

# 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.

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 609 and 620

RIN 3052-AC02

#### Electronic Commerce; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA or Agency) proposes to create and amend regulations to reflect emerging business approaches to electronic commerce (E-commerce). The proposed rule is designed to remove regulatory barriers to E-commerce and create a flexible regulatory environment that facilitates the safe and sound use of new technologies by Farm Credit System (System or FCS) institutions and their customers.

**DATES:** Please send your comments to us by November 21, 2001.

**ADDRESSES:** You may send comments by electronic mail (e-mail) to [reg-comm@fca.gov](mailto:reg-comm@fca.gov) or through the Pending Regulations section of our Web site at [www.fca.gov](http://www.fca.gov). You may also mail or deliver written comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or fax them to (703) 734-5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. Objectives

The objectives of our proposed 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 overview of Federal laws and regulations that facilitate E-commerce.

We are seeking comments on this proposal and also on any other FCA regulation that we could amend, or eliminate, to facilitate E-commerce.

##### II. Background

###### A. Creating a New E-Commerce Rule Part

We propose creating a new E-commerce Rule part. System institutions are increasingly using new technologies and engaging in E-commerce. In 2000, Congress enacted the "Electronic Signatures in Global and National Commerce Act" (E-SIGN) (Pub. L. 106-229), which legitimizes the use of electronic contracts, signatures, and record keeping in many situations. E-SIGN makes it easier for System institutions to use electronic communications in transactions and realize potential cost savings. We believe many System institutions, like other financial institutions, will use electronic communications to conduct E-commerce and engage in online lending, among other activities. Thus, we believe this rulemaking and creation of a new part are necessary. The following information provides more background:

###### 1. Department of Commerce Working Group Solicitation

In a presidential memorandum dated November 29, 1999, Federal Agencies were asked to adopt policies, laws, and regulations on E-commerce, electronic services, and electronic transmissions. The Department of Commerce was directed to form a workgroup, which would invite public comment on how the Federal Government could adjust to the electronic environment while ensuring existing protections for the public. The Department of Commerce formed the United States Government

Working Group on Electronic Commerce (USGWC). On February 1, 2000, the USGWC invited the public to identify laws or regulations that might obstruct or hinder E-commerce. (See 65 FR 4801, Feb. 1, 2000.)

On February 15, 2000, the FCA issued an informational memorandum advising the System of the USGWC's request for comments on facilitating E-commerce. We advised System institutions this was their opportunity to suggest how the Act or its implementing regulations could better facilitate E-commerce. The public comment period closed on March 17, 2000. The Farm Credit Council Presidents' Planning Committee (Planning Committee), Farm Credit Service of America, PCA & FLCA (FCS of America), and Pacific Coast Farm Credit Services, ACA<sup>1</sup> (Pacific Coast) forwarded comments to the USGWC, with copies to the FCA.

###### 2. System Institution Requests

System institutions have wanted to communicate electronically with shareholders and do online lending. Many System institutions have an Internet Web site presence through their home pages. We have received the following comments from the System on E-commerce:

- In March 2000, the Planning Committee and FCS of America stated that FCA should undertake a rulemaking to remove barriers to E-commerce and address legal issues raised by electronic records and signatures.

- In March 2000, Pacific Coast stated that FCA regulations that require legal loan documents and disclosures to shareholders to be in writing hindered E-commerce.

- In April and May 2000, AgCredit of California PCA and FLCA,<sup>2</sup> and the Western Farm Credit District Chief Financial Officers' Subcommittee on Accounting and Reporting stated that they wanted to post annual reports to shareholders on System institution Web sites. They wanted to notify System

<sup>1</sup> After submitting its comment letter Pacific Coast Farm Credit Services, ACA merged with other System institutions. The successor institution is American AgCredit, ACA.

<sup>2</sup> After submitting its comment letter AgCredit of California PCA and FLCA, merged with other System institutions. The successor institution is AgCredit Financial, ACA.

institution shareholders by brief letters or postcards of the electronic posting.

- In April 2000, the Farm Credit Council and the System's Accounting Standards Work Group asked us to consider allowing the System to use electronic media to deliver information to shareholders.

- In March 2001, the System's E-Commerce Task Force (Task Force) identified FCA regulations that they believe may impede the System's efforts to use E-commerce. Many of those regulations pertain to disclosures or notices to shareholders, which are a subject of this proposed regulation. We will consider other suggestions of the Task Force in other rulemakings.

### 3. Electronic Signatures in Global and National Commerce Act (E-SIGN)

E-SIGN became effective October 1, 2000. FCA Bookletter BL-041 notified the System of E-SIGN's enactment and its principal provisions.

E-SIGN helps to facilitate E-commerce by providing greater legal certainty to electronic transactions. E-SIGN establishes (with some exceptions) the legal validity of electronic contracts, electronic signatures, and records maintained in electronic rather than paper form. Thus, an online contract with an electronic signature is legally equivalent to a contract signed in ink on paper. With the consent of the parties to the transaction, you can now engage in E-commerce with customers, System institutions, and others. You can also purchase and sell goods and services online or engage in online lending.

E-SIGN supercedes (with some exceptions) most State or Federal statutes or regulations, including the Farm Credit Act (Act) and its implementing regulations, that require contracts or other records to be written, signed, or in non-electronic form. Thus, in general (certain exceptions exist) we cannot create, amend, or enforce any provision of the Act or its implementing regulations requiring paper copies and handwritten signatures. For example, this means that you can now enter into electronic contracts, engage in electronic online lending, and send disclosures electronically as long as the other party consents. However, all electronic records, signatures, and contracts must satisfy other legal requirements.

As explained in more detail below, E-SIGN has exceptions for certain kinds of records. Written notification is still required for notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure when a loan is secured by the primary residence of an individual. E-SIGN also does not

apply to writing or signature requirements imposed under the Uniform Commercial Code (UCC), other than sections 1-107 and 1-206 and Articles 2 and 2A.

Under E-SIGN the parties to a transaction are not required to use or accept electronic records or signatures. Both parties must agree to do so. E-SIGN preserves the right to refuse to use electronic media in any transaction. Thus, the parties to a transaction retain the right to establish their own requirements for acceptable communications. E-SIGN does not prohibit or limit traditional oral or paper-based forms of communication and commerce or require that transactions be conducted electronically.

E-SIGN establishes different standards for conducting E-commerce with businesses and with consumers. Although both businesses and consumers must consent to electronic communications, E-SIGN provides certain protections and establishes mandatory procedures for consumers. Under E-SIGN, "consumer" means an individual who obtains, through a transaction, products or services used primarily for personal, family, or household purposes.

E-SIGN provides that, if any other law requires information concerning the transaction to be provided to a consumer in writing, the consumer must affirmatively consent to receiving the information electronically. The "consumer consent" provisions do not apply to business-to-business transactions. An example of a law requiring certain information to be provided to a consumer in writing is the Equal Credit Opportunity Act (ECOA), which requires a creditor to notify a consumer (but not a business) in writing of the specific reasons for rejecting a loan application or the right to learn the reasons if the consumer asks within 60 days of the creditor's notification. Under E-SIGN, you cannot make this disclosure electronically without complying with its consumer consent provisions.

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.

If consumers do agree to E-commerce, the following provisions of E-SIGN apply:

- Consumers may choose between receiving legal notices and records electronically or in writing but can change their minds in the future (possibly subject to a fee);

- Consumer consent may apply to a particular transaction and/or to categories of records;

- The provider of an electronic record must describe the procedures: (1) The consumer must use to withdraw consent; and, (2) to update the information needed to contact the consumer electronically;

- The provider of the electronic record must inform the consumer of the ability to get a paper copy of an electronic record (possibly subject to a fee) after consent;

- Consumers who choose to receive documents electronically must demonstrate the technological capacity to do so prior to consenting to E-commerce;

- The provider of the electronic record must provide the consumer with a statement detailing the computer hardware and software needed to receive and keep the information to be sent; and

- A consumer may opt out of using electronic signatures without paying a fee if a change in the technology needed affects the consumer's ability to receive or keep information.

E-SIGN permits the parties to the transaction to determine the appropriate document integrity and signature authentication technologies. Document integrity ensures that each party signing a document will sign the same document and that the terms of the document cannot be changed after signing. Signature authentication ensures that appropriate parties sign a document and that each electronic signature is exclusively attributable to each of the parties signing the document. A party entering into an online transaction in reliance on an electronic communication must be confident of the source of the document. For example, when a System institution receives an online loan application, the System institution must be able to verify the source of the application and ensure that it is not dealing with an impostor.

An essential element for the enforceability of all electronic transactions is record keeping. E-SIGN also encourages electronic records storage. Under E-SIGN, electronic records storage satisfies any law or regulation, with certain exceptions. Electronic records may be used to satisfy requirements that an "original" be retained. Electronic records storage should result in cost savings.

E-SIGN requires that electronically stored documents 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. In other words, records stored electronically must be accurate, accessible, and reproducible for later reference. This is important because FCA must be able to examine System institutions, including their electronic records, for safety and soundness and for compliance with law and regulation.

Electronic promissory notes secured by real property are subject to different treatment under E-SIGN. E-SIGN establishes special technological and business process standards for electronic promissory notes secured by real estate. To treat an electronic version 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 UCC 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.

As we explained in BL-041, the requirements of E-SIGN are complex. We have provided only a brief overview of E-SIGN. System institutions should read E-SIGN in its entirety to see how it applies and affects their conduct of E-commerce. System institutions are encouraged to consult legal counsel before engaging in E-commerce.

#### 4. Consumer Protection Regulations B, Z, and M

In March and April 2001, the Federal Reserve Board (FRB) issued interim final rules, with requests for comments, to establish uniform standards for the electronic delivery of disclosures or notices required by Regulations B (Equal Credit Opportunity), Z (Truth in Lending), and M (Consumer Leasing).<sup>3</sup> The rules were effective March 30, 2001. The FRB lifted the October 1, 2001, mandatory compliance date on August 2, 2001, to allow consideration of the comments received. The comments pertained to operational issues regarding the requirements that institutions alert consumers by e-mail when electronic disclosures are made available at another location, such as a Web site. The comment period closed June 1, 2001. The FRB rules establish standards of fair practice and meaningful disclosure for certain lending and leasing activities.

Under the rules, consistent with E-SIGN, financial institutions, creditors, lessors, and others may deliver

disclosures electronically if they obtain the consumer's consent. The FRB's rules establish uniform requirements for the timing and delivery of electronic disclosures. Disclosures may be sent by e-mail to a designated electronic address or to another location, such as an Internet Web site address. When the disclosures are not sent by e-mail, the consumer must be notified of the availability of the disclosures. Disclosures posted on a Web site must be available for at least 90 days to allow adequate time to access and retain the information. Under the FRB's rules, when disclosures are returned undelivered, there must be a good faith attempt to redeliver electronic disclosures using available information.

These rules apply only to consumer transactions and not to business transactions. System institutions will have to distinguish between consumer and business transactions to comply with the FRB's rules.

#### B. Amending Part 620—Disclosures to Shareholders

As discussed above, System institutions have wanted to use electronic media to provide disclosures to shareholders. Currently, part 620 addresses only paper disclosures. We propose amending this part to specifically allow electronic disclosures.

### III. Analysis of Proposed Rules

#### A. Part 609

We are proposing to create a new regulation part on E-commerce. The new part provides an overview of E-SIGN's general rules, including E-SIGN's prohibition on using electronic communications to deliver certain notices. For example, we note that under E-SIGN, System institutions may not use electronic media to deliver certain notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure when a loan is secured by the primary residence of an individual. We also note that E-SIGN does not apply to the writing or signature requirements imposed under the UCC, other than sections 1-107 and 1-206 and Articles 2 and 2A. You should review E-SIGN yourself to determine which of its other provisions apply to your institution.

We also include a reminder that System institutions must comply with FRB Regulations B, Z, and M. These regulations establish guidance on the timing and delivery of electronic disclosures to ensure an adequate opportunity to access and retain required information. Under these rules, disclosures may be delivered

electronically if the consumer consents in accordance with E-SIGN. These rules were adopted as interim rules to allow for additional public comment.

This new part also explains that all terms in the Act and its regulations should be broadly interpreted and defined in the context of E-commerce. For example, the terms "mail," "notice," and "send" should be broadly interpreted to encompass both paper-based and electronic transactions. You should interpret "address," "signature," "record," and "writing" similarly. We provide some background definitions to assist with your understanding of E-commerce.

Boards and management must ensure trust in all aspects of electronic transactions, including security procedures. What is required to establish trust varies depending on the type of transaction. We propose that System institutions' boards and management assess the risks and benefits of E-commerce and establish a policy and procedures for E-commerce. Boards and management must establish good business practices for E-commerce to ensure the safety and soundness of System institutions and compliance with law and regulation. We have identified subjects that your policy and procedures should address. This should help you understand your responsibilities and accountability. We have not established specific requirements or standards because they could become outdated quickly due to technological and customer service innovations.

Finally, this part also would establish our general requirements for your use of electronic communications with consumers and parties other than consumers. We restate E-SIGN's requirement that both parties consent to electronic communications. We need to ensure appropriate electronic communications between System institutions and their customers. A customer includes a borrower, applicant, shareholder, or lessee. A customer may always choose to receive paper copies. Also, System institutions must ensure their communications with parties other than consumers demonstrate good business practices.

At this time, we are not imposing document integrity standards for electronic disclosures or mandating the use of independent certification authorities for signature authentication. Nonetheless, boards and management should consider adopting document integrity standards and the use of independent certification authorities as part of good business practices. System institutions should consider the level of

<sup>3</sup> See 66 FR 17779, Apr. 4, 2001; 66 FR 17329, Mar. 30, 2001; and 66 FR 17322, Mar. 30, 2001, respectively.

assurance needed based on the sensitivity and importance of the electronic communication. Customers will expect these assurances.

#### *B. Amending Part 620—Disclosures to Shareholders*

We are proposing to amend part 620 to allow System institutions to communicate electronically with their shareholders. We are not amending any of the substantive requirements of the rule; we are only specifying that electronic communications are permitted, with the consent of the parties. The amendments allow System institutions to 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.

As we have already stated, in adding new part 609 and amending part 620 we do not suggest our other regulations do not allow E-commerce. All of our regulations must be interpreted in light of what E-SIGN does and does not allow. We will review all our regulations over time and amend them as necessary to reflect E-SIGN's provisions and to promote E-commerce.

#### **IV. Request for Comment**

FCA invites comment on how particular statutes, regulations, or FCA policies affect you or your customer's use of new technologies.

##### *A. E-Commerce Regulations*

We propose creating a new part on E-commerce and amending part 620 to specifically allow E-commerce. We request your comment on whether adding a new and separate part 609 on E-commerce is necessary or desired. We request comments on whether the general rules, interpretations and definitions, standards, and requirements at proposed part 609 help in providing a flexible regulatory environment and ensuring the System's safety and soundness. We also ask whether part 609 adequately addresses E-commerce and electronic communications.

We would also like your comments on whether our proposed amendments to our Disclosure to Shareholders regulations at part 620 to specifically allow electronic communications benefit you.

Please tell us what other regulatory changes you need to facilitate E-commerce, including online lending and the electronic delivery of services. Which regulations, if any, negatively affect the likelihood that a customer

would choose to engage in online borrowing? Do any FCA policies impose unreasonable burdens on your institution's online technologies?

##### *B. Interpreting E-SIGN Provisions*

Under section 104(b) of E-SIGN, we have limited authority to interpret E-SIGN. We are authorized to issue regulations that interpret how E-SIGN applies to our regulations if they are consistent with E-SIGN and do not add to the requirements of E-SIGN. Before issuing any such regulation, however, FCA must find that the regulation is necessary and will not impose unreasonable costs on the acceptance and use of electronic records. Finally, the regulation cannot favor one technology over another.

We request comments on how provisions of E-SIGN, or any other law, affect your or your customers' ability to use new technologies. We also request comments on whether you need additional guidance on E-SIGN's statutory provisions, including consumer consent. For example, you should tell us whether you need guidance on how consumers can confirm their consent electronically or clarification on what happens when a consumer withdraws consent or requests paper copies of electronic disclosures.

#### **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 propose to add a new part 609 and amend part 620 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

1. Add a 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 (Pub. L. 106-229) (E-SIGN).

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

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

609.920 Interpretations.

609.925 Definitions.

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

609.930 Policy 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 (Pub. L. 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. E-commerce is optional; all parties to a transaction must consent 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 supercedes 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 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 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 regulation to review the original record.

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

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), Z (Truth in Lending), and M (Consumer Leasing) (12 CFR parts 202, 226 and 213).

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

##### **§ 609.920 Interpretations.**

(a) E-SIGN supercedes existing statutes and regulations, including the Act and its implementing regulations that require paper copies and handwritten signatures. 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 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.

##### **§ 609.925 Definitions.**

We provide the following definitions that apply to this part:

(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 Policy 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 improve 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 an E-commerce policy and procedures to ensure your institution's safety and soundness and compliance with law and regulation. Among other concerns, the policy and procedures must address:

- (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 applicable, business plans must contain an analysis of:

(a) The strategic and operational aspects of E-commerce; and

(b) Potential and existing customers that can use E-commerce.

#### § 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 policy and procedure 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) *Consent.* In accordance with E-SIGN, System institutions may communicate electronically to conduct business. E-commerce transactions require the consent of all parties when you do business.

(b) *Communications with consumers.* E-SIGN and Federal Reserve Board Regulations B, Z, and M (12 CFR parts 202, 226 and 213) 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 Z and M (12 CFR parts 226 and 213) apply to consumers only.) Nonetheless, you must ensure that your communications, including those disclosures required under the Act and these regulations, 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 consent 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 monthend 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 § 620.15(a) or (b)

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 § 620.21(d)(4). 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 § 620.21(d)(4) 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 § 620.21(d)(4) 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. 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: October 15, 2001.

**Kelly Mikel Williams,**

*Secretary, Farm Credit Administration Board.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

[CA 054-OPP; FRL-7087-9]

**Clean Air Act Proposed Full Approval of the Title V Operating Permit Programs for Twenty-Four California Air Pollution Control Districts**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to fully approve the operating permit programs submitted by the California Air Resources Board (CARB) on behalf of Amador County Air Pollution Control District (APCD), Butte County Air Quality Management District (AQMD), Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Shasta County APCD, Siskiyou County APCD, Tehama County APCD, Tuolumne County APCD, and Yolo-Solano AQMD. All twenty-four operating permit programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted final interim approval to nineteen of the twenty-four districts' operating permit programs on May 3, 1995 (60 FR 21720). The five districts that were not included in that rulemaking were Glenn County APCD, Tehama County APCD, Lake County AQMD, Shasta County APCD, and Mariposa APCD. EPA granted final interim approval to Mariposa APCD's operating permit program on December 7, 1995 (60 FR 62758) and to the other four districts' programs on July 13, 1995 (60 FR 36065). All twenty-four districts revised their programs to satisfy the conditions of the interim approval and this action proposes approval of those revisions. In addition, many districts made other changes to their rules that were not required to correct an interim approval issue; EPA proposes to approve most of these other changes districts have made.

**DATES:** Comments on the program revisions discussed in this proposed action must be received in writing by November 21, 2001.

**ADDRESSES:** Written comments on this proposed action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR-3), EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. You can inspect copies of the program submittals, and other supporting documentation relevant to this action, during normal business hours at Air