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SUBCHAPTER B—FARM CREDIT SYSTEM

PART 609—ELECTRONIC COMMERCE

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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).

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

Subpart A—General Rules

§ 609.905 Background.

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

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

(a) *General.* E-SIGN makes it easier to conduct E-commerce. With some exceptions, E-SIGN permits the use and establishes the legal validity of electronic contracts, electronic signatures, and records maintained in electronic rather than paper form. It governs transactions relating to the conduct of business, consumer, or commercial affairs between two or more persons. E-commerce is optional; all parties to a transaction must agree before it can be used.

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

(c) *Specific exceptions.* E-SIGN does not permit electronic notification for notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure, under a credit agreement secured by, 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 617, subparts A, D, E, and G of this chapter. In addition, E-SIGN does not apply to the writing or signature requirements imposed under the Uniform Commercial Code, other than sections 1–107 and 1–206 and Articles 2 and 2A.

(d) *Promissory notes.* E-SIGN establishes special technological and business process standards for electronic promissory notes secured by real estate. To treat an electronic version of

such a promissory note as the equivalent of a paper promissory note, you must conform to E-SIGN's detailed requirements for transferable records. A transferable record is an electronic record that:

(1) Would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(2) The issuer of the electronic record has expressly agreed is a transferable record; and

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

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

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

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

[67 FR 16631, Apr. 8, 2002, as amended at 69 FR 10906, Mar. 9, 2004]

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

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

Subpart B—Interpretations and Definitions

§ 609.920 Interpretations.

(a) E-SIGN preempts most statutes and regulations, including the Act and its implementing regulations that require paper copies and handwritten signatures in business, consumer, or commercial transactions. E-SIGN requires that statutes and regulations be interpreted to allow E-commerce as long as the safeguards of E-SIGN are met and its exceptions recognized. Generally, an electronic record or signature satisfies any provision of the Act or its implementing regulations that require such records and signatures to be written, signed, or in paper form.

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

§ 609.925 Definitions.

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

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

(b) *Electronic communication* means a message that can be transmitted electronically and displayed on equipment

as visual text. An example is a message displayed on a personal computer monitor screen. This does not include audio- and voice-response telephone systems.

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

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

(1) To send or submit information electronically; or

(2) A communication received electronically.

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

Subpart C—Standards for Boards and Management

§ 609.930 Policies and procedures.

The FCA supports E-commerce and wants to facilitate it and other new technologies and innovations to enhance the efficient conduct of business and the delivery of safe and sound credit and closely related services. Through E-commerce, System institutions can enhance customer service, access information, and provide alternate communication systems. At the same time, E-commerce presents challenges and risks that your board must carefully consider in advance. Before engaging in E-commerce, you must weigh its business risks against its benefits. You must also adopt E-commerce policies and procedures to ensure your institution's safety and soundness and compliance with law and regulations. Among other concerns, the policies and procedures must address, when applicable:

(a) Security and integrity of System institution and borrower data;

(b) The privacy of your customers as well as visitors to your Web site;

(c) Notices to customers or visitors to your Web site when they link to an affiliate or third party Web site;

(d) Capability of vendor or application providers;

(e) Business resumption after disruption;

(f) Fraud and money laundering;

(g) Intrusion detection and management;

(h) Liability insurance; and

(i) Prompt reporting of known or suspected criminal violations associated with E-commerce to law enforcement authorities and FCA under part 612, subpart B of this chapter.

[67 FR 16631, Apr. 8, 2002; 69 FR 42853, July 19, 2004]

§ 609.935 Business planning.

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

§ 609.940 Internal systems and controls.

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

(a) Follow and achieve business plan objectives and policies and procedures requirements regarding E-commerce; and

(b) Prevent and detect material deficiencies on a timely basis.

§ 609.945 Records retention.

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

Subpart D—General Requirements for Electronic Communications

§ 609.950 Electronic communications.

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

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

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

PART 610—REGISTRATION OF MORTGAGE LOAN ORIGINATORS

AUTHORITY: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 1.13, 2.2, 2.4, 2.12, 5.9, 5.17, 7.2, 7.6, 7.8 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2021, 2073, 2075, 2093, 2243, 2252, 2279a–2, 2279b, 2279c–10); and secs. 1501 *et seq.* of Pub. L. 110–289, 122 Stat. 2654.

SOURCE: 78 FR 51048, Aug. 20, 2013, unless otherwise noted.

§ 610.101 Cross reference.

The rules formerly at 12 CFR part 610 have been recodified by the Consumer Financial Protection Bureau at 12 CFR part 1007, ''S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators (Regulation G)''.

PART 611—ORGANIZATION

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