

## 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 elec-

tronic 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