a remaining maturity of less than 90 days, provided that, at its inception the lease was a conforming lease.

§ 23.10 Transition rule.

(a) *General rule.* CEBA Leases entered into prior to July 22, 1991, may continue to be administered in accordance with the lease financing terms agreed to by the bank/lessor and the lessee. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.7, however, a bank that enters into a new extension of credit to a customer, including a lease, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a CEBA Lease that was entered into prior to July 22, 1991, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the CEBA Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith and demonstrates by appropriate documentation that renewal of the lease is necessary to avoid financial loss and to recover its investment in and its cost of financing the property.

Subpart C—Section 24(Seventh) Leases

§ 23.11 General rule.

Pursuant to 12 U.S.C. 24(Seventh), a national bank may become the legal or beneficial owner and lessor of, or otherwise acquire, personal property; or may become the owner and lessor of personal property by purchasing the property from another lessor in connection with the bank's purchase of the related lease, provided that: the lease is a net, full-payout lease representing a noncancelable obligation of the lessee (notwithstanding the possible early termination of that lease); and the lease is a conforming lease.

§ 23.12 Estimated residual value.

(a) *Recovery of investment and costs.* A national bank's estimates of the residual value of the property and the portion of the estimated residual value that the bank relies upon to satisfy the requirements of a full-payout lease, as defined in § 23.2(c), must be reasonable in light of the nature of the leased property and all circumstances relevant to the transaction. The bank's realization of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, must depend primarily on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual value of the leased item.

(b) *Estimated residual value subject to guarantee.* The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or a third party may exceed 25 percent of the original cost of the property if the bank determines and demonstrates by appropriate documentation that the guarantor has the resources to meet the guarantee and the guarantor is not an affiliate of the bank, as defined by 12 U.S.C. 371c.

(c) *Leases to government entities.* Calculations of estimated residual value on leases of personal property to Federal, State, or local government entities may be based on future

transactions or renewals that the bank reasonably anticipates will occur.

§ 23.13 Transition rule.

(a) *Exclusion.* Subpart A and this subpart shall not apply to any § 24(Seventh) Leases executed prior to June 12, 1979. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.7, however, a bank that enters into a new extension of credit to a customer, including a lease shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a Section 24(Seventh) Lease that was entered into prior to June 12, 1979, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the Section 24(Seventh) Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith and demonstrates by appropriate documentation that renewal of the lease is necessary to avoid financial loss and to recover its investment in and its cost of financing the property.

Dated: August 14, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 895 and 898

[Docket No. 94N-0078]

Medical Devices; Proposed Performance Standards for Electrode Lead Wires and Proposed Banning of Unprotected Electrode Lead Wires; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 20, 1995, the comment period on a proposed rule that published in the **Federal Register** of June 21, 1995 (60 FR 32406). The document proposed to establish a performance standard for electrode lead wires, and to make

unprotected electrode lead wires a banned device upon the effective date of the standard. FDA is taking this action in response to two requests for an extension of the comment period.

DATES: Written comments by October 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301-594-4765, ext. 145.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 21, 1995 (60 FR 32406), FDA issued a proposed rule to establish a performance standard for electrode lead wires, and to make unprotected electrode lead wires a banned device upon the effective date of the standard.

FDA has received two requests from trade associations for a 90-day extension of the comment period. The reasons given for the requests are that the proposed rule has raised potential implications beyond those previously anticipated, and additional time is needed for the consideration of these issues and the preparation of meaningful comments.

The agency agrees in part with the requests, however, it believes that due to the public health significance of this issue, an extension for the entire length of time requested is not appropriate. The agency is extending the comment period for 45 days, to October 20, 1995.

Interested persons may, on or before October 20, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 30, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95-22104 Filed 8-31-95; 4:29 pm]

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