

# Rules and Regulations

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## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 609 and 620

RIN 3052-AC02

#### Electronic Commerce; Disclosure to Shareholders

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA or Agency) issues a final rule creating a new part on Electronic Commerce (E-commerce) and amending another part to specifically allow electronic disclosures. These changes reflect emerging business approaches to E-commerce. The final rule removes regulatory barriers to E-commerce and creates a flexible regulatory environment that facilitates the safe and sound use of new technologies by Farm Credit System (System) institutions and their customers.

**EFFECTIVE DATE:** This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. Objectives

Our objectives for the final rule are to:

- Remove regulatory barriers to E-commerce;

- Create a flexible regulatory framework that facilitates the safe and sound use of new technologies by System institutions and their customers; and

- Provide a brief outline of Federal laws and regulations that facilitate E-commerce.

The rule will help to achieve these objectives by:

- Creating new part 609 on E-commerce; and
- Amending part 620 on Disclosure to Shareholders to specifically allow electronic disclosures.

## II. Background

### A. Applicable Law

A law entitled "Electronic Signatures in Global and National Commerce Act" (E-SIGN) (Pub. L. 106-229) became effective October 1, 2000. E-SIGN governs transactions relating to the conduct of business, consumer, or commercial affairs between two or more persons. It legitimizes electronic contracts, signatures, and recordkeeping in many situations. E-SIGN makes it easier for System institutions to use E-commerce and potentially realize cost savings. FCA Booklet BL-041, dated September 21, 2000, on Electronic Signatures in Global and National Commerce, which will be cancelled when this final rule becomes effective, reported E-SIGN's enactment and how its principal terms applied to the System. You can currently review this booklet on our home page at [www.fca.gov](http://www.fca.gov).

E-SIGN preempts (with some exceptions) provisions in most State or Federal statutes or regulations, including the Farm Credit Act of 1971, as amended (Act), and its implementing regulations, that require contracts or other records to be written, signed, or in nonelectronic form. With the parties' agreement, you can now engage in E-commerce in many situations. E-SIGN does not, however, allow electronic communications for a notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure when an individual's primary residence secures the loan. E-SIGN also does not apply to writing or signature requirements under the Uniform Commercial Code, other than sections 1-107 and 1-206 and Articles 2 and 2A. E-SIGN preempts only those statutes and regulations that

relate to business, consumer, or commercial transactions.

E-SIGN sets up different standards for E-commerce with businesses and with consumers. Although both businesses and consumers must agree to E-commerce, E-SIGN provides certain protections and compulsory procedures for consumer transactions. Under E-SIGN, "consumer" means an individual who obtains, through a transaction, products or services used primarily for personal, family, or household purposes. Under E-SIGN, some System loans qualify as consumer transactions, while others are business transactions. System institutions will need to distinguish between the two types of transactions to comply with E-SIGN.

E-SIGN also:

- Allows parties to a transaction to decide document integrity and signature authentication technologies.
- Requires electronically stored documents to accurately reflect the information in the original, whether in paper or electronic form, and be accessible to all people entitled to review the original in a form capable of accurate reproduction.
- Sets up special technological and business process standards for electronic promissory notes secured by real estate.

System institutions should read E-SIGN in its entirety to see how it applies and affects E-commerce. System institutions should consult legal counsel before engaging in E-commerce.

### B. FCA's Response to E-SIGN and System Institution Requests

System institutions asked FCA for guidance on E-commerce. Because of these requests and the enactment of E-SIGN, we proposed a rule on E-commerce at part 609 and an amendment of part 620 to specifically allow electronic disclosures to shareholders. See 66 FR 53348, Oct. 22, 2001.

Proposed part 609 contains the following four subparts: (1) General Rules; (2) Interpretations and Definitions; (3) Standards for Boards and Management; and (4) General Requirements for Electronic Communications. We discuss those subparts and the regulation sections within them below in Section III.

Our proposed amendments to part 620 did not amend any of its substantive requirements. Amendments to part 620

removed references to traditional paper documents and their delivery and incorporated references to electronic documents and their delivery. We specified that, if all parties agree, they may use electronic communications. System institutions may provide electronic disclosures and notices, including annual and quarterly reports, annual meeting information statements, report of condition of the Federal Agricultural Mortgage Corporation, and notices of significant changes in a System institution's permanent capital ratio. We did not receive any comments on our proposed amendments to part 620. However, we did make a small technical change that is described in Section III below.

Finally, we remind System institutions that in adding new part 609 and amending part 620 we do not suggest that our other regulations do not allow E-commerce. E-SIGN preempts most regulations requiring paper documentation in business, consumer, or commercial transactions. FCA continues to have authority to require paper documentation in regulations that are primarily governmental. You should read all our regulations in light of what E-SIGN does and does not allow.

### III. Comments and FCA's Response in Final Rule

#### A. Comments

We received comment letters from the United States Small Business Administration (SBA); the Farm Credit Council (Council) on behalf of its member System banks and associations; and AgCredit Financial, ACA (AgCredit), a System Agricultural Credit Association.

The SBA's comment letter stated that we did not comply with the Regulatory Flexibility Act (RFA) and requested that we repropose the rule. As discussed below, we believe the RFA does not apply to this rule because System institutions are not "small entities" as defined in the RFA and we certify to this below.

Generally, the Council and AgCredit supported the proposed rule. However, both comment letters expressed some concerns, ranging from questioning FCA's need to interpret E-SIGN to the language of part 609.

After carefully considering the comments received, we are adopting the proposed rule without substantive change.

#### B. FCA's Response in Final Rule

Below we discuss each section of our proposed rule, including comments we received on the preamble. We include any changes in our final rule.

#### 1. Background for General Rules on E-commerce

Proposed § 609.905 states that FCA wants to create a flexible regulatory environment that facilitates E-commerce and allows System institutions and their customers to use new technologies. The section also states that System institutions may use E-commerce, but must establish good business practices that ensure safety and soundness while doing so. The Council and AgCredit stated we should move those provisions to the preamble and delete them from the regulation because they impose no further legal obligations.

FCA wants to facilitate E-commerce and other new technologies and innovations to enhance the efficient conduct of business and the delivery of sound, adequate, and constructive credit and closely related services to farmers, their cooperatives, and farm-related businesses. In addition to introducing the concept of E-commerce, this section sets a standard for System institutions engaging in E-commerce. We think no change is necessary and adopt the proposed section as final.

#### 2. Compliance With E-SIGN

The Council and AgCredit had two comments on proposed § 609.910 and our preamble. That section and the preamble summarize pertinent provisions of E-SIGN.

First, they questioned the need to summarize E-SIGN and stated that System institutions do not need FCA's interpretation of E-SIGN to comply with its requirements. They also noted that we did not summarize other Federal laws that System institutions must comply with, such as the Truth in Lending Act and the Equal Credit Opportunity Act.

E-SIGN is important to E-commerce. Some System institutions have little exposure to E-SIGN or using E-commerce. System institutions need to know about E-SIGN, which we summarize in the regulation and the preamble, when they think about using or use E-commerce. Before issuing the proposed rule, many System institutions requested our guidance and we issued a booklet on E-SIGN, BL-041. Other Federal laws noted by the commenters are not new, and we have provided supplemental guidance on them. We believe it useful to notify System institutions of applicable requirements in this area. Therefore, our summary of E-SIGN remains in the final rule.

Second, the commenters stated proposed regulation § 609.910(a) does not comply with E-SIGN because E-SIGN requires "consent" only in

consumer transactions. Proposed § 609.910(a) states, in part, that all parties to a transaction must "consent" before using E-commerce. This statement accurately reflects the law. Section 101(b)(2) of E-SIGN provides that E-SIGN does not require any person to agree to use or accept E-commerce. Thus, E-SIGN recognizes that parties, freely interacting with one another, may or may not prefer alternatives to paper-based transactions. E-SIGN merely recognizes that under basic contract law the parties must agree.

We realize, nonetheless, that the term "consent" in this context may be confusing. The "agreement" needed to engage in E-commerce is different from the "consent" that E-SIGN's provisions require. Thus, in the final rule we are changing the term "consent" in § 609.910(a) and § 609.950(a) to "agree" or "agreement" as appropriate. Also in the final rule we are making the same change in § 620.2(d) for Disclosure to Shareholders. This conforms to E-SIGN's language and should remove any confusion between the requirement that parties to E-commerce agree to conduct business in that manner and the consumer consent provisions.

We have modified subsections (a) and (e) of § 609.910 to make clear E-SIGN's focus on business, consumer, or commercial transactions rather than governmental transactions. We made similar changes in §§ 609.920 and 609.950.

#### 3. Compliance With Other Federal Regulations

Proposed § 609.915 states that System institutions must comply with the Federal Reserve Board (FRB) consumer protection regulations B (Equal Credit Opportunity), M (Consumer Leasing), and Z (Truth in Lending). The Council and AgCredit stated that FCA should delete § 609.915 because it duplicates the FRB regulations.<sup>1</sup>

We disagree with the suggestion to delete the section. Section 609.915 merely reminds System institutions to comply with the FRB regulations. Section 609.915 does not impose

<sup>1</sup> The FRB issued interim regulations containing guidance on the timing and delivery of electronic disclosures to ensure consumers an adequate opportunity to access and retain required information. See 66 FR 17779, Apr. 4, 2001; 66 FR 17329, Mar. 30, 2001; and 66 FR 17322, Mar. 30, 2001. These interim rules provide guidance for delivering disclosures electronically if a consumer consents under E-SIGN. The FRB adopted these rules as interim rules to allow for added public comment. Since publication of the FRB interim rules, the FRB lifted its October 1, 2001, mandatory compliance date to consider the comments received. See 66 FR 41439, Aug. 8, 2001.

additional legal requirements for System institutions. We intend this section to remind System institutions of the role of these regulations in E-commerce.

The FRB regulations identified by the commenters have long been in existence. FCA provides guidance on these regulations in Informational Memoranda to the System and in our Examination Manual, which you can access through our home page. For further information on any of these regulations, System institutions should feel free to consult our Informational Memoranda,<sup>2</sup> the Examination Manual, or the source documents for the FRB regulations.

We adopt the proposed rule section as final.

#### 4. Preemption of State and Federal Law and Regulations

Proposed § 609.920(a) provides that E-SIGN “supercedes” existing laws and regulations, including the Act and its implementing regulations, that require paper copies and handwritten signatures. The Council and AgCredit asked that we note in the preamble and in § 609.920(a) that E-SIGN allows State law to “preempt” E-SIGN in those States that enact the Uniform Electronic Transactions Act (UETA), a uniform law developed by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

UETA preceded E-SIGN’s enactment. UETA was intended to provide some uniformity, given the patchwork of differing legal protections, commercial standards, and levels of security that different States required for E-commerce. Adoption of UETA is voluntary. Some States have adopted it in its entirety, some have adopted variations, and some have not adopted it.

Congress enacted E-SIGN to respond to the need for uniform protections for E-commerce. E-SIGN resolves the problem of the States’ various approaches to UETA by generally preempting State law and setting up a nationwide standard of acceptance.

E-SIGN preempts State laws as follows. If a State enacts an unamended version of UETA, that version rather than E-SIGN will govern with respect to State law. If a State changes UETA in any way, the divergent provisions supersede E-SIGN only if they are consistent with E-SIGN and do not

“require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification.”

The discussion in this preamble should provide the guidance requested. Further discussion of UETA and preemption in this regulation is beyond the scope of our regulation. System institutions should consult legal counsel to determine whether their States have enacted UETA in its entirety or a version of it and whether E-SIGN has been superseded.

Clearly E-SIGN is intended to preempt State law generally. However, we recognize that E-SIGN does not preempt UETA in States that have adopted it in its entirety. State law supersedes E-SIGN only if the State adopts a “pure” version of UETA or if the divergent provisions do not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification.

In the final rule we amend § 609.920(a) to state that E-SIGN “preempts most” statutes and regulations. E-SIGN does not, however, preempt those statutes and regulations that are primarily governmental and do not relate to business, consumer, or commercial transactions. This revised provision is a more accurate description of E-SIGN.

#### 5. Definitions

Proposed § 609.925 contains five definitions. The Council and AgCredit stated that FCA’s five definitions in § 609.925 could be confusing and suggested we adopt all the definitions found in E-SIGN.

We adopted two definitions, “electronic” and “electronic signature” from E-SIGN. However, with the definition of “electronic signature” we included an explanatory sentence. E-SIGN does not contain our other three definitions: “electronic communication,” “electronic business,” and “electronic mail.”

We see no need to adopt all of E-SIGN’s definitions. We included in the regulation only those definitions necessary to understand the new part 609 and the Farm Credit Act of 1971, as amended, and its implementing regulations. Including all of E-SIGN’s definitions would be unnecessary as we did not include all of E-SIGN’s terms. Additional definitions would be potentially confusing. Therefore, the definitions in our proposed rule become final without amendment. However, we are deleting “to this part” in the first sentence of this section and substituting “to the Act and its implementing

regulations.” We intend the definitions to apply to the Farm Credit Act of 1971, as amended, and its implementing regulations, not just part 609.

#### 6. Policies and Procedures

Proposed § 609.930 states FCA’s support of E-commerce and identifies the benefits and challenges for System institutions. It requires System institutions to adopt policies and procedures for E-commerce and lists items to be addressed. The Council and AgCredit had three comments on proposed § 609.930.

First, the commenters asked that we delete from the regulation our statement that we support E-commerce and want to facilitate it. They stated such language has no regulatory effect and FCA should delete it or move it to the preamble.

As we stated previously, we believe E-commerce is important. We believe we must notify System institutions of our expectations and requirements in this area, as well include relevant background material on E-SIGN. Accordingly, we keep the language in the final rule section.

Second, the commenters identified an ambiguity in the proposed rule’s preamble and proposed § 609.930. The preamble states that we have identified subjects that a System institution’s policies and procedures “should” address. The regulation identifies subjects that the policies and procedures “must” address.

We agree with the observation that the language of the preamble and the regulation should be consistent. The language of the regulation correctly expressed our intentions. The policies and procedures “must” address the items listed in the regulation, as stated in our final regulation.

Third, the commenters stated that the list of items a System institution must address in its policies and procedures does not apply to a System bank that does not make retail loans and offered suggested language. FCA believes that the items listed in paragraphs (a) through (i) are basic requirements for a System institution engaging in E-commerce. However, as noted, the items specified may not be relevant to a System bank or association that does not make retail loans.

We are changing the final rule to reflect this possible limitation by inserting “, when applicable:” after “the policies and procedures must address.” This change addresses the commenters’ concern.

<sup>2</sup> Information Memoranda dated September 7, 2001 (Subject: Amendments to Federal Reserve Regulations B, M, and Z Regarding Electronic Delivery of Required Disclosures), and September 25, 2001 (Subject: Mandatory Compliance Date Lifted for Interim Rules Governing the Electronic Delivery of Certain Consumer Disclosures).

## 7. Business Planning

Proposed § 609.935(b) states, in part, that when applicable, business plans must contain an analysis of potential and existing customers that can use E-commerce. The Council and AgCredit stated that this requirement may be costly and of questionable value, noting that customers are not compelled to use E-commerce. They also asked that we move the business plan requirements for E-commerce to § 618.8440, which pertains to business planning.

We want System institutions to exercise good business judgment and assess costs and benefits before engaging in E-commerce. To address the commenters' concerns and to reflect our intent, we are deleting the language of the entire § 609.935 and substituting the following:

When engaging in E-commerce, the business plan required under part 618, subpart J, must describe the E-commerce initiative, including intended objectives, business risks, security issues, relevant markets, and legal compliance.

We believe the language in final § 609.935 is in keeping with the general requirements and intent of part 618, subpart J. However, as E-commerce is relatively new, we do outline our expectations in some detail. The final regulation does not require System institutions to incur unreasonable costs in developing a business plan. Moreover, a thoughtful business plan should pay for itself by helping to avoid costly mistakes.

As to the commenters' concern on moving the requirements in § 609.935 to § 618.8440, we think the reference to part 618, subpart J, in the new language should eliminate any confusion. At this time, we believe System institutions will benefit from having all the new provisions on E-commerce, including business planning, in one part. Thus, the business planning requirements for E-commerce will remain in § 609.935.

## 8. Internal Systems and Controls

Proposed § 609.940(a) states that when applicable, internal systems and controls must provide reasonable assurances that System institutions will follow and achieve business plan objectives and policies and procedures requirements regarding E-commerce. The Council and AgCredit asked that we clarify our intent and regulatory interest in a System institution following and achieving business plan objectives.

We want internal systems and controls to provide reasonable assurances that System institutions will make a concerted effort to achieve business plan objectives and policies

and procedures requirements. We do not expect that System institutions will routinely meet all business plan objectives. This language is consistent with prior guidance found in the Examination Manual. Therefore, we adopt the proposed section as final.

## 9. Records Retention

Proposed § 609.945 states records stored electronically must be accurate, accessible, and reproducible for later reference. The Council and AgCredit had three comments on this section.

First, the commenters recommended using E-SIGN's language on records retention. E-SIGN states that a record must be "retrievable in perceivable form." The commenters stated that E-SIGN's language would avoid confusion over whether we require that a record be available in paper form.

We believe "reproducible for later reference" in § 609.945 is a reasonable interpretation of E-SIGN's language and easier for the public and our examiners to understand and implement. Therefore, we leave it in the final rule.

Second, the commenters asked whether a paper-based retention schedule would suffice for electronic records. Electronically stored documents must accurately reflect the information in the original, whether in paper or electronic form, and be accessible to all persons entitled to review the original in a form capable of accurate reproduction. System institutions must be able to produce, and FCA examiners must be able to review, a System institution's records, regardless of form, during an examination. For example, a System institution must have the necessary software and hardware to allow examiners to review an electronic record.

System institution records are retained according to retention schedules established by the institution. A retention schedule mandates the period of time that a record, regardless of form, must be maintained. We believe that System institutions have the discretion to dispose of any records not required for research, legal, audit, or examination purposes. In accordance with good business practices, records retention policies should be set forth in written procedures approved by an institution's board.

A retention schedule must be the same for the same type of record, regardless of form. Thus, a loan file in paper form and a similar loan file in electronic form must be maintained for the same time period. A retention schedule originally established for paper records would suffice for

electronic records. We do not require paper records, subject to the exceptions of E-SIGN. However, as this section makes clear, we must be able to examine a System institution.

Finally, the commenters asked that we change the heading of this section from "Records Retention" to "Record Retrieval." We believe that "Records Retention" covers a broader range of records issues than "Record Retrieval." Also, the heading is consistent with E-SIGN's language. We adopt the proposed section heading as final.

## 10. Electronic Communications

Proposed § 609.950(c) states, in part, that System institutions must ensure that their communications with parties other than consumers demonstrate good business practices in the delivery of credit and closely related services and in obtaining goods and services. The Council and AgCredit stated that the section could be interpreted to mean that FCA will regulate how an institution electronically purchases goods and services.

This section is intended to focus System institutions' attention on the need to exercise good business judgment in this new environment. All facets of an institution's dealings, whether with a consumer or a party other than a consumer, must be designed to provide for the safety and soundness of the institution. We adopt the proposed section as final.

## 11. Preamble Question—E-mails to Customers and Additional Guidance

Our proposed rule asked if proposed part 609 adequately addressed E-commerce and electronic communications. The Council and AgCredit stated that FCA could interpret part 609 broadly to apply to System e-mails to customers that contains general or marketing information, as well as to e-mails containing consumer disclosures.

We do not intend part 609 to apply to System e-mails to customers that contain general or marketing information.

The Council and AgCredit requested that we provide guidance on: (1) When a permitted disclosure is deemed to have been received by a customer; (2) the lender's responsibility for redelivery; and (3) how a customer withdraws consent after having given it.

As the commenters noted, we did not address these issues in the proposed regulation. We intend to provide this type of guidance in an Informational Memorandum or similar communication. The E-commerce regulation provides broad guidance on

E-commerce issues. We have not included detailed direction for System institutions on any topic, including electronic disclosures, related to E-commerce. We have done this, in part, so that our regulation will not be unduly affected by changes in technology, business practices, or the variety of products and services offered. For background information on the delivery of electronic communications, System institutions can refer to the FRB regulations mentioned previously, as well as Informational Memoranda on our home page.

#### 12. Preamble Question—Regulations Hindering Online Borrowing

The proposed rule asked if any of our regulations negatively affect the likelihood that a customer would choose to engage in online borrowing. The Council and AgCredit stated that § 613.3005 of this chapter limits System institutions financing the full credit needs of part-time farmers and ranchers. The commenters stated that surveys show that part-time farmers use the Internet the most to locate credit.

The commenters raised concern on the scope of financing of part-time farmers and ranchers. While we appreciate the feedback, this is not an issue we can address in this regulation.

#### 13. Model Consumer Consent Form

The Council and AgCredit asked that we include a model consumer consent form in the final regulation. The commenters referenced the FRB's model consumer consent form included in the FRB's proposed 1999 regulations.

The FRB's model consumer consent form was published prior to E-SIGN's enactment. It does not comply with E-SIGN. E-SIGN does not establish model consumer consent disclosures or a model form. The FRB did not include a model consumer consent form in the interim rules on Regulation B, M, and Z published in March and April of 2001.

We do not believe FCA should publish a model consumer consent form because System institutions may need to revise consumer disclosure forms often to reflect changes in technology or business practices. Also, consumer consent disclosures will vary depending on the products or services a System institution offers. Thus, FCA will not include a model consumer consent form in the regulation.

#### 14. Regulatory Flexibility Act

The SBA expressed the view that FCA must republish the proposed rule to comply with the RFA. The RFA requires an agency to conduct an analysis of the impact of its regulations on small

entities and describe steps taken to minimize significant economic impact. The agency must publish the analysis with the rulemaking unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities.

The RFA does not require an agency to publish the certification with both the proposed rule and the final rule. FCA believes that publication of the following certification upon adoption of the final rule complies with the RFA.

Pursuant to § 605(b) of the RFA (5 U.S.C. 601 *et seq.*), the FCA certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets in excess of \$5 billion and annual income in excess of \$400 million. Therefore, Farm Credit System institutions are not "small entities" as defined in the RFA.

#### C. Commenters' Support of FCA's E-Commerce Initiatives

The Council and AgCredit provided the following positive responses to our questions in the preamble to the proposed rule. Their comments did not require action on our part in this final rule, but are valuable for our future rulemakings.

#### 1. Preamble Question—Electronic Disclosures to Shareholders Benefit the System

The proposed rule asked if our proposed amendments at part 620 to specifically allow electronic disclosures to shareholders benefited the System. The Council and AgCredit stated that the provisions make it easier to share financial information with stockholders.

#### 2. Preamble Question—Burden on Online Technologies

The proposed rule asked if FCA policies impose unreasonable burdens on an institution's online technologies. The Council and AgCredit stated that FCA's policies have been technologically neutral and encouraged FCA to continue.

#### IV. Withdrawal of FCA Bookletter BL-041

When this final regulation becomes effective, we will withdraw FCA Bookletter BL-041 pertaining to E-SIGN.

#### List of Subjects

##### 12 CFR Part 609

Agriculture, Banks, banking, Electronic commerce, Reporting and

recordkeeping requirements, Rural areas.

##### 12 CFR Part 620

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

For the reasons stated in the preamble, we add new part 609 and amend part 620 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

1. Add new part 609 to subchapter B to read as follows:

#### PART 609—ELECTRONIC COMMERCE

##### Subpart A—General Rules

Sec.

609.905 Background.

609.910 Compliance with the Electronic Signatures in Global and National Commerce Act (Public Law 106-229) (E-SIGN).

609.915 Compliance with Federal Reserve Board Regulations B, M, and Z.

##### Subpart B—Interpretations and Definitions

609.920 Interpretations.

609.925 Definitions.

##### Subpart C—Standards for Boards and Management

609.930 Policies and procedures.

609.935 Business planning.

609.940 Internal systems and controls.

609.945 Records retention.

##### Subpart D—General Requirements for Electronic Communications

609.950 Electronic communications.

**Authority:** Sec. 5.9 of the Farm Credit Act (12 U.S.C. 2243); 5 U.S.C. 301; Pub. L. 106-229 (114 Stat. 464).

##### Subpart A—General Rules

###### § 609.905 Background.

The Farm Credit Administration (FCA) wants to create a flexible regulatory environment that facilitates electronic commerce (E-commerce) and allows Farm Credit System (System) institutions and their customers to use new technologies. System institutions may use E-commerce but must establish good business practices that ensure safety and soundness while doing so.

###### § 609.910 Compliance with the Electronic Signatures in Global and National Commerce Act (Public Law 106-229) (E-SIGN).

(a) *General.* E-SIGN makes it easier to conduct E-commerce. With some exceptions, E-SIGN permits the use and establishes the legal validity of electronic contracts, electronic signatures, and records maintained in electronic rather than paper form. It governs transactions relating to the conduct of business, consumer, or

commercial affairs between two or more persons. E-commerce is optional; all parties to a transaction must agree before it can be used.

(b) *Consumer transactions.* E-SIGN contains extensive consumer disclosure provisions that apply whenever another consumer protection law, such as the Equal Credit Opportunity Act, requires the disclosure of information to a consumer in writing. Consumer means an individual who obtains, through a transaction, products or services, including credit, used primarily for personal, family, or household purposes. You must follow E-SIGN's specific procedures to make the required consumer disclosures electronically. E-SIGN's special disclosure rules for consumer transactions do not apply to business transactions. Under E-SIGN, some System loans qualify as consumer transactions, while others are business transactions. You will need to distinguish between the two types of transactions to comply with E-SIGN.

(c) *Specific exceptions.* E-SIGN does not permit electronic notification for notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a person's primary residence. These notices require paper notification. The law also requires paper notification to cancel or terminate life insurance. Thus, System institutions cannot use electronic notification to deliver some notices that must be provided under part 614, subpart L of this chapter, Actions on Applications; Review of Credit Decisions, and part 614, subpart N of this chapter, Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal. In addition, E-SIGN does not apply to the writing or signature requirements imposed under the Uniform Commercial Code, other than sections 1-107 and 1-206 and Articles 2 and 2A.

(d) *Promissory notes.* E-SIGN establishes special technological and business process standards for electronic promissory notes secured by real estate. To treat an electronic version of such a promissory note as the equivalent of a paper promissory note, you must conform to E-SIGN's detailed requirements for transferable records. A transferable record is an electronic record that:

- (1) Would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;
- (2) The issuer of the electronic record has expressly agreed is a transferable record; and

(3) Relates to a loan secured by real property.

(e) *Effect on State and Federal law.* E-SIGN preempts most State and Federal statutes or regulations, including the Farm Credit Act of 1971, as amended (Act), and its implementing regulations, that require contracts or other business, consumer, or commercial records to be written, signed, or in non-electronic form. Under E-SIGN, an electronic record or signature generally satisfies any provision of the Act, or its implementing regulations that requires such records and signatures to be written, signed, or in paper form. Therefore, unless an exception applies or a necessary condition under E-SIGN has not been met, an electronic record or signature satisfies any applicable provision of the Act or its implementing regulations.

(f) *Document integrity and signature authentication.* Each System institution must verify the legitimacy of an E-commerce communication, transaction, or access request. Document integrity ensures that the same document is provided to all parties. Signature authentication proves the identities of all parties. The parties to the transaction may determine how to ensure document integrity and signature authentication.

(g) *Records retention.* Each System institution may maintain all records electronically even if originally they were paper records. The stored electronic record must accurately reflect the information in the original record. The electronic record must be accessible and capable of being reproduced by all persons entitled by law or regulations to review the original record.

#### **§ 609.915 Compliance with Federal Reserve Board Regulations B, M, and Z.**

The regulations in this part require fair practices and meaningful disclosures for certain lending and leasing activities. System institutions must comply with Federal Reserve Board Regulations B (Equal Credit Opportunity), M (Consumer Leasing), and Z (Truth in Lending) (12 CFR parts 202, 213, and 226).

#### **Subpart B—Interpretations and Definitions**

##### **§ 609.920 Interpretations.**

(a) E-SIGN preempts most statutes and regulations, including the Act and its implementing regulations that require paper copies and handwritten signatures in business, consumer, or commercial transactions. E-SIGN requires that statutes and regulations be interpreted to allow E-commerce as long as the safeguards of E-SIGN are met and

its exceptions recognized. Generally, an electronic record or signature satisfies any provision of the Act or its implementing regulations that require such records and signatures to be written, signed, or in paper form.

(b) System institutions may interpret the Act and its implementing regulations broadly to allow electronic transmissions, communications, records, and submissions, as provided by E-SIGN. This means that the terms address, copy, distribute, document, file, mail, notice, notify, record, provide, send, signature, sent, written, writing, and similar words generally should be interpreted to permit electronic transmissions, communications, records, and submissions in business, consumer, or commercial transactions.

##### **§ 609.925 Definitions.**

We provide the following definitions that apply to the Act and its implementing regulations:

(a) *Electronic* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(b) *Electronic communication* means a message that can be transmitted electronically and displayed on equipment as visual text. An example is a message displayed on a personal computer monitor screen. This does not include audio- and voice-response telephone systems.

(c) *Electronic business (E-business) or electronic commerce (E-commerce)* means buying, selling, producing, or working in an electronic medium.

(d) *Electronic mail (E-mail)* means:

(1) To send or submit information electronically; or

(2) A communication received electronically.

(e) *Electronic signature* means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. Electronic signature describes a category of electronic processes that can be substituted for a handwritten signature.

#### **Subpart C—Standards for Boards and Management**

##### **§ 609.930 Policies and procedures.**

The FCA supports E-commerce and wants to facilitate it and other new technologies and innovations to enhance the efficient conduct of business and the delivery of safe and sound credit and closely related services. Through E-commerce, System institutions can enhance customer service, access information, and provide

alternate communication systems. At the same time, E-commerce presents challenges and risks that your board must carefully consider in advance. Before engaging in E-commerce, you must weigh its business risks against its benefits. You must also adopt E-commerce policies and procedures to ensure your institution's safety and soundness and compliance with law and regulations. Among other concerns, the policies and procedures must address, when applicable:

- (a) Security and integrity of System institution and borrower data;
- (b) The privacy of your customers as well as visitors to your Web site;
- (c) Notices to customers or visitors to your Web site when they link to an affiliate or third party Web site;
- (d) Capability of vendor or application providers;
- (e) Business resumption after disruption;
- (f) Fraud and money laundering;
- (g) Intrusion detection and management;
- (h) Liability insurance; and
- (i) Prompt reporting of known or suspected criminal violations associated with E-commerce to law enforcement authorities and FCA under part 617 of this chapter.

#### § 609.935 Business planning.

When engaging in E-commerce, the business plan required under part 618 of this chapter, subpart J, must describe the E-commerce initiative, including intended objectives, business risks, security issues, relevant markets, and legal compliance.

#### § 609.940 Internal systems and controls.

When applicable, internal systems and controls must provide reasonable assurances that System institutions will:

- (a) Follow and achieve business plan objectives and policies and procedures requirements regarding E-commerce; and
- (b) Prevent and detect material deficiencies on a timely basis.

#### § 609.945 Records retention.

Records stored electronically must be accurate, accessible, and reproducible for later reference.

#### Subpart D—General Requirements for Electronic Communications

##### § 609.950 Electronic communications.

(a) *Agreement.* In accordance with E-SIGN, System institutions may communicate electronically in business, consumer, or commercial transactions. E-commerce transactions require the agreement of all parties when you do business.

(b) *Communications with consumers.* E-SIGN and Federal Reserve Board Regulations B, M, and Z (12 CFR parts 202, 213, and 226) outline specific disclosure requirements for communications with consumers.

(c) *Communications with parties other than consumers.* The consumer disclosure requirements of E-SIGN and of Federal Reserve Board Regulation B (12 CFR part 202) do not apply to your communications with parties other than consumers. (Federal Reserve Board Regulations M and Z (12 CFR parts 213 and 226) apply to consumers only.) Nonetheless, you must ensure that your communications, including those disclosures required under the Act and the regulations in this part, demonstrate good business practices in the delivery of credit and closely related services and in your obtaining goods and services.

#### PART 620—DISCLOSURE TO SHAREHOLDERS

2. The authority citation for part 620 continues to read as follows:

**Authority:** Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); secs. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

##### Subpart A—General

3. Amend § 620.1 as follows:

- a. Revise paragraph (o);
- b. Redesignate existing paragraph (r) as new paragraph (s); and
- c. Add a new paragraph (r).

##### § 620.1 Definitions.

(o) *Report* refers to the annual report, quarterly report, notice, or information statement, regardless of form, required by this part unless otherwise specified.

(r) Signed, when referring to paper form, means a manual signature, and, when referring to electronic form, means marked in a manner that authenticates each signer's identity.

4. Amend § 620.2 as follows:

- a. Remove the first sentence and add three new sentences in its place in paragraph (a);
- b. Revise paragraph (b) introductory text;
- c. Remove the word "filed" and add in its place, the word "required" in paragraph (b)(3)(i);
- d. Remove the words "typed or" from the second sentence in paragraph (b)(3)(ii); and
- e. Redesignate existing paragraphs (d), (e), (f), (g), (h), and (i) as newly designated paragraphs (e), (f), (g), (h), (i), and (j) consecutively;

f. Add new paragraph (d); and

g. Remove the words "mail or otherwise furnish" and add in their place, the word "provide" in newly designated paragraph (i)(3).

##### § 620.2 Preparing and filing the reports.

(a) Copies of each report required by this section, including financial statements and related schedules, exhibits, and all other papers and documents that are a part of the report must be sent to the Chief Examiner, or to another office designated by the Chief Examiner. If sending paper copies, send three copies to Chief Examiner, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. If providing electronic copies, send according to our instructions to you.

(b) At least one of the reports provided to the Farm Credit Administration shall be dated and manually signed on behalf of the institution by:

(d) Shareholders must agree to electronic disclosures of reports required by this part.

##### Subpart B—Annual Report to Shareholders

##### § 620.4 [Amended]

- 5. Amend § 620.4 as follows:
  - a. Remove the word "distributing" and add in its place, the word "providing" in the heading; and
  - b. Remove the word "distribute" and add the word "provide" each place it appears in paragraphs (a), (b)(1), and (b)(2).

##### § 620.5 [Amended]

- 6. Amend § 620.5 as follows:
  - a. Remove the word "distributed" and add in its place, the word "provided" in paragraph (a)(3); and
  - b. Remove the word "signed" and add in its place, the words "manually signed, or if in electronic form, signed in a manner that authenticates each signer's identity" in paragraph (m)(2).

##### Subpart C—Quarterly Report

7. Amend § 620.11 by revising the second sentence of paragraph (b)(6) to read as follows:

##### § 620.11 Content of quarterly report to shareholders.

- (b) \* \* \* \* \*
- (6) \* \* \* In addition, a statement from the persons who verify the



institution's financial statements shall be included as an exhibit, indicating whether or not the change is to an alternative principle which in their judgment is preferable under the circumstances, except that no such statement need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

\* \* \* \* \*

#### Subpart D—Notice to Shareholders

8. Revise § 620.15 to read as follows:

##### § 620.15 Notice.

(a) Each Farm Credit bank and direct lender association shall prepare and provide the Farm Credit Administration and shareholders a notice, within 30 days following the month end that the institution initially determines that it is not in compliance with the minimum permanent capital standard prescribed under § 615.5205 of this chapter.

(b) An institution that has given notice to shareholders pursuant to paragraph (a) of this section or subsequent notice pursuant to this paragraph shall also prepare and provide the Farm Credit Administration and shareholders a notice within 45 days following the end of any subsequent quarter at which the institution's permanent capital ratio decreases by one-half of 1 percent or more from the level reported in the most recent notice provided to shareholders.

(c) Each institution required to prepare a notice under paragraphs (a) or (b) of this section shall provide the notice to shareholders or publish it in any publication with circulation wide enough to be reasonably assured that all of the institution's shareholders have access to the information in a timely manner.

##### § 620.17 [Amended]

9. Amend § 620.17 by removing the words "distribute" and adding in its place, the word "provide" in paragraph (b)(4).

#### Subpart E—Association Annual Meeting Information Statement

##### § 620.20 [Amended]

10. Amend § 620.20 as follows:

a. Remove the word "distributing" and add in its place, the word "providing" in the heading; and

b. Remove the word "distribute" and add in its place, the word "provide" in paragraph (a).

11. Amend § 620.21 as follows:

a. Remove the words "furnished a letter" and add in their place, the words "provided a notice" in the first sentence of paragraph (c)(3);

b. Remove the words "contained in the letter" at the end of the first sentence in paragraph (c)(3);

c. Add the words "paper mail or electronic" before the word "mail" in each place it appears in paragraphs (d)(3)(i)(A), (d)(3)(i)(B), (d)(3)(ii)(A), and (d)(3)(ii)(B);

d. Revise paragraph (d)(5) to read as follows:

##### § 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting.

\* \* \* \* \*

(d) \* \* \*

(5) For each nominee who is not an incumbent director, except a nominee from the floor, provide the information referred to in § 620.5(j) and (k) and paragraph (d)(4) of this section. If shareholders will vote by paper mail or electronic mail ballot upon conclusion of all sessions, each floor nominee must provide the information referred to in § 620.5(j) and (k) and paragraph (d)(4) of this section in paper or electronic form to the association within the time period prescribed by the association's bylaws. If the association's bylaws do not prescribe a time period, state that each floor nominee must provide the disclosure to the association within 5 business days of the nomination. The association shall ensure that the information is provided to the voting shareholders by delivering the ballots for the election of directors in the same format as the comparable information contained in the association's annual meeting information statement. If shareholders will not vote by paper mail or electronic mail ballot upon conclusion of all sessions, each floor nominee must provide the information referred to in § 620.5(j) and (k) and paragraph (d)(4) of this section in paper or electronic form at the first session at which voting is held.

\* \* \* \* \*

##### § 620.30 [Amended]

12. Amend § 620.30 by removing the words "distribute or mail" and adding in their place, the word "provide" in the second sentence.

#### Subpart G—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

13. Amend § 620.40 as follows:

a. Revise the heading and remove the words "distribution of" and add in their

place, the words "providing of the" in the heading;

b. Remove the word "distribute" and add in its place, the word "provide" in paragraph (b);

c. Remove the words "mail or otherwise furnish to the requestor a copy of" and add in their place, the words "provide the requester" in paragraph (c); and

d. Revise paragraph (d):

##### § 620.40 Content, timing, and providing of the Federal Agricultural Mortgage Corporation annual report of condition.

\* \* \* \* \*

(d) The Corporation shall provide copies of the annual report of condition to the Farm Credit Administration's Office of Secondary Market Oversight within 120 days of its fiscal year-end. If providing paper copies, send three copies to Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. If providing electronic copies, send according to our instructions to you.

Dated: April 1, 2002.

**Kelly Mikel Williams,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 02-8212 Filed 4-5-02; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR PART 191

[T.D. 02-16]

RIN 1515-AD00

#### Drawback; Conforming Amendments

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations relating to drawback in order to conform with changes that were made to the drawback law by the Miscellaneous Trade and Technical Corrections Act of 1999. The amendments concern drawback on packaging material and drawback in connection with the substitution of finished petroleum derivatives.

Also, a minor clarification is made to the general manufacturing drawback rulings for piece goods and woven piece goods that appear in an appendix to the Customs drawback regulations in order to conform these general rulings with the regulations.

**EFFECTIVE DATE:** April 8, 2002.

**FOR FURTHER INFORMATION CONTACT:**