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**Handbook Mailing HM-09-1**

[6705-01-P]

**FARM CREDIT ADMINISTRATION**

**12 CFR Parts 611, 613, 615, 619 and 620**

RIN 3052-AC43

**Organization; Eligibility and Scope of Financing; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Definitions; and Disclosure to Shareholders; Director Elections**

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) is proposing to amend our rules on Farm Credit System (System) bank and association director elections and other voting procedures to clarify director election processes and update our rules to incorporate interpretations made through several recent bookletters to System institutions. We propose consolidating general election procedures, clarifying the role of nominating committees, enhancing eligibility and disclosure requirements for director-candidates, and improving annual meeting information statement instructions. We also propose new regulations on floor nominations and meetings of stockholders. We expect this proposed rule will increase stockholder participation in the director election process and enhance impartiality and disclosure in director elections.

**DATES:** You may send comments on or before June 15, 2009.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- FCA Web site: <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web

site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

#### **FOR FURTHER INFORMATION CONTACT:**

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#### **SUPPLEMENTARY INFORMATION:**

##### **I. Objectives**

The objectives of this proposed rule are to:

- Strengthen the independence of nominating committees;
- Encourage greater stockholder participation in the director election process;
- Ensure procedures on nominations from the floor are equitable and known to stockholders;
- Clarify director election procedures;
- Enhance impartiality and disclosure in the election of directors; and
- Incorporate FCA interpretations and responses to questions raised by System institutions and FCA examiners in our rules.

##### **II. Background**

The Farm Credit Act of 1971, as amended (Act),<sup>1</sup> establishes the System as a farmer-owned cooperative system that provides credit to farmers, ranchers, producers or harvesters of aquatic products, and rural home owners. The cooperative structure of the System relies on the owner control and participation of its stockholders and is supported by the accurate and timely information provided by the directors of System institutions. The majority of all Farm Credit bank and association directors are elected by voting stockholders.<sup>2</sup>

One of the main objectives of cooperatives today, as in the past, is to promote the participation of members in the management, ownership, and control of the cooperative, which includes electing directors to represent the interests and concerns of all the institution's owner-borrowers. Boards of directors in a cooperative system have the responsibility of encouraging stockholder participation in the management and control of the cooperative. The capacity of the board of directors to view borrowers as owners as well as customers is key to a successful cooperative enterprise. Respecting borrowers as owners is indispensable to creating stockholder interest and activity in the institution's existence as a cooperative. Providing stockholders the opportunity to give voice to their concerns through various forums, such as an annual stockholders' meeting, gives the board of directors the feedback they need to measure how well they are serving all their stockholders' interests. It is from this pool of interested, active, and informed

stockholders that the cooperative draws its next generation of directors.

For these reasons, we are strengthening certain provisions on election of directors and adding other provisions to ensure that stockholders' voices continue to resound in the boardroom through their elected representatives. We are further proposing to consolidate our general director election rules, currently located throughout our rules, into subpart C of part 611, "Election of Directors and Other Voting Procedures." Our rules at part 611 were intended to address election procedures, and we believe consolidating our election rules into this section is appropriate. We believe the proposed reorganization will add clarity to our rules by keeping subject matters together, thereby facilitating System compliance. In the proposed process of consolidating provisions, some regulatory language is proposed to be changed to remove redundancy and enhance clarity.

### **III. Comments Received**

We received two comments on our existing election regulations prior to developing these proposed rules. The comments were in response to a June 23, 2008, regulatory burden solicitation (73 FR 35361). We evaluated the comments in recognition of existing law and policy considerations and the cooperative nature of the System.

One commenter asked us to consider overall revisions to our election rules, but made no suggestions on what changes should be made. The second commenter requested we modify our rules at § 611.325 and § 615.5230 to allow stockholders to nominate and elect directors in any manner they consider appropriate, as long as the process is fair and equitable. Our existing rules do not prevent voting stockholders from using various means to nominate directors as long as the right to make floor nominations and use a nominating committee remains available. The Act, at section 4.15, requires associations to use nominating committees and permit floor nominations in director elections. Institutions wishing to use additional methods, such as nominations by petition, may do so. Further, our rules do not prevent stockholders from using multiple methods, such as mail ballots and regional elections, in electing directors. We propose expanding the options in this proposed rule by introducing online meetings. Our rules, however, provide protections for the cooperative structure of the System by limiting each association stockholder to one vote and providing weighted voting for Farm Credit Banks. This proposed rule carries forward that concept in our impartiality in elections rules at § 611.310, while also increasing the flexibility of institutions by proposing to treat the associations who are stockholders in a Farm Credit bank in the same manner that a stockholder is treated at the association level when campaigning for director-candidates. We believe we have balanced the rights of stockholders with legitimate safety and soundness concerns in our regulations and continue that balance in this proposed rule.

### **IV. Section-by-Section Analysis**

#### **A. Meetings of Stockholders [new §§ 611.100, 611.110, and 611.120]**

We propose adding a new subpart A to part 611 that would address meetings of stockholders and consist of three sections. The three sections we are proposing are § 611.100 for definitions, § 611.110 to address the basic aspects of meetings of stockholders, and § 611.120 on establishing a quorum for stockholders' meetings.

##### **1. Stockholders' Meetings [new § 611.110]**

The proposed § 611.110 would capture the existing practices of System institutions in holding annual director elections. It would also incorporate and cross-reference the notice of meeting

requirements currently found in § 620.21 and allow for the use of online meetings as part of the annual meeting process. In today's rapidly changing environment, System institutions are able to employ new technologies to support online meetings conducted over the Internet, creating more opportunities for facilitating member attendance and involvement. These opportunities help mitigate attendance issues arising from larger territories and the costs and inconveniences associated with traveling long distances. In proposed § 611.110, System institutions would be permitted to use online meetings to augment their traditional annual meeting held in a physical location within the institution's territory. Each bank and association using an online meeting space would need to develop policies and procedures that would provide stockholders with the information needed to access the online meeting and register their attendance. Because not all stockholders may have the means to use online technology, online meetings would not substitute for an actual physical meeting location for the annual meeting, but would be in addition to it.

## **2. Stockholder Attendance [new § 611.110(d)]**

We are proposing a requirement that Farm Credit banks and associations actively encourage stockholder attendance at the annual meeting. We encourage institutions to consider using the Annual Meeting Information Statement (AMIS) or other shareholder communications to describe the various opportunities for shareholders' participation in the ownership, control, and management of their institutions. For instance, opportunities may include shareholder appreciation meetings, financial results conference calls, sponsorship of conferences, educational and other agricultural credit-related events, participation in advisory committees, and the opportunity to serve on the institution's board of directors or nominating committee. FCA believes strongly that the Act places significant expectations on System institutions to foster and facilitate shareholder involvement and knowledge of the cooperative nature of the System. As a result, FCA encourages System institutions to be creative in finding ways to reach out to member-shareholders beyond the lending relationship, providing for related services, or simply distributing copies of required disclosures.

## **3. Quorums [new § 611.120]**

The proposed § 611.120 would clarify requirements for Farm Credit institutions' determining if a quorum at a stockholders' meeting was achieved and require institutions to identify quorum requirements in their bylaws. A quorum is the minimum number of voting stockholders necessary to conduct business, including holding a vote. As such, we propose that a quorum count may not include mail ballots. General corporate law principles define a quorum as "the number of persons who must be present before any business can be transacted at a meeting."<sup>3</sup> Since mail balloting occurs after a meeting is convened and is an actual component of the business of a meeting, mail ballots cannot be used to establish that there were a sufficient number of voting stockholders present at the start of the meeting. Because our proposed rule in § 611.110 would permit Farm Credit institutions to hold online annual meetings, at which voting stockholders can register their attendance electronically, we believe versatility and sufficient flexibility exist to enable the institution to meet its quorum requirement without the necessity of including mail ballots for that purpose. We are proposing a delayed date for the prohibition on using mail ballots to establish a quorum because we are aware that some Farm Credit institutions may currently allow the counting of mail ballots to determine whether a quorum has been met and will have to amend their procedures accordingly.

The proposed rule would not affect counting proxy ballots towards the quorum requirement because proxies are treated as "present" and voting members.<sup>4</sup> In order to execute a proxy, the person designated as the proxy holder must be in attendance at the stockholders' meeting. Our proposed rule would also continue to allow those Farm Credit institutions holding annual meetings of stockholders, or

any special meeting of stockholders, in consecutive sectional sessions to count the attendance of voting stockholders at all sessions for quorum purposes, provided no voting stockholder is counted more than once. Further, if a quorum is present when a meeting is first convened, the meeting may be recessed to a later time and, when reconvened, be held as a legal meeting even if a quorum is no longer present.

We encourage institution boards to renew their efforts to meet their existing quorum requirements as a result of this proposed change. The board of directors of the cooperative has an important role to play in maintaining open and direct communications with the cooperative's owners. An annual meeting of stockholders provides a unique opportunity for the cooperative's members and their majority-elected directors to reflect on the accomplishments and challenges of the past year and discuss their goals for the future. The annual meeting is also a forum for member-owners to meet with their directors and other members to discuss member concerns and member satisfaction. Taking actions that result in a well-attended stockholders' meeting reflects the board's collective commitment in meeting the needs of its members. Consequently, institutions should consider ways for encouraging stockholder-owner involvement and attendance at annual meetings, even though mail ballots may not be used for quorum purposes. The opportunity to hold annual meetings online and include, in the quorum count, the voting stockholders attending the online meeting is likely to satisfy an institution's existing quorum requirement.

## **B. Eligibility for Membership on Board of Directors [§ 611.310]**

We propose modifying the language of existing § 611.310(b)--regarding director eligibility when there is a case of incompetence or criminal conviction--to mirror the statutory language at section 5.65(d) of the Act. Our existing regulatory language identifies felony convictions, but the Act makes no distinction between misdemeanor and felony convictions. Our proposed change would bring the regulatory text into compliance with the Act.

We propose adding new paragraph (e) addressing director eligibility when a person has run for membership on a nominating committee. Our existing rule at § 611.325 already prohibits this dual role, but we believe further clarity is required. We propose clarifying that a person is not eligible to be a director if that person is elected to serve on the institution's nominating committee and attends a meeting of the nominating committee. Attending a meeting of the nominating committee could give a committee member the ability to access information that would allow that person to judge the likelihood of a successful run for the board, thus creating a potential conflict of interest that the rules in § 611.310 seek to avoid. For this reason, we propose including the existing § 611.325 prohibition in § 611.310 after making clarifying changes to § 611.325 to allow a nominating committee member to step down and run as a director-candidate in an election as long as the member has not attended a nominating committee meeting.

We are also proposing to add a new paragraph (f) in § 611.310 that would allow out-of-territory borrowers to serve as association directors. Many out-of-territory borrowers, who are eligible borrowers under § 613.3000, are voting stockholders in their institutions and, as such, are potentially eligible to run for election to the institution's board of directors. We propose giving the institution the discretion to limit out-of-territory borrowers' opportunity to run for the board if made a part of the institution's bylaws. Associations would also be required to inform, in writing, an out-of-territory borrower at the time the loan is made as to the borrower's eligibility to serve as a director.

## **C. Impartiality in the Election of Directors [§ 611.320]**

### **1. Institution Resources [§ 611.320(c)]**

Our existing rule at § 611.320(c) on impartiality in elections states that no resources of an institution may be used by a candidate for nomination or election unless the same resources are simultaneously made available, and made known, to all declared candidates. We propose clarifying this provision to explain that facilities and resources include an institution's information technology resources and financial resources. For example, an institution may use its financial resources to provide reasonable reimbursement of travel expenses of director-candidates to attend annual meetings (including sectional sessions) if all candidates are offered the same reimbursement. We propose this clarification to ensure that institutions that have paid the travel expenses of incumbent directors running for re-election do not deny other candidates reimbursement for similar travel expenses. We also propose clarifying that when resources are made available to all candidates, the institution must also make the resources available to floor nominees. To ensure that all candidates, including any floor nominees, are aware of an institution's policy that permits candidate reimbursement, we would expect the institution to include stockholder notice, in the AMIS or elsewhere, that candidates will be provided the opportunity to receive reasonable travel reimbursement. The advance notice to voting stockholders would help ensure fairness and equal access to the reimbursement opportunity. In no instance may an institution provide its financial resources in a manner that results in personal financial gain for the candidate(s). Use of an institution's financial resources must be reasonable, prudent, and consistent with supporting an election that is fair and unbiased.

We further propose amending paragraph (c) to recognize associations as stockholders in their funding banks. We propose treating associations as stockholders and not as "institutions" to allow stockholder-associations to use their property, facilities, and resources in support of a candidate to the bank board. As part of this proposal, stockholder-associations would be able to exercise their rights as stockholders in supporting a bank director-candidate -- if authorized by the affiliated Farm Credit bank's impartiality in director elections' policies and procedures. Our rule would require the bank's policy and procedures to set reasonable standards for stockholder-associations' use of their property, facilities and resources for this purpose. For example, we would expect the bank to establish a reasonable amount that stockholder-associations could expend in supporting a bank director-candidate. In establishing the reasonable amount, the bank would need to take into consideration the various sizes of the associations in its district before establishing the maximum amount that could be expended by a stockholder-association. The bank's policy and procedures must be fair and equitable and be clear that the amount expended by a stockholder-association is not for the personal use of any bank director-candidate. The bank's policy could also identify that using photocopying facilities, mailing materials, and the like are acceptable uses of the stockholder-association's resources, but cash outlays are not an acceptable use. Likewise, banks may want to permit stockholder-associations to host moderate social gatherings or reimburse travel expenses in order to introduce candidate(s) to the bank's other voting stockholders.

We believe requiring the bank to authorize the use of association property, facilities, and resources is appropriate because it is the bank's director election process and the bank should have the authority to determine the allowable activities of its stockholders in this process, subject to our regulations. In the event a bank does not choose to allow its stockholder-associations to use property, facilities, and resources in support of bank director-candidates, no stockholder-association in that district would be authorized to provide campaign support to any bank director-candidate in any manner.

We caution System institutions that stockholder-associations may not write checks to any bank director-candidate to support his or her campaign. It is critical that any support provided by a stockholder-association to a bank director-candidate not result in enriching the candidate or providing the candidate with personal financial gain. Should the candidate win election to the board, we believe that such actions may create a conflict of interest in the director's execution of his or her fiduciary duties on behalf of all stockholders

As a technical change, we propose replacing the phrase "System institution" with "Farm Credit" everywhere it appears in § 611.320.

## **2. Involvement of Directors in Board Elections [new § 611.320(f)]**

We propose adding a new paragraph (f) to address the involvement of directors in board elections. While our existing rule at § 611.320(b) prohibits, in part, employees and agents from making statements intended to influence votes in elections and nominations, we propose adding a prohibition for directors of Farm Credit institutions from actively supporting a candidate for nomination or election to that institution's board of directors. We believe a director's active support of a candidate creates a potential for conflicts of interest should that director-candidate be elected to the board. An example of prohibited conduct would include a sitting director of an institution distributing or mailing a letter to the voting stockholders endorsing a particular candidate for director (other than him or herself). We are proposing to limit this restriction to activities made on another's behalf. Therefore, the proposed rule would allow any director to freely engage in campaign activities for his or her own election to the board.

## **D. Nominating Committees [existing § 611.325]**

We are proposing that each institution establish and maintain policies and procedures on the formation, operation and duties of its nominating committee, consistent with current laws and regulations. While the nominating committee is a committee of voting stockholders and not a committee of the board, the institution's use of policies and procedures will help meet its obligation to ensure the independence and integrity of the nominating committee process in the election of directors for each and every election cycle. To that end, policies and procedures for the institution's nominating committee would help ensure that nominating committee members are fully informed of their rights and obligations as they perform this important service to their cooperative.

We further propose clarifying that each institution may have only one nominating committee in any one election cycle, consistent with informal guidance we have provided in our brochure on nominating committees, our March 8, 2007 booklet, "Guidance on Farm Credit Bank and Association Nominating Committees" (BL-043 Revised), and Frequently Asked Questions (FAQ) on our Web site.

### **1. Nominating Committee Composition [existing § 611.325(a)]**

We are proposing to add a requirement to paragraph (a) that would permit out-of-territory borrowers, who are voting stockholders, to serve on an institution's nominating committee. The proposed rule would recognize that an institution may prohibit eligibility for such activities by out-of-territory borrowers in its bylaws. Associations would also be required to inform, in writing, the out-of-territory borrower, at the time the loan is made, whether the borrower is eligible to serve on the nominating committee. We also propose moving the existing § 611.325(a) prohibitions on membership to the nominating committee to proposed new paragraph (c), which is discussed further below.

### **2. Nominating Committee Election [new § 611.325(b) and existing § 620.21]**

We propose amending our existing rule at § 611.325 by adding a new paragraph (b) on nominating committee elections. We propose clarifying that an institution may use ballots that would allow stockholders to vote for nominating committee members as a slate, as long as stockholders also retain the ability and right to elect members individually. We have encountered questions on whether institutions may present voting stockholders with a list of candidates, identifying only one name for each vacant

committee position, and then requiring stockholders to vote either for or against the entire list. Allowing institutions to determine the entire composition of the committee in this manner does not give voting stockholders an ability to choose the individual members of the nominating committee. The proposed rule would not prevent an institution from offering its voting stockholders the option of voting on the list of candidates as an alternative to voting on each individual candidate running for the nominating committee, but the institution would not be allowed to require voting stockholders to vote only for or against the list of nominating committee candidates. We believe that the institution is responsible for developing an open and impartial process for soliciting candidates for nominating committee membership. The process must ensure that the institution, its directors and management, and the existing nominating committee are not naming successors for, or appointing members to, the nominating committee. In our BL-043 Revised, we suggest ways in which potential nominating committee candidates can be identified.

We also propose clarifying in § 611.325(b) that association nominating committee members may only be elected to serve a 1-year term. Section 4.15 of the Act requires each association to elect a nominating committee at the annual meeting to serve for the following year. Individual members of an association nominating committee may be elected to sequential 1-year terms, however. We are not proposing term limits for bank nominating committee members because we recognize that some banks do not conduct their director elections at annual meetings, and there is no statutory provision limiting the terms of bank nominating committees. We further propose clarifying that each Farm Credit Bank, but not agricultural credit banks or banks for cooperatives, must use weighted voting procedures when electing members to their nominating committees. We propose this change to conform the nominating committee election procedure to our existing rules on Farm Credit Banks' director elections. These proposed changes are consistent with informal guidance we have provided in our brochure on nominating committees, BL-043 Revised, and Frequently Asked Questions (FAQ) on our Web site.

## **2. Nominating Committee Conflicts of Interest [new § 611.325(c)]**

We are proposing regulatory language on conflicts of interest for nominating committees in a new paragraph (c) to § 611.325. We propose moving the existing § 611.325(a) prohibitions on membership to the nominating committee to this new paragraph and adding proposed language clarifying that once elected to a nominating committee, a member may not resign from the committee to be considered as a candidate for a director position if the member has attended a meeting of the nominating committee. We previously explained this limitation in the preamble to the original rulemaking for § 611.325.<sup>5</sup> This clarification is important because we have received numerous questions regarding whether nominating committee members may resign from the committee or recuse themselves from committee deliberations in order to be a director-candidate. Our existing rule at § 611.325(a) prohibits an individual from running for election to the board of directors if that same individual already successfully ran for election to the nominating committee that is identifying director-candidates in that election cycle. We believe that to preserve impartiality, committee members must be free from any interest in a directorship during service on the nominating committee. We continue to believe that an open and fair nominating process must be free of potential conflicts that could result if a nominating committee member, once elected, attends a meeting of the nominating committee and is allowed to recuse himself or herself from committee discussions or resign from the committee in order to run for director in that same election cycle. While we believe that a stockholder has adequate time to decide whether a directorship or nominating committee membership would allow him or her to best serve the cooperative for that election year cycle, we understand that situations may arise that beg reconsideration of the stockholder's original decision. In such situations, we are proposing that a person elected to the nominating committee, but who did not attend any meeting of the nominating committee, may resign his or her position. We are also proposing that nominating committees keep minutes of their meetings, which would reflect attendance. We further

encourage institutions to elect alternate members to the nominating committee so the committee can function without interruption if a member decides to resign his or her position on the nominating committee. For example, if nominating committee members are elected by nomination region and the person resigning is the only representative from a region, the institution would have to hold elections to replace the member who resigned if no alternate had been elected to take his or her place.

### **3. Nominating Committee Duties [redesignated § 611.325(d)]**

We propose redesignating paragraph (b) on nominating committee responsibilities as paragraph (d), clarifying that nominating committees may not be used for other institution business and adding a requirement that nominating committees keep records of their meetings. We believe having other duties diverts the nominating committee from its very significant role in the director election process, and therefore we propose limiting its duties to those described in proposed § 611.325(d). For example, some institutions are giving the nominating committee the task of identifying candidates for election to the nominating committee for the following year. While the institution may invite the nominating committee to suggest names of individuals who may have an interest in succeeding them on the committee, it goes beyond the nominating committee's role to determine the candidates who will stand for election to the next nominating committee. In other occurrences, the nominating committee has been tasked with verifying the eligibility or credentials of a floor nominee. The institution, not the nominating committee, is responsible for ensuring that the floor nominee is eligible. In addition, the nominating committee has completed its tasks for that election cycle before floor nominations are made or accepted.

We are not proposing to prohibit institutions from forming other stockholder committees for various purposes where some or all of the nominating committee members may serve on those committees. We are proposing to clarify that the nominating committee itself may not be used for functions other than those required by section 4.15 of the Act.

### **4. Nominating Committee Resources [redesignated § 611.325(e)]**

We propose redesignating paragraph (c) on nominating committee resources as paragraph (e) and adding a provision that institutions provide their nominating committees with FCA rules and other FCA-issued guidance on the operation of nominating committees. We believe this requirement is necessary to ensure that the nominating committee is aware of FCA's rules and guidance regarding the nominating committee's role in representing the institution's stockholders in the director elections process and understands how it must operate in accordance with those rules.

### **E. Floor Nominations [new § 611.326]**

We propose moving eligibility and procedural requirements for floor nominations from existing § 620.21(d) to new § 611.326. We also propose incorporating previous guidance provided to System institutions in our February 14, 2008 booklet, "Floor Nomination Procedures for System Associations and Banks" (BL-055), and addressing floor nomination procedural requirements for various balloting methods.

Making nominations from the floor is an express right of each association's voting stockholder that may not be unduly restricted in a way that effectively weakens it.<sup>6</sup> As explained in BL-055, the procedures for nominations from the floor may not be unduly burdensome nor have the effect of denying voting stockholders the right to name candidates through floor nominations. We propose requiring System associations, and those Farm Credit banks that allow floor nominations, to have policies and procedures for accepting nominations from the floor. The proposed rule would set minimum procedural

limits for the level of voting stockholder support that may be required by the institution before accepting a floor nomination. The proposed limit is no more than a second to a nomination. The proposed rule would also require that a floor nominee accept the nomination prior to placing the nominee on the ballot and clarify that floor nominations may be called for only after the nominating committee has identified its slate of director candidates.

We are also proposing to address a concern that allowing nominations from the floor only at the physical locations of the annual meeting may create delays and meeting inefficiencies because the institution first has to verify that the nominee is eligible for the position for which he or she has been nominated before the meeting can continue. Our proposed rule in § 611.110(c) would permit online annual meetings. Once the chairperson of the online annual meeting declares the meeting open, a "virtual floor" would allow a voting stockholder to make a "virtual floor nomination" through the interactive online meeting space. Virtual floor nominations would require using an "instant access" method such as "instant messaging" or a telephone call to the institution, both of which are unedited as in a physical meeting. An acceptable "instant access" method would be one that enables voting stockholders to second the floor nomination immediately and for the nominee to accept the nomination. For example, instant messaging to an online meeting space or a comment board would be considered sufficiently "instant," as well as being public to all voting stockholders. An e-mail or voice mail system would not be considered instant, as the institution staff would have to transfer the information to the virtual floor. This virtual floor could remain open for several hours or be recessed and reopened for several days at set times, enabling the institution to obtain floor nominee eligibility information before voting begins. We believe this process addresses the concerns for time to verify eligibility of candidates and the integrity of the floor nomination process. Floor nominations are public nominations of candidates that are not previously vetted by any person or committee. Ensuring the "public" nature and instant responses by stockholders to a floor nomination are essential. Because of the various forms of, and rapid changes in, technology, as well as recognizing the diversity of operations within the System, we are not proposing specific rules on how this innovative online meeting process occurs. We would expect Farm Credit institutions to develop procedures that address the core elements contained in this proposed rule.

If an institution uses a virtual floor in connection with an online meeting, this would not replace the floor at the physical location of the annual meeting. The institution must allow voting stockholders to nominate from the floor at any physical location of the annual meeting if voting stockholders will vote on director-candidates by paper or electronic mail ballot after all sessions of the annual meeting are concluded. Or, if the institution permits stockholders to vote in person at the meeting, then a voting stockholder must be allowed to nominate from the floor at the initial physical location of the annual meeting. It is for these reasons we also propose requiring banks and associations to inform stockholders in the AMIS of the procedures for making floor nominations.

#### **F. Director-Nominee Disclosures [new § 611.330 and existing § 620.21]**

We propose moving the existing requirements on director-nominee disclosures from § 620.21(d) to a new § 611.330 called "Disclosures of Farm Credit bank and association director-nominees." We believe that these requirements are process-related, describing steps that are taken in conducting director elections, and do not belong in part 620, which covers reporting requirements. We propose an additional provision in new paragraph (a) of § 611.330, which would require that each institution adopt policies and procedures addressing the acquisition of director-nominee disclosure statements to ensure that all director-nominees are fairly treated in the election and voting processes. We previously provided guidance on this matter in our September 11, 2008 booklet, "Distribution of Director Candidate Information" (BL-056).

As a conforming technical change, we propose changing the reference in § 611.320(e) from § 620.21(d) to § 611.330.

**G. Regional Voting in Director Elections [new § 611.335 and existing §§ 615.5230(a) and 620.21(d)]**

We propose moving the existing requirements on regional director elections to a new § 611.335 called "Regional voting in director elections" to enhance the clarity and organization of our rules. We propose moving the regional voting procedures contained in existing § 615.5230(a)(3) and § 620.21(d)(4)(ii) to a new § 611.335 because existing § 620.21 is an interim report to stockholders (AMIS) and § 615.5230 addresses equity issuances in cooperative principles. As a conforming technical change, we propose deleting the paragraphs addressing regional elections contained in § 620.21(d)(4) and § 615.5230(a)(3).

**H. Confidentiality and Security in Voting [§§ 611.330 and 611.340]**

We propose consolidating into § 611.340 the "security in voting" rules and the "confidentiality in voting" rules currently located in existing §§ 611.330 and 611.340. We believe the consolidation will eliminate redundancy and make the rule easier to read. As part of the consolidation, we propose clarifying that only an independent third party or a tellers committee may validate and tabulate votes. The proposed clarification would remove a provision that allows another designated group of persons to perform these tasks. We do not believe an institution needs to designate any other group of individuals to validate and tabulate ballots when it can use a tellers committee or an independent third party for this purpose. We also propose new language on the membership of a tellers committee in paragraph (a)(4). We propose that only voting stockholders who do not have a conflict of interest may serve on the tellers committee. That is, only those voting stockholders who are not directors, director-candidates, or serving on the current election-year nominating committee may be members of the tellers committee. Institution employees who hold voting stock in the institution remain eligible to serve on a tellers committee. This limitation ensures that only those voting stockholders who have had no direct involvement in the nomination or election process are tabulating and counting ballots.

We further recognize the practical need for institutions to identify eligible voting stockholders as of the record date set for each stockholder voting action in paragraph (a)(2). The list of stockholders indicates the names of those stockholders holding voting stock as of the record date and thus the stockholder's eligibility to cast a ballot. Each institution is expected to update its list of stockholders, including individuals designated to vote for a legal entity that is a voting stockholder, each time the record date is set for director and nominating committee elections or any other matter requiring a stockholder vote. An updated list is also essential to determine if a floor nominee for a director position or membership on the nominating committee is a voting stockholder.

As a clarifying change, we propose adding language to paragraph (d) to explain that only proxy ballots may be accepted before stockholder meetings are convened for election or other voting purposes. Accepting mail ballots before an annual meeting results in those stockholders being unable to consider any candidate nominated from the floor because mail ballots cannot be revoked once received by the institution. Proxy ballots must be returned to the institution by the date of the stockholders' meeting and before balloting begins. The stockholder voting by proxy may withdraw the proxy authorization and vote in person at the meeting. Thus, a nominee from the floor could conceivably uphold a viable candidacy with sufficient stockholder support from those voting at the meeting as well as those that decide to revoke their proxy ballots and vote in person at the meeting.

As a conforming technical change, we propose changing the reference in § 611.1240(e) from §§

611.330 and 611.340 to § 611.340.

### **I. Cooperative Principles in Elections [§§ 611.350 and 615.5230(a)]**

We propose moving the contents of existing § 615.5230(a)(1) and (a)(2), addressing voting rights of stockholders in Farm Credit bank and association director elections, to existing § 611.350 on cooperative principles in director elections. We propose no changes to the § 615.5230 provisions on how many votes a stockholder may cast, but propose minor rewording of the language for clarity and to recognize the proposed new location of these provisions.

We also propose adding a new provision to § 611.350 to clarify that out-of-territory borrowers holding voting stock must be assigned to a specific geographic region for voting purposes if the association apportions its territory into regions for voting purposes. Section 4.15 of the Act requires the nominating committee of each association to review a list of farmers from the association's territory and seek to nominate director-candidates representing all sections of the territory. Also, sections 2.1 and 2.11 require that elected directors come from the voting members (voting stockholders) of the association. We believe that these provisions, when read together, allow all voting members of an association, including out-of-territory borrowers, to have equal standing in the association in terms of voting stock. As discussed earlier in section IV.B. of this preamble (see discussion on § 611.310(f)), each institution must determine whether out-of-territory borrowers may serve the institution in other ways, such as on the board of directors or the nominating committee.

We also propose moving the provision requiring the disclosure of the types of agriculture in which directors of an institution engage from the existing provision at § 615.5230(b)(5) to § 620.21. We further propose, as a technical change, removing the remaining portions of § 615.5230(b)(5) regarding the nomination of at least two candidates for each director position as it is redundant of § 611.325.

### **J. Annual Meeting Information Statement (AMIS)**

We propose renaming subpart E to clarify that an AMIS is used for more than an annual meeting. We also propose dividing the existing § 620.21 into two sections, one to address preparation and distribution of an AMIS and the other to address the contents of an AMIS. We propose this change to conform the AMIS to our other reporting sections.

#### **1. Preparing and Distributing the AMIS [new § 620.20]**

We propose moving that portion of the existing introductory language of § 620.21, discussing distribution of the AMIS to shareholders, to new § 620.20 and adding a requirement that the AMIS be dated. We believe that without a date of preparation, the value of the information in the AMIS is difficult to determine. We also propose an outside timeframe of 30 business days for distributing the AMIS to shareholders. The existing rule requires an AMIS be provided to shareholders at least 10 days before a meeting or election to ensure the shareholders' receipt before the meeting. We believe an outside timeframe is needed to ensure that the information in the AMIS is reasonably current at the time the shareholders' meeting or director elections take place. We also propose clarifying that the existing requirement to provide the AMIS no later than 10 days before a meeting means business days. We further propose referencing in paragraph (b) of new § 620.20 the existing signature and filing requirements of §§ 620.2 and 620.3 for all reports, specifically that the AMIS be provided to the Farm Credit Administration and that every AMIS be signed and dated. Institutions are required in § 620.3(b) to sign all reports, including the AMIS, and we are proposing to reference this requirement in § 620.20 to facilitate compliance with our rules. We are also proposing to include a requirement that the AMIS be

electronically filed with the FCA at the time it is issued. On December 4, 2007, the FCA issued a final rule (72 FR 68060) amending the disclosure and reporting regulations for System institutions. As part of this rulemaking, § 620.4 now requires that each System institution prepare and send to FCA an electronic copy of its annual report. This amendment did not address filing requirements for the AMIS. We propose including this provision for the AMIS in new § 620.20 so that the filing requirements are consistent between the annual report and the AMIS.

We further propose adding language to paragraph (a)(3) of new § 620.20 explaining that an AMIS may be posted on an institution's Web site after the AMIS is mailed to shareholders. We propose requiring these postings be maintained on the institution's Web site for a reasonable amount of time, but at least 30 calendar days, to provide shareholders some certainty of time to view the posting. For example, if a posted AMIS addresses an upcoming director election, we would consider a reasonable amount of time to be the duration of the election cycle.

## **2. Contents of the AMIS [existing § 620.21]**

We propose reorganizing existing § 620.21 to clarify the minimum information that must be included in an AMIS and the additional information that must be included in any AMIS issued in connection with elections.

### **a. Minimum Requirements for Each AMIS [§ 620.21(a)]**

We propose keeping existing requirements that each AMIS include the date, time, and place of the meeting; the number of voting shareholders currently in the institution; updates to previously issued financial reports; changes or disagreements with external auditors; and the current composition and attendance history of the board of directors. While we make no changes to the substance of these existing requirements, we do propose some clarifications and additional requirements.

We propose incorporating notice of any online meeting space that might be used into the date, time, and place of meeting section of the AMIS. As explained earlier in the § 620.20 discussion, we propose requiring that the AMIS be issued no earlier than 30 business days in advance of a meeting or election, but no later than 10 business days in advance of the meeting.

We make no changes to how the AMIS identifies the number of voting shareholders, but propose moving the existing language in § 620.21(d)(3), addressing the number of shareholders voting by region, to this paragraph. We propose moving the requirement that each AMIS update financial information and report disagreements or changes in accountants to new paragraph (a)(3). We propose clarifying that the annual report being updated by the AMIS is the last annual report of record. This would clarify which annual report to reference when an institution holds an annual meeting before mailing the current year's annual report to shareholders.

We propose moving the requirement that institutions record the types of agriculture each incumbent director is engaged in from existing § 615.5230(b)(5) to paragraph (a)(4) of this section. We make the proposed change as part of our effort to consolidate our regulations and enhance clarity by keeping subject matters together.

We are not changing the existing requirement that director attendance be reported in the AMIS. However, we offer clarification of existing § 620.21(c)(2) on whether an institution is to disclose only the number of missed board meetings or the number of missed committee meetings in the director meeting attendance disclosure. The intention of the rule is to disclose any reduced attendance at meetings of

official board business and thus the requirement to disclose missed meetings covers both board meetings and committee meetings. In providing this clarification, we propose no change to the current rule.

**b. Additional Information for Elections [new § 620.21(b)]**

**i. Director-Nominees [new § 620.21(b)(1) and (b)(3)]**

We propose moving to paragraph (b)(1) the existing § 620.21(d)(2) language on the efforts of the nominating committee to find two nominees for each vacant position. We then propose amending the provision to require that the names of the director-candidates nominated by the nominating committee be listed. This language captures the provision of existing § 620.21(d)(1) which, when moved to proposed § 611.330, loses the link to the nominating committee.

We propose moving to paragraph (b)(2) existing language requiring an AMIS to include director-nominee disclosures. We propose conforming changes to reference proposed § 611.330. As discussed earlier, the proposed creation of a new § 611.330, addressing the contents of director-nominee disclosures, involves moving those provisions from this section. The proposed creation of a separate director-nominee disclosure section does not remove the requirement of including those disclosures (or a restatement of them) in an election AMIS.

In another matter, we are aware that some institutions indicate on their ballots the director-candidates who are incumbent directors. While we are not proposing to amend the AMIS candidate disclosure requirement, we urge institutions to observe the principles of fairness and equal treatment of all director-candidates in providing disclosure information as stated in BL-056. We believe it is not necessary to indicate incumbency status on the ballots because all candidates provide disclosure statements with resume-type information and the incumbent's disclosure is likely to indicate past service on the institution board.

**ii. Floor Nominations [new § 620.21(b)(3)]**

We propose moving, but not changing, the existing requirement that institutions state whether floor nominations will be accepted. We are proposing that System institutions explain the procedures for making floor nominations. As discussed in section IV.E. of this preamble, institutions need to explain how voting shareholders can make floor nominations to ensure that the process works efficiently and effectively.

**c. Nominating Committees [new §620.21(c)]**

We propose adding a requirement in paragraph (c) that the election procedures for nominating committee candidates be included in the AMIS when nominating committees will be elected in connection with director elections. As in the election of directors, the election of members to the nominating committee is subject to each stockholder's right to a secret ballot under section 4.20 of the Act. We believe each institution must inform its voting shareholders of the procedures for voting on candidates for the nominating committee and must do so in a manner that protects each shareholder's right to a secret ballot.

**K. Other Miscellaneous Changes**

**1. Similar Entity Participation Lending Limit Voting [§ 613.3300]**

We propose clarifying § 613.3300(c)(1)(i)(B) to explain that the stockholder vote for participation lending limits is based on the majority of voting stockholders voting. The existing language does not specify how a majority vote is tabulated.

## **2. Equityholder Voting on Preferred Stock [§ 615.5230(b)]**

We propose clarifying § 615.5230(b)(1) to explain that the equityholder vote on issuing preferred stock requires the approval of the majority of the shares voting of each class of equities adversely affected by the preference, voting as a class. The existing language does not specify that the majority is of the shares actually voted.

## **3. Definitions [existing § 620.1(p) and new § 619.9320]**

We propose moving the definition of "shareholder" from part 620 to our general definition section at part 619. We also propose clarifying that the terms "shareholder" and "stockholder" have the same meaning for purposes of our rules. These two terms are currently used interchangeably in our rules as well as in the Act.

## **V. Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed 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 and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

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<sup>1</sup>Pub. L. 92-181, 85 Stat. 583.

<sup>2</sup>See sections 1.4, 2.1, 2.11, 3.2, 3.21, 7.1, 7.12 of the Act.

<sup>3</sup>See Fletcher's Cyclopedia of Corporations § 2013(emphasis added).

<sup>4</sup>A proxy is an authorization to act for a voting stockholder and requires the stockholder issuing the proxy to name a director or another voting stockholder of his or her choosing to cast that stockholder's vote.

<sup>5</sup>See 71 FR 5740, 5753 (February 2, 2006).

<sup>6</sup>Section 4.15 of the Act requires System associations to accept floor nominations, but does not have a similar requirement for Farm Credit banks.

## **List of Subjects**

### **12 CFR Part 611**

Agriculture, Banks, banking, Rural areas.

### **12 CFR Part 613**

Agriculture, Banks, banking, Credit, Rural areas.

### **12 CFR Part 615**

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

### **12 CFR Part 619**

Agriculture, Banks, banking, Rural areas.

### **12 CFR Part 620**

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

For the reasons stated in the preamble, parts 611, 613, 615, 619, and 620 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

## **PART 611--ORGANIZATION**

1. The authority citation for part 611 continues to read as follows:

**Authority:** Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.21, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0-7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2012, 2021, 2071, 2072, 2091, 2092, 2121, 2123, 2142, 2183, 2184, 2203, 2208, 2209, 2243, 2244, 2252, 2278a-9, 2278b-6, 2279a-2279f-1, 2279aa-5(e)); secs. 411 and 412 of Pub. L. 100-233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100-399, 102 Stat. 989, 1003, and 1004.

2. Add a new subpart A, consisting of §§ 611.100 through 611.120, to read as follows:

### **Subpart A--General**

**Sec.**

**611.100 Definitions.**

**611.110 Meetings of stockholders.**

**611.120 Quorums.**

### **Subpart A--General**

#### **§ 611.100 Definitions.**

The following definitions apply for the purpose of this part:

(a) *Mail ballot* means a ballot cast by mail or by electronic means after the conclusion of a stockholders' meeting.

(b) *Online meeting* means a meeting that is conducted over the Internet through the use of mediating technologies, such as online services, computer hardware and software, etc., where technology is used to generate objects and environments that are presented to users through a number of senses (e.g., vision and hearing). The mediating technologies allow remote people or objects to appear locally present

or at least allow them to be treated that way during the course of the meeting.

(c) Online meeting space means an online environment where Farm Credit institutions can hold stockholder meetings that allow stockholders to communicate, collaborate, and share information. Any stockholder with the necessary technology requirements and access (e.g., password-protected meetings) must be allowed to connect to his or her institution's online meeting space.

(d) Quorum means the minimum number of voting stockholders of a Farm Credit institution that must be present, either in person (including through an online medium) or by proxy, at an annual meeting or other meeting of stockholders in order for the institution to conduct business.

(e) Regional election means the apportionment of a Farm Credit institution's territory into regions in which a director or directors from a region are elected only by those voting stockholders who reside or conduct agricultural or aquatic operations in that same region.

(f) Stockholder-association means an association within a Farm Credit bank district holding voting stock in that bank.

(g) Stockholder-elected director means a director who is elected by the majority vote of the voting stockholders voting to serve as a member of a Farm Credit institution's board of directors.

### **§ 611.110 Meetings of stockholders.**

(a) Requirement. Associations must annually have a meeting of stockholders for the purpose of conducting annual director elections. Associations must elect at least one director at each annual meeting, but the vote on the election of a director or directors may occur in the period following an annual meeting if voting is solely by mail ballots. Farm Credit banks are encouraged to hold annual or periodic meetings of stockholders. Farm Credit banks and associations may use an online meeting space in addition to a physical meeting space to conduct a stockholders' meeting or director elections. A physical meeting space must always exist for meetings involving director elections.

(b) Notice. Each Farm Credit bank and association must issue an Annual Meeting Information Statement in accordance with the requirements of §§ 620.20 and 620.21 of this chapter to notify stockholders of the date, time, and place of annual meetings or director elections. If a Farm Credit bank or association uses an online meeting space to conduct part of its meeting, the notice must specify the date, time, and location of the online meeting as well. The notice must be provided at least 10 business days, but no more than 30 business days, before the meeting.

(c) Online meeting. Each Farm Credit bank and association using an online meeting space as part of a meeting or election must have policies and procedures in place addressing how the online meeting space will be accessed and used by participants. The policies and procedures must specifically identify any technological adaptations necessary to address the confidentiality and security in voting requirements of § 611.340.

(d) Attendance. Each institution must encourage stockholder attendance at the annual meeting, whether in person or through online meeting attendance.

### **§ 611.120 Quorums.**

(a) The bylaws of each Farm Credit bank and association must specify the quorum requirements for stockholder meetings.

(b) After January 1, 2011, mail ballots may not be used to establish a quorum. Proxy ballots and attendance at annual meetings or sectional sessions thereof, including such meetings held online, may be used to establish a quorum.

### **Subpart C--Election of Directors and Other Voting Procedures**

3. Amend § 611.310 by revising paragraph (b) and adding new paragraphs (e) and (f) to read as follows:

**§ 611.310 Eligibility for membership on bank and association boards and subsequent employment.**

\* \* \* \* \*

(b) No bank or association director shall be eligible to continue to serve in that capacity and his or her office shall become vacant if after election as a member of the board, he or she becomes legally incompetent or is convicted of any criminal offense involving dishonesty or breach of trust or held liable in damages for fraud.

\* \* \* \* \*

(e) No person shall be eligible for membership on a Farm Credit bank or association board of directors in the same election cycle for which the Farm Credit institution's nominating committee is identifying candidates if that person was elected to serve on that institution's nominating committee and attended any meetings called by the nominating committee.

(f) Out-of-territory borrowers who hold voting stock in the association may serve as association directors unless prohibited by the association's bylaws. Associations must inform, in writing, each out-of-territory borrower of his or her eligibility status for directorship at the time the loan is made.

4. Amend § 611.320 by:

a. Removing the word "System" and adding the words "Farm Credit" each place it appears in paragraphs (a) and (d);

b. Revising paragraphs (c) and (e); and

c. Adding a new paragraph (f) to read as follows:

**§ 611.320 Impartiality in the election of directors.**

\* \* \* \* \*

(c) No property, facilities, or resources, including information technology and human or financial resources, of any Farm Credit institution shall be used by any candidate for nomination or election or by any other person for the benefit of any candidate for nomination or election, unless the same property, facilities, or resources are simultaneously available and made known to be available for use by all declared candidates, including floor nominees. For the limited purpose of Farm Credit bank board elections, each stockholder-association of a Farm Credit bank may, to the extent permitted by the affiliated Farm Credit bank's policies and procedures, use its property, facilities, or resources in support of bank director-candidates. Each Farm Credit bank permitting this activity must establish reasonable standards that stockholder-associations must follow when using property, facilities, and resources for the nomination or election of candidates to the bank board. The Farm Credit bank's policies and procedures must give appropriate consideration to the various sizes of stockholder-associations within a bank's district and include a maximum amount that a stockholder-association may expend in support of a bank director-candidate.

\* \* \* \* \*

(e) No Farm Credit institution may in any way distribute or mail, whether at the expense of the institution or another, any campaign materials for director-candidates. Institutions may request biographical information, as well as the disclosure information required under § 611.330, from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

(f) No director of a Farm Credit institution shall make any statement, either orally or in writing, which may be construed as intended to influence any vote in that institution's director nominations or elections. This paragraph shall not prohibit director-candidates from engaging in campaign activities on their own behalf.

5. Revise § 611.325 to read as follows:

**§ 611.325 Bank and association nominating committees.**

Each Farm Credit bank and association may have only one nominating committee in any one election cycle. Each Farm Credit bank and association must establish and maintain policies and procedures on its nominating committee, describing the formation, composition, operation, resources, and duties of the committee, consistent with current laws and regulations. Each nominating committee must conduct itself in the impartial manner prescribed by the policies and procedures adopted by its institution under § 611.320 and this section.

**(a) *Composition.*** The voting stockholders of each bank and association must elect a nominating committee of no fewer than three members. Unless prohibited by association bylaws, out-of-territory borrowers who are voting stockholders may serve as members of an association's nominating committee. Each association must inform, in writing, an out-of-territory borrower of his or her eligibility to serve on the nominating committee at the time the loan is made.

**(b) *Election.*** Farm Credit banks and associations may use in-person (including use of an online medium) or mail balloting procedures to elect a nominating committee.

**(1)** Farm Credit banks and associations must provide voting stockholders the opportunity to vote on each nominee for membership on the nominating committee. Farm Credit banks and associations may give voting stockholders the option to vote on a slate of nominees for the nominating committee as long as the right to vote on individual nominees remains.

**(2)** Association nominating committee members may only be elected to a 1-year term. Farm Credit Banks must use weighted voting, with no cumulative voting permitted, when electing members to serve on a nominating committee.

**(c) *Conflicts of interest.*** No individual may serve on a nominating committee who, at the time of election to, or during service on, a nominating committee, is an employee, director, or agent of that bank or association. A nominating committee member may not be a candidate for election to the board in the same election for which the committee is identifying nominees. A nominating committee member may resign from the committee to run for election to the board only if the individual did not attend any nominating committee meeting.

**(d) *Responsibilities.*** It is the responsibility of each nominating committee to identify, evaluate, and nominate candidates for stockholder election to a Farm Credit bank or association board of directors. A nominating committee's responsibilities are limited to the following:

**(1)** Nominate individuals whom the committee determines meet the eligibility requirements to run for open director positions. The committee must endeavor to ensure representation from all areas of the Farm Credit bank's or association's territory and, as nearly as possible, all types of agriculture practiced within the territory.

**(2)** Evaluate the qualifications of the director-candidates. The evaluation process must consider whether there are any known obstacles preventing a candidate from performing the duties of the position.

**(3)** Nominate at least two candidates for each director position being voted on by stockholders. If two nominees cannot be identified, the nominating committee must provide written explanation to the existing board of the efforts to locate candidates or the reasons for disqualifying any other candidate that resulted in fewer than two nominees.

**(4)** Maintain records of its meetings, including a record of attendance at meetings.

**(e) *Resources.*** Each Farm Credit bank and association must provide its nominating committee reasonable access to administrative resources in order for the committee to perform its duties. Each Farm Credit bank and association must, at a minimum, provide its nominating committee with FCA regulations and guidance on nominating committees, a current list of stockholders, the most recent bylaws, the current director qualifications policy, and a copy of the policies and procedures that the bank or the association has adopted pursuant to § 611.320(a) ensuring impartial elections. On the request of the nominating committee, the institution must also provide a summary of the current board self-evaluation. The bank or association may require a pledge of confidentiality by committee members prior to releasing evaluation documents.

6. Add a new § 611.326 to subpart C to read as follows:

**§ 611.326 Floor nominations for open Farm Credit bank and association director positions.**

(a) Each floor nominee must be eligible for the director position for which the person has been nominated.

(b) Voting stockholders of associations must be allowed to make floor nominations for every open stockholder-elected director position. Associations using only mail ballots must allow nominations from the floor at every session of an annual meeting. Associations permitting stockholders to cast votes during annual meetings may only allow nominations from the floor at the first session of the annual meeting. Before every director election by a Farm Credit bank, the bank must inform voting stockholders whether floor nominations will be accepted.

(c) Each association must adopt policies and procedures for making and accepting floor nominations of candidates to stand for election to the association's board of directors. Farm Credit banks allowing nominations from the floor must also adopt policies and procedures for making and accepting floor nominations. Policies and procedures for floor nominations must, at a minimum, provide that:

(1) Floor nominations may only be made after the nominating committee has provided its list of director-nominees.

(2) No more than a second by a voting stockholder to a nomination from the floor is required. After receiving a floor nomination, the floor nominee must state if he or she accepts the nomination.

(3) Floor nominees must make the disclosures required by § 611.330 of this part.

7. Revise § 611.330 to read as follows:

**§ 611.330 Disclosures of Farm Credit bank and association director-nominees.**

(a) Each Farm Credit bank and association must adopt policies and procedures that ensure a disclosure statement is prepared by each director-nominee. At a minimum, each disclosure statement for each nominee must:

(1) State the nominee's name, city and state of residence, business address if any, age, and business experience during the last 5 years, including each nominee's principal occupation and employment during the last 5 years.

(2) List all business interests on whose board of directors the nominee serves or is otherwise employed in a position of authority and state the principal business in which the business interest is engaged.

(3) Identify any family relationship of the nominee that would be reportable under part 612 of this chapter if elected to the institution's board.

(b)(1) Floor nominees who are not incumbent directors must provide to the Farm Credit bank or association the information referred to in this section and in § 620.5(j) and (k) of this chapter. The information must be provided in either paper or electronic form within the time period prescribed by the institution's bylaws or policies and procedures. If the institution does not have a prescribed time period, each floor nominee must provide this information to the institution within 5 business days of the nomination. If stockholders will not vote solely by mail ballot upon conclusion of the meeting, each floor nominee must provide the information at the first session at which voting is held.

(2) For each nominee who is not an incumbent director or a nominee from the floor, the nominee must provide the information referred to in this section and in § 620.5(j) and (k) of this chapter.

(c) Each Farm Credit bank and association must distribute director-nominee disclosure information to all stockholders eligible to vote in the election. Institutions may either restate such information in a standard format or provide complete copies of each nominee's disclosure statement.

(1) Disclosure information for each director-nominee must be provided as part of the Annual Meeting Information Statement issued for director elections.

(2) Disclosure information for each director-nominee must be distributed or mailed with ballots or

proxy ballots. Farm Credit banks and associations must ensure that the disclosure information on floor nominees is provided to voting stockholders by delivering ballots for the election of directors in the same format as the comparable information contained in the Annual Meeting Information Statement.

(d) No person may be a nominee for director who does not make the disclosures required by this section.

8. Add a new § 611.335 to subpart C to read as follows:

**§ 611.335 Regional voting in director elections.**

(a) *Authority.* The use of regional voting in director elections requires a bylaw provision approved by a majority of voting stockholders, voting in person or by proxy. The use of regional voting in director elections does not prevent any voting stockholder, regardless of the region where he or she resides or conducts agricultural or aquatic operations, from voting in any stockholder vote to remove a director.

(b) *Region size.* When using regional voting in director elections, there must be an approximately equal number of voting stockholders in each of the voting regions. Regions will have an approximately equal number of voting stockholders if the number of voting stockholders in any one region does not exceed the number of voting stockholders in any other region by more than 25 percent. At least once every 3 years, the number of voting stockholders in each region must be counted and, if the regions do not have an approximately equal number of voting stockholders, the regional boundaries must be adjusted to achieve such result. If more than one director represents a region, the equitability of regions shall be determined by dividing the number of voting stockholders in that region by the number of director positions representing that region, and the resulting quotient shall be the number that is compared to the number of voting stockholders in other regions.

9. Revise §§ 611.340 and 611.350 to read as follows:

**§ 611.340 Confidentiality and security in voting.**

(a) Each Farm Credit bank and association must adopt policies and procedures that:

(1) Ensure the security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials.

(2) Ensure that ballots and proxy ballots are provided only to stockholders who are eligible to vote as of the record date set for the stockholder vote.

(3) Ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including protecting the information from disclosure to the institution's directors, stockholders, or employees, or any other person except:

(i) An independent third party tabulating the vote; or

(ii) The Farm Credit Administration.

(4) Provide for the establishment of a tellers committee or independent third party who will be responsible for validating ballots and proxies and tabulating voting results. A tellers committee may only consist of voting stockholders who are not directors, director-nominees, or members of that election cycle's nominating committee.

(b) No Farm Credit bank or association may use signed ballots in stockholder votes. A bank or association may use balloting procedures, such as an identity code on the ballot, that can be used to identify how or whether an individual stockholder has voted only if the votes are tabulated by an independent third party. In weighted voting, the votes must be tabulated by an independent third party. An independent third party that tabulates the votes must certify in writing that such party will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration if requested.

(c) Once a Farm Credit bank or association receives a ballot, the vote of that stockholder is final,

except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting. A Farm Credit bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

(d) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. When stockholder meetings are held for the purpose of conducting elections or other votes, only proxy ballots may be accepted prior to any or all sessions of the stockholders' meeting. In an election of directors, ballots, proxy ballots and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(e) An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or independent third party has validated the results of the vote.

### **§ 611.350 Application of cooperative principles to the election of directors.**

In the election of directors, each Farm Credit institution shall comply with the following cooperative principles as well as those set forth in § 615.5230 of this chapter, unless otherwise required by statute or regulation.

(a) Each voting stockholder of an association or bank for cooperatives has only one vote, regardless of the number of shares owned or the number of loans outstanding. Each voting stockholder-association of a Farm Credit Bank has only one vote that is assigned a weight proportional to the number of that association's voting stockholders. Each voting stockholder of an agricultural credit bank has only one vote, unless otherwise approved by the Farm Credit Administration.

(b) Each voting stockholder must be accorded the right to vote in the election of each stockholder-elected director, unless regional voting in director elections is provided for in the institution's bylaws. When electing directors by regions, pursuant to § 611.335, each voting stockholder must be accorded the right to vote in the election of each stockholder-elected director for their region.

(c) If the association apportions its territory into geographic regions for director nomination or election purposes, out-of-territory voting stockholders must be assigned to a geographic region.

(d) Each voting stockholder of a Farm Credit institution must be allowed to cumulate votes and distribute them among the director-nominees at the stockholder's discretion unless otherwise provided in the bylaws or in the case of regional voting in director elections. Cumulative voting is not allowed in the regional voting of directors. A Farm Credit Bank may eliminate cumulative voting if 75 percent of the associations that are voting stockholders of the Farm Credit Bank vote in favor of elimination. In a vote to eliminate cumulative voting, each association shall be accorded one vote that is not a weighted vote.

(e) All voting stockholders of a Farm Credit institution have the right to vote in any stockholder vote to remove any director.

### **Subpart P--Termination of System Institution Status**

10. Revise § 611.1240(e) to read as follows:

#### **§ 611.1240 Voting record date and stockholder approval.**

\* \* \* \* \*

(e) *Voting procedures.* The voting procedures must comply with § 611.340. You must have an independent third party count the ballots. If a voting stockholder notifies you of the stockholder's intent to exercise dissenters' rights, the tabulator must be able to verify to you that the stockholder voted against the termination. Otherwise, the votes of stockholders must remain confidential.

\* \* \* \* \*

**PART 613--ELIGIBILITY AND SCOPE OF FINANCING**

11. The authority citation for part 613 continues to read as follows:

**Authority:** Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

**Subpart C--Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act**

**§ 613.3300 [Amended]**

12. Amend § 613.3300(c)(1)(i)(B) by removing the words "if a majority of the shareholders" and adding in their place the words "if a majority of voting stockholders voting".

**PART 615--FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS**

13. The authority citation for part 615 continues to read as follows:

**Authority:** Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100-233, 101 Stat. 1568, 1608.

**Subpart I--Issuance of Equities**

14. Amend § 615.5230 by revising paragraphs (a) and (b)(1) and by removing paragraph (b)(5) to read as follows:

**§ 615.5230 Implementation of cooperative principles.**

(a) Voting stockholders of Farm Credit banks and associations shall be accorded full voting rights in accordance with cooperative principles. Except as otherwise required by statute or regulation and except as modified by paragraph (b) of this section, the voting rights of each voting stockholder are as follows:

(1) Each voting stockholder of an association or bank for cooperatives has only one vote, regardless of the number of shares owned or the number of loans outstanding.

(2) Each voting stockholder-association of a Farm Credit Bank has only one vote that is assigned a weight proportional to the number of that association's voting stockholders.

(3) Each voting stockholder of an agricultural credit bank has only one vote unless otherwise approved by the Farm Credit Administration.

(b) \* \* \*

(1) Each issuance of preferred stock (other than preferred stock outstanding on October 5, 1988, and stock into which such outstanding stock is converted that has substantially similar preferences) shall be approved by a majority of the shares voting of each class of equities adversely affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

\* \* \* \* \*

## **PART 619--DEFINITIONS**

15. The authority citation for part 619 is revised to read as follows:

**Authority:** Secs. 1.4, 1.7, 2.1, 2.4, 2.11, 3.2, 3.21, 4.9, 5.9, 5.17, 5.18, 5.19, 7.0, 7.1, 7.6, 7.8 and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2015, 2072, 2075, 2092, 2123, 2142, 2160, 2243, 2252, 2253, 2254, 2279a, 2279a-1, 2279b, 2279c-1, 2279f).

16. Amend part 619 by adding new § 619.9320 to read as follows:

### **§ 619.9320 Shareholder or stockholder.**

A holder of any equity interest in a Farm Credit institution.

## **PART 620--DISCLOSURE TO SHAREHOLDERS**

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

**Authority:** Secs. 4.19, 5.9, 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2207, 2243, 2252, 2254, 2279aa-11); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656.

### **Subpart A--General**

#### **§ 620.1 [Amended]**

18. Amend § 620.1 by removing paragraph (p) and redesignating paragraphs (q) and (r) as paragraphs (p) and (q).

### **Subpart E--Annual Meeting Information Statement**

19. Revise the heading of subpart E to read as follows:

#### **Subpart E--Annual Meeting Information Statements and Other Information to be Furnished in Connection with Annual Meetings and Director Elections**

20. Amend subpart E by adding a new § 620.20 to read as follows:

#### **§ 620.20 Preparing and distributing the information statement.**

(a)(1) Each Farm Credit bank and association must prepare and provide an information statement ("statement" or "AMIS") to its shareholders at least 10 business days, but no more than 30 business days, before any annual meeting or any director elections.

(2) Each Farm Credit bank and association must provide to the Farm Credit Administration an electronic copy of the AMIS when issued.

(3) In addition to the mailed AMIS, each Farm Credit bank and association may post its AMIS on its Web site. Any AMIS posted on an institution's Web site must remain on the Web site for a reasonable period of time, but not less than 30 calendar days.

(b) Every AMIS must be dated and signed in accordance with the requirements of § 620.3(b) of this part.

(c) Every AMIS must be available for public inspection at all offices of the issuing institution pursuant to § 620.2(b) of this part.

21. Amend § 620.21 by revising the heading, removing the introductory text, and revising paragraphs (a) through (d) to read as follows:

**§ 620.21 Contents of the information statement.**

(a) An AMIS must, at a minimum, address the following items:

(1) *Date, time, and place of the meeting(s).* Notice of the date, time, and meeting location(s) must be provided at least 10 business days, but no more than 30 business days, before the meeting. If the Farm Credit bank or association will use an online meeting space as part of its meeting, the notice must also specify the date, time, and means of accessing the online meeting space.

(2) *Voting shareholders.* For each class of stock entitled to vote at the meeting, state the number of shareholders entitled to vote and, when shareholders are asked to vote on preferred stock, the number of shares entitled to vote. State the record date as of which the shareholders entitled to vote will be determined and the voting requirements for each matter to be voted upon. If directors are nominated or elected by region, describe the regions and state the number of voting shareholders entitled to vote in each region.

(3) *Financial updates.* Each AMIS must reference the most recently issued annual report required by subpart B of this part. The AMIS must also include such other information considered material and necessary to make the required contents of the AMIS, in light of the circumstances under which it is made, not misleading.

(i) If any transactions between the institution and its senior officers and directors of the type required to be disclosed in the annual report to shareholders under § 620.5(j), or any of the events required to be disclosed in the annual report to shareholders under § 620.5(k) have occurred since the end of the last fiscal year and were not disclosed in the annual report to shareholders, the disclosures required by § 620.5(j) and (k) shall be made with respect to such transactions or events in the information statement. If any material change in the matters disclosed in the annual report to shareholders pursuant to § 620.5(j) and (k) has occurred since the annual report to shareholders was prepared, disclosure shall be made of such change in the information statement.

(ii) If the Farm Credit institution has had a change or changes in accountants since the last annual report to shareholders, or if a disagreement with an accountant has occurred, the institution shall disclose the information required by § 621.4(c) and (d) of this chapter.

(4) *Directors.* State the names and ages of persons currently serving as directors of the institution, their terms of office, and the periods during which such persons have served. Institutions must also state the type or types of agriculture or aquaculture engaged in by each director. No information need be given with respect to any director whose term of office as a director will not continue after the meeting to which the statement relates.

(i) Identify by name any incumbent director who attended fewer than 75 percent of the board meetings or any meetings of board committees on which he or she served during the last fiscal year.

(ii) If any director resigned or declined to stand for re-election since the last annual meeting because of a policy disagreement with the board, and if the director has provided a notice requesting disclosure of the nature of the disagreement, state the date of the director's resignation and summarize the director's description of the disagreement. If the institution holds a different view of the disagreement, the institution's view may be summarized.

(b) An AMIS issued for director elections must also include the information required by this paragraph.

(1) Provide the nominating committee's slate of director-nominees. If fewer than two director-nominees for each position are named, describe the efforts of the nominating committee to locate two willing nominees.

(2) Provide, as part of the AMIS, each director-nominee's disclosure information collected under § 611.330 of this chapter. Institutions may either restate such information in a standard format or provide complete copies of each nominee's disclosure statement.

(3) State whether nominations will be accepted from the floor and explain the procedures for making floor nominations.

(c) When the nominating committee will be elected during director elections, notice to voting shareholders of this event must be included in the AMIS. The AMIS must describe the balloting procedures that will be used to elect the nominating committee, including whether floor nominations for committee members will be permitted. The AMIS must state the number of committee positions to be filled and the names of the nominees for the committee.

(d) If shareholders are asked to vote on matters not normally required to be submitted to shareholders for approval, the AMIS must describe fully the material circumstances surrounding the matter, the reason shareholders are asked to vote, and the vote required for approval of the proposition. The AMIS must describe any other matter that will be discussed at the meeting upon which shareholder vote is not required.

\* \* \* \* \*

**Dated: April 10, 2009**

**Roland E. Smith,**  
**Secretary,**  
**Farm Credit Administration Board.**