

FARM CREDIT ADMINISTRATION**12 CFR Part 620**

RIN 3052-AC37

Disclosure to Shareholders—Annual Report to Shareholders**AGENCY:** Farm Credit Administration.**ACTION:** Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, we), proposes to amend § 620.4 of our regulations to allow Farm Credit System (System) institutions 90 calendar days to prepare and distribute annual reports to shareholders, while retaining the 75 calendar day requirement for electronic reporting and distribution to the FCA.

DATES: You may send comments on or before September 13, 2007.

ADDRESSES: We offer a variety of methods to receive your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, please consider another means to submit your comment if possible. 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.
- *Agency Web site:* <http://www.fca.gov>. Select "Legal Info," then "Pending Regulations and Notices."
- *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.
- *Fax:* (703) 883-4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

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 "Legal Info," and then select "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 electronic-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Christopher D. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4414, TTY (703) 883-4434; or Bob Taylor, Attorney Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020; or Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

SUPPLEMENTARY INFORMATION:**I. Objectives**

Our objectives in this proposed rule are to:

- Extend the time for System institutions to prepare and distribute their annual reports to shareholders from 75 calendar days to 90 calendar days; and
- Promote high quality and timely reporting and disclosure by System institutions to shareholders and the FCA.

II. Background*A. Annual Report Distribution Under FCA Regulations*

Part 620, Disclosure to Shareholders, establishes the requirements for financial reports for Farm Credit banks and associations. In pertinent part, § 620.4 establishes the time requirements for System institutions to prepare and provide to their shareholders an annual report.

On March 14, 2006, the FCA proposed to amend our regulations at part 620. Among other things, we proposed to amend § 620.4(a) so that all annual reports would be filed within 75 calendar days of the end of an institution's fiscal year. At that time, institutions had a 90-day deadline. The FCA stated that significant technological advances had occurred in the last 10 years that both increased the market's demand for more timely information and improved the ability of institutions to capture, process, and disseminate this information. Additionally, the FCA stated that accelerating the time to report the financial condition of a System institution to shareholders, investors, and the general public would improve information flow and facilitate shareholder and investor decisionmaking. Finally, the FCA stated that the proposed timeframes were a reasonable compromise between industry practices and the unique cooperative structure of the System.

Our amendments to part 620 were published as a final rule on December

20, 2006, and became effective on February 16, 2007. However, the final rule provided that compliance with all provisions of the rule must be achieved by the start of the fiscal year immediately following the effective date of the rule. Thus, the 2007 annual report would be the first annual report distributed under the accelerated filing guidelines.

B. System's Concerns

During the past few months, System institutions have raised concerns regarding the new 75-day filing requirement. System institutions have stated that they believed the 75-day requirement adopted in December 2006 only applied to the electronic filing of the report with FCA, similar to the accelerated electronic filings of reports of public companies with the Securities and Exchange Commission.

System institutions have also raised concerns regarding the report sent to shareholders. Typically, System institutions send hard copy annual reports to their shareholders and electronic reports to the FCA. Based on the System's current processes and requirements for preparation and distribution of their annual reports, they have indicated that they would not be able to comply with the 75-calendar-day accelerated distribution requirement to their shareholders and still meet the objectives of providing them timely, accurate, and high quality disclosures. Specifically, System institutions have collectively stated that it will be extremely onerous for them to comply with the 75-calendar-day accelerated distribution requirement for the annual report to shareholders because of the prohibitive costs and time needed for: (1) The external audit process; (2) the audit committee review; and (3) printing and distribution of the report. Due to the perceived ambiguity of the prior rulemaking and the difficulties involved in producing high quality annual reports to shareholders, System institutions have requested that FCA require the annual report be sent to shareholders within 90 days rather than 75 days.

C. FCA Response

FCA has reviewed the System's concerns and is proposing an amendment to § 620.4(a). The amended rule would allow System institutions 90 calendar days after the end of a fiscal year to provide their annual reports to shareholders, while retaining the 75-calendar-day requirement to send an electronic copy of the report to us.

To ensure accelerated disclosure, the FCA would require that each System

institution: (1) Publish a copy of its annual report on its Web site when it sends the report to us electronically, and (2) provide prior written notification to its shareholders and other interested persons that the institution will publish its annual report on the institution's Web site when the report is sent electronically to the FCA. A System institution must develop procedures to ensure that prior written notification to the shareholders is prominent and conspicuous so that there is effective shareholder notice that the annual report will be published on its Web site and that shareholders will be provided a copy of such report within 90 calendar days of the end of its fiscal year. The notification can be at the time a loan is made to the shareholder, when the annual meeting information notice is sent to each shareholder, by a postcard to all shareholders, or at any other time before the annual report is published. After effective notice is provided to a shareholder, further notification to that shareholder is not required.

In addition, the reports filed with the FCA and posted on the institutions' Web sites would be available for public inspection as required by § 620.2(b). This would allow shareholders and other interested persons to have access to the annual report at that time. We believe that this bifurcated approach resolves any ambiguity from the prior rulemaking and fully addresses the System's logistical issues of providing an attractive, high quality annual report to shareholders, while meeting the goal of accelerated filing and disclosure.

Additionally, the copy of the annual report sent to the FCA electronically and the annual report provided to the shareholders must be substantively identical. The FCA realizes that the annual report sent electronically to the FCA may lack photographs or other "glossy" pictures, graphs, or covers. The FCA also realizes that System institutions may want to simplify the format of the annual reports sent to shareholders and not use photographs or other elaborate graphics.

D. Methods of Accelerated Reporting

To achieve accelerated reporting to both the FCA and shareholders, System institutions can provide electronic annual reports to their shareholders, as they do to the FCA. Under E-SIGN,¹ electronic reports have the same legal

effect as paper reports. Part 609 of the FCA regulations summarizes the pertinent provisions of E-SIGN.

In order to provide electronic notices to a customer, both the System institution and the customer must agree to electronic reporting. E-SIGN establishes different technological and other standards for a System institution conducting E-commerce with a "business" or a "consumer".² Some System loans qualify as consumer transactions, while others are business transactions. Thus, System institutions must determine whether a loan qualifies as a consumer transaction or a business transaction to comply with E-SIGN.

In order to effectively use electronic disclosures, if they so choose, System institutions must begin planning now on how to achieve compliance with E-SIGN and the FCA's regulations. A System institution cannot decide to send electronic disclosures to a shareholder without the shareholder's consent, nor can an institution institute electronic disclosures to all shareholders on the basis of a majority vote of the shareholders. We intend to provide further guidance on electronic disclosures in an informational memorandum or similar communication. For additional background information on the delivery of electronic communications, see our informational memoranda dated October 23, 2001 regarding electronic communications on our Web site.

E. Technical Amendment

We are also proposing a technical amendment to § 620.2(c). We are proposing to omit the second sentence of that paragraph to avoid duplication with § 620.2(d).

III. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the 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 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, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

² A "consumer" is an individual who obtains, through a transaction, products or services that are used primarily for personal, family, or household purposes.

List of Subjects in 12 CFR Part 620

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

For the reasons stated in the preamble, part 620 of Chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. 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, 100 Stat. 1568, 1656.

Subpart A—General

§ 620.2 [Amended]

2. Amend § 620.2(c) by removing the second sentence.

Subpart B—Annual Report to Shareholders

3. Revise § 620.4(a) to read as follows:

§ 620.4 Preparing and providing the annual report.

(a) Each institution of the Farm Credit System must:

(1) Prepare and send to the Farm Credit Administration an electronic copy of its annual report within 75 calendar days of the end of its fiscal year;

(2) Publish a copy of its annual report on its Web site when it sends the report electronically to the Farm Credit Administration;

(3) Provide prior written notification to its shareholders and other interested persons that the institution will publish its annual report on the institution's Web site when the report is sent electronically to the Farm Credit Administration; and,

(4) Within 90 calendar days of the end of its fiscal year, prepare and provide to its shareholders an annual report substantively identical to the copy of the report sent to the Farm Credit Administration under paragraph (a)(1) of this section.

* * * * *

Dated: August 8, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.
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¹ E-SIGN stands for the "Electronic Signatures in Global and National Commerce Act" (Pub. L. 106-229) which became effective October 1, 2000. Electronic contracts, signatures, and recordkeeping, in most instances, have the legal effect of their paper counterparts.