SUBCHAPTER B—FARM CREDIT SYSTEM

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


Source: 67 FR 16631, Apr. 8, 2002, unless otherwise noted.

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 a personal 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 617, subparts A, D, E, and G of this chapter. 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
§ 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.