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: Final rule.

SUMMARY: The Farm Credit Administration (FCA or we) issues this final rule on Farm Credit System (System) bank and association director elections and other voting procedures. The final rule clarifies director election processes and updates FCA regulations to incorporate interpretations made through bookletters to System institutions. It also consolidates general election procedures, clarifies the role of nominating committees, enhances eligibility and disclosure requirements for director candidates, and improves annual meeting information statement instructions. The final rule also adds new regulations on floor nominations and meetings of stockholders. We expect this final rule will increase stockholder participation, enhance impartiality, and strengthen disclosures in director elections.

DATES: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

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SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this final rule are to:

- Strengthen the independence of nominating committees;
- Encourage greater stockholder participation in the director election process;
- Ensure that 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 regulations.

II. Background

The Farm Credit Act of 1971, as amended (Act) (Pub. L. 92–181, 85 Stat. 583), establishes the System as a farmer-owned cooperative system that provides credit to farmers, ranchers, producers or harvesters of aquatic products, and rural homeowners. The System's cooperative structure relies on stockholder control, participation, and ownership, supported by accurate and timely information provided by the directors of System institutions. Boards of directors have the responsibility of encouraging stockholder participation in the management, control, and ownership of the cooperative. Importantly, it is also from this pool of interested, active, and informed stockholders that the cooperative draws its next generation of directors.

On April 16, 2009, we published a proposed rule (74 FR 17612) to strengthen certain director election provisions and add other provisions to ensure that stockholders' interests continue to be the focus in the boardroom through their elected directors. We further proposed consolidating our director election rules into subpart C of part 611, "Election of Directors and Other Voting Procedures," to keep subject matters together and facilitate ease of use. We initially established a 60-day comment period but, on the request of the public, extended that period another 60 days.[1] The extended comment period for the proposed rule closed on August 14, 2009.

III. Comments and Our Response

We received 96 comment letters to our proposed rule from individuals and entities associated with the System, including the Farm Credit Council (FCC), acting for its membership, and each of the five Farm Credit banks. Of the comment letters received, 62 expressed support for the FCC comment letter, adding individual elaborations when they deemed them appropriate. We discuss the comments to our proposed rule and our responses below. Those areas of the proposed rule not receiving comment are finalized as proposed unless otherwise discussed in this preamble.

A. General Issues

We received 68 comments on the need for additional regulations on election processes in the System, including one from the FCC and multiple letters from members of individual System associations. While most commenters supported our objective of improving System election processes, the FCC, three Farm Credit banks and several associations questioned the need for additional regulations. The FCC and a couple of other commenters acknowledged that some of the existing regulations needed updating, but remarked that they were unaware where the existing rules had failed. Other commenters remarked that we should not impose regulatory requirements that restrict individual institution discretion in elections. These comments are addressed here.

1. Need for Regulation

The FCC and 49 other commenters asked that we withdraw the rule and work with the System to find a nonregulatory approach to strengthen institution elections. Many of these commenters remarked that active dialogue with System boards can address any weaknesses in the current election process, as can FCA informal guidance and examination. The FCC and a few other commenters remarked that our existing rules on election practices already exceed other regulators and suggested we adopt the practices of other financial regulators by requiring each institution to have policies in place specifying election practices in lieu of regulations. A few associations commented that the election process in the System is working and the rule would have a negative impact and increase costs, but one association remarked that the rule provided many opportunities for enhanced elections. This association also cautioned that those opportunities should not be forced upon the institutions. Another association stated that the rule does not follow best practices and expressed dismay at the implementation efforts that would be required if the rule became final, including changes to bylaws and policies. This same association asserted that the rule does not further the safe and sound operations of the System. Conversely, one association expressed appreciation that the rule recognizes best practices, but the commenter questioned the need to capture best practices in regulations. Another commenter stated that associations are in a better position to structure election procedures. The FCC and other commenters remarked that the proposed regulatory scheme seemed unjustified based on the limited election provisions in the Act. Still another commenter

[1] *See* 74 FR 23961 (May 22, 2009).

remarked that adoption of the rule could carry unintended consequences undermining the stated objectives of the rule. A couple of commenters expressed concern that the rule does not give sufficient consideration to the different sizes and operations of various System institutions. One commenter went so far as to state that the rule was a regulatory burden. Another expressed a lack of optimism that the rule would improve election processes. Two Farm Credit banks cautioned FCA on regulating election procedures within the System, questioning if such rules are in keeping with FCA's status as an arm's-length regulator. One bank stated that the proposed rule and existing rules are too detailed, explaining that individual institutions are better equipped to control election procedures. This same bank questioned why this rulemaking was needed as it was not aware of any harm or purpose that would be addressed by the rule.

We are not withdrawing the rule, but, in response to the comments received, we have amended certain provisions based on specific comments. While voluntary administration of elections is valuable, it does not replace the stability that rules provide in assuring System stakeholders of the safety and soundness of the System, and we have a responsibility to address this issue. Moreover, an effective director election process is critical to good governance, which in turn is essential for institution safety and soundness. The FCA is the independent Federal agency in the executive branch of the Government responsible for examining and regulating System institutions. In the course of issuing regulations, we consider whether the rulemaking may duplicate other requirements, would be ineffective, or impose burdens that are greater than the benefits received. Also, we promulgate rules necessary to implement the expectations and requirements of the Act, which, in the case of director elections, is to support stockholder participation in the management, control, and ownership of the System. We believe this rule clarifies the intended meaning of certain existing rules, eliminates confusion through reorganization of the rules, replaces outdated regulatory language with more current terminology, and introduces technological alternatives to existing requirements. We also believe that this rulemaking is not a regulatory burden, as a large portion of it incorporates previous informal guidance provided to institutions and, therefore, does not result in significant adjustments to individual institution operations. We do not agree with comments that our rule is inconsistent with what other regulators require. The FCA, as an independent regulator of the System, is not required to follow the actions of other regulators. Instead, we consider the policy positions of other regulators to decide if we should follow them or take a different approach if appropriate to implement the requirements and expectations of the Act.

Our election rule sets a minimum level of performance and gives prime consideration to the cooperative structure of the System. We believe the assurances derived from this regulatory minimum standard will benefit the System overall by increased stockholder, investor, and public confidence. In this rulemaking, our intent is to ensure that appropriate election standards exist for all System institutions. We carefully considered the size, complexity, risks, interrelationships, and resources of System institutions when developing our rules, and incorporated variations and flexibility as appropriate. While we believe it is important to preserve individual institution flexibility when possible, our regulatory responsibility requires us to issue regulations that we determine appropriate for safety and soundness reasons. While commenters remarked that they knew of no risk or problem that needs to be addressed in a regulation, we explain that we are not limited to issuing regulations only when there is an existing problem. It is our responsibility as a safety and soundness regulator to be proactive in our rulemaking and provide standards that help avert potential problems.

2. Examination Instead of Rulemaking

Thirty-four (34) System commenters cited our examination and enforcement authorities as a sufficient means to address election issues, concluding that additional regulations are unnecessary. Many explained that the FCA examination function is better suited to addressing individual problems, rather than a rulemaking that impacts the entire System, and that we should focus our attention on those institutions with election concerns instead of developing a set of regulations impacting all institutions. The FCC and several other commenters suggested FCA issue an election governance policy statement and then use its examination authority to verify compliance with the policy. Commenters also stated that we have all the enforcement powers necessary to correct any unsafe or unsound election practices without this rule. The FCC commented that because there are no problems in election of bank directors, there is little burden on FCA in examining individual bank election policies, rather than issuing regulations and examining for compliance with those regulations.

We examine to ensure the safety and soundness of System institutions and their compliance with laws and regulations. This function is not a substitute for our responsibility to issue regulations implementing the Act and ensuring the safety and soundness of System institutions. Our examiners use our rules as the basis for compliance determinations and to require any necessary corrective actions. Regulations reduce the likelihood that examinations will uncover unsafe and unsound practices and provide a minimum standard of performance to assure stakeholders of the safe and sound operations of System institutions. While we agree with the commenters that we have a high level of enforcement authority, we do not view it as our primary tool for ensuring the safety and soundness of System institutions. Safe and sound operations of individual System institutions are ensured by a clear set of rules and thorough examinations.

3. Interaction With Bylaws

The FCC and eight other commenters stated that our rulemaking efforts conflict with section 5.17(b) of the Act. This section of the Act precludes FCA from approving institution bylaws. As we have explained in other rulemakings, issuing rules impacting bylaws does not mean we are approving bylaws in violation of section 5.17(b) of the Act. The prohibition on bylaw approval doesn't preclude rulemaking on matters affecting an institution's bylaws or the safe and sound operations of System institutions. In fact, the Act at section 5.17(a)(9) directs us to issue rules and regulations "necessary or appropriate" to carry out the Act. In pursuit of ensuring a safe and sound System and carrying out the Act, institution bylaws and operations are necessarily impacted by our rules. Additionally, while the authority of System institutions to establish bylaws is fairly broad, it is not without limits. Bylaws must be consistent with applicable laws and regulations, and we retain the responsibility to examine institution bylaws to ensure compliance. Consequently, we may regulate the terms and conditions by which institutions exercise their powers through their bylaws, while not approving the bylaws themselves, and then examine compliance with our regulations.

4. Differences between Farm Credit Banks and Associations

Two Farm Credit banks expressed concern that the regulation does not adequately recognize the differences between bank and association election procedures. One commenter remarked that the rule is too restrictive for banks, while not providing enough protection of association rights. This commenter asked the FCA to reevaluate the proposed rule to recognize differences in election procedures between banks and associations contained in the Act. One association remarked that FCA should adopt the concept of 75-percent stockholder-associations' affirmative vote on all bank election procedures, similar to the current rule on overturning cumulative voting in bank elections. We disagree with the suggestion that stockholder-associations be allowed to overrule bank board decisions on a bank's election process. Each Farm Credit bank may consider the suggestions of its stockholder-associations and incorporate them into the bank's election policies and procedures if the bank desires. We agree that the rule requires further clarity in its application to Farm Credit banks versus associations and have made modifications to those sections of the rule we considered appropriate. We addressed these specific modifications in the section-by-section analysis of this preamble below.

5. Implementation Date

We received five comments asking that the implementation date of the rule be extended to facilitate compliance. We proposed no delayed implementation date because we do not consider it necessary. As stated earlier, much of this rulemaking incorporates previous guidance provided by FCA to the System. We are not delaying the implementation of the other areas of the rule because the timing of the rule's effective date is not anticipated to impact ongoing elections.

B. Specific Issues

1. Meetings of Stockholders [New §§ 611.100 and 611.110]

a. Definitions [New § 611.100]

We received two comments on the definition of "mail ballots." The commenters asked that we continue to permit mail ballots to be used by Farm Credit banks, whether or not a stockholders' meeting has been held. One of the commenters pointed out that Farm Credit banks, as acknowledged elsewhere in the proposed rule, do not always have stockholders' meetings when conducting director elections. This same commenter also remarked that proxy ballots could be used if mail ballots were eliminated.

The commenter's point that the definition offered in the proposed rule would effectively prevent banks from using mail ballots absent a stockholders' meeting is well made. Our proposed definition was in no way intended to prevent Farm Credit banks from using mail ballots, absent a stockholders' meeting. We are therefore removing that portion of the definition and placing the language explaining that mail ballots may not be distributed prior to the conclusion of a meeting in paragraph (d) of § 611.340, which discusses the time when proxy ballots may be accepted and mail ballots may be distributed in connection with stockholders' meetings. We believe this movement of language regarding when mail ballots are distributed from § 611.100(a) to § 611.340(d) clarifies that when a stockholders' meeting is held to conduct elections, mail ballots may not be issued before the conclusion of that meeting.

Although no comments were made on the definition of mail ballots, including by electronic means, we are clarifying that electronic ballots classified as mail ballots are those cast by electronic mail. We did not intend to characterize electronic, "real time" balloting procedures, such as electronic ballot stations or online balloting that may be used by stockholders attending a meeting either in a physical location or online, as mail ballots. Those electronic "real time" balloting methods would properly be characterized as in-person voting. We also clarify that text messaging is not an appropriate method for balloting as it is nearly impossible to verify the identity of the sender of text messages.

One commenter remarked that the definitions for online meetings and online meeting spaces, while providing flexibility, do not allow for meetings without a physical space. This commenter asked for clarification on what business can be conducted by mail or online without physical meetings. This comment is better directed to § 611.110, "Meetings of stockholders," since the definitions in § 611.100 do not contain the limitation mentioned, but we respond to the comment here. We require a physical meeting space when using online meetings for all associations and those Farm Credit banks allowing floor nominations. As explained in the proposed rule preamble, E-commerce requires each stockholder to agree to electronic communication in lieu of traditional communications, so unless all stockholders have made such an agreement, a physical meeting space is needed to provide a "floor" for floor nominations. Because the commenter thought our proposed rule would require Farm Credit banks to always have a physical meeting space when using online meetings, we are modifying § 611.110(a) to clarify this requirement always applies to associations, since associations must allow floor nominations. The requirement would only apply to Farm Credit banks permitting floor nominations, as reflected in § 611.326(b)(2).

We received one comment on the definition of a quorum, asking if a quorum applies to individual meeting items or the entire meeting. A quorum is the number of stockholders needed to be present to start a meeting; it does not vary for each agenda item. However, we are removing the definition of a quorum for reasons stated under section III.B.1.d. of this preamble. We received no comments on the other provisions of § 611.100 and finalize those as proposed.

b. Stockholders' Meetings [New § 611.110]

We received 22 comments, including the FCC, on System associations' holding annual director elections and allowing for the use of online meetings as part of the annual meeting process. Many of these commenters expressed dismay at having to have one large meeting each year instead of individual and localized customer appreciation meetings. Several commenters also stated that institutions should remain free to determine the meeting process. An association commented that it had stopped holding annual meetings 12 years ago, instead using localized customer appreciation gatherings, which have resulted in significant increases in stockholder participation and attendance. Still another association stated that it has scaled down its annual meeting and redirected the cost savings in separate customer appreciation events. One commenter remarked that annual meetings are not practical, nor reliable, for generating stockholder involvement. Another commenter expressed concern that annual meetings are viewed as the only or best means of stockholder participation in institution business. Still another stated that one annual meeting, versus multiple local meetings, is difficult to schedule in a fair manner given the variety of agricultural production timelines involved. Other commenters remarked on the growing territorial sizes and difficulties presented in holding a single annual meeting. One commenter stated that even using regional meetings does

not address timeframes or improve stockholder participation.

The provision that associations hold annual meetings of stockholders comes from section 4.15 of the Act, which provides that each association "shall elect a nominating committee by vote of the stockholders at the annual meeting to serve for the following year." In addition, we are seeking to recognize, within the general election procedures, § 611.1123(a)(3) of our merger regulations. Under § 611.1123(a)(3), the governance plan for a continuing association must provide for the election of at least one director at each annual meeting held subsequent to the date of merger. Incorporating this requirement into general election provisions facilitates compliance as most associations have merged under this rule and therefore have annual meetings and director elections.

We assure commenters that our rule does not require a single, large annual meeting, only that an annual meeting be held. Associations may use a single location or multiple locations to hold their annual meetings. It is up to the association to determine how to best meet the needs of its stockholders in structuring the meeting, but we encourage associations that serve diverse types of agricultural operations or that have large territories to consider using sectional sessions out of consideration for its borrowers. Annual meetings, besides serving as a forum for elections, provide the opportunity to review the association's financial condition, discuss its progress or setbacks over the previous year, look at the challenges that management and board expect to face in the year ahead, address member concerns that warrant the board's attention, and discuss the rights, privileges, and obligations of members, individually and collectively. The annual meeting creates the unique setting for such discussions.

One association objected to requiring annual director elections, explaining that it rotates director terms each year and, because appointed directors are included in that rotation, a stockholder-elected director seat may not be up for election each year. Another commenter expressed concern that the rule does not consider special circumstances, such as mergers, which make electing a director every year impractical.

We disagree with comments that annual director elections, held in conjunction with annual meetings, are not necessary every year. We expect associations to stagger the terms of all their directors, but we do not expect the inclusion of appointed directors in a director rotation cycle to prevent the election of a stockholder-elected director each year. Since appointed directors (either outside directors or board-appointed stockholder directors) are not elected by the voting stockholders but instead, are chosen by the other board members, they should not be included in the director election rotation cycle. With respect to mergers, FCA has favorably responded to requests from associations to suspend director elections in a merger year or to facilitate a planned downsizing of the continuing board of directors.

A commenter asked us to clarify the language in § 611.110(a) regarding the interaction of mail ballots with annual meetings. The rule provides that in-person (including proxy ballots) and online elections of directors must occur at the annual meeting, but mail ballots may be distributed after the meeting. Thus, associations have to elect a director each year, but the timing of the election ballot depends on the balloting methods used: in-person, online, and proxy balloting happens at the annual meeting, but mail balloting happens after the annual meeting concludes. Based on this comment, we have revised §§ 611.110(a) and 611.340(d) to make it clear that mail ballots may only be distributed after the annual meeting.

The FCC and one association asked that banks not be required to have annual meetings because the Act does not require it. Another association asked that banks not be required to elect directors annually. These commenters explained that the manner in which banks communicate with stockholders for election purposes should be left to the banks. We clarify that this rule does not require banks to have annual meetings. While we are not requiring Farm Credit banks to hold these types of meetings, we believe, however, they should do so. Thus, we are not removing the language from § 611.110(a) encouraging Farm Credit banks to hold annual or periodic meetings. We continue to strongly believe that the Act places significant expectations on System institutions to foster and facilitate stockholder involvement in, and knowledge of, the cooperative nature of each System institution and the System itself. Farm Credit banks should give serious consideration to the value of holding an organized, structured meeting wherein stockholder-associations can communicate with their board members on matters that may be of interest and concern to them. In addition, Farm Credit banks are required to elect at least one director on an annual basis.

Most commenters on the online meeting aspect of the rule indicated appreciation for the provision, but expressed reservations on its usefulness, costs and implementation. One commenter remarked that using online meetings may not be appropriate or available in all locations and asked us to clarify whether or not we were requiring online meetings. A couple of commenters remarked that the cost of using technology to conduct meetings or elections may not be justified by actual use of the feature. One of these commenters also stated that based on "hits" to its Web site, stockholders do not prefer this manner of communication. A couple of commenters also stated the security requirements for online meetings and elections would outweigh their benefit. One commenter stated that its stockholders' infrastructure and culture did not support online meetings. Three associations remarked that some institution stockholders did not have the technical skills to participate in online meetings. Other commenters stated that online meetings are not viable means for increasing stockholder participation as many stockholders prefer not to participate in online banking activities. Two associations expressed concern with the implementation issues associated with using online meetings, such as coordinating a virtual floor for an online meeting. One of these commenters stated that online meetings send the message that the board is not interested in personal interaction with stockholders. A couple of commenters observed that a number of its stockholders do not have Internet access, particularly in rural areas, so would not be able to attend an online meeting. However, 12 other commenters favored the use of online meetings, most welcoming a regulation identifying it as a tool for associations to use to increase participation as long as it is not a requirement, but one of these commenters stated that online procedures should be left to the institutions. Another stated that online meetings should not entirely replace a physical meeting.

The rule provides associations the option of holding their annual meetings in both a physical location and online. While we recognize that associations incur certain costs associated with annual meetings, we believe the association's investment in its members through stockholder participation and involvement in the annual meeting justifies the costs involved. In § 611.110, System institutions may use online meetings to augment the traditional annual meetings held in a physical

location, but are not required to do so. In response to the comments, we are modifying this aspect of the provision to clarify that the use of online meetings, online voting, and other technological resources, is optional.

We do not view online meetings as eliminating the board members' personal interactions with stockholders, but as an opportunity for enhanced stockholder participation. Online meetings allow online attendees to communicate with board members and others who are present at the physical meeting site. Online attendees can also nominate a person as a director candidate from the virtual floor provided by the online meeting, ask questions of the meeting chair, and engage in discussions, etc., as if they were physically at the meeting. We recognize that implementing online meetings involves up-front costs to put this technology to use. Each institution must decide whether these costs are justified in light of the benefits to the institution and its stockholders in the long run. We also recognize that there are rural areas of the country where broadband Internet access is not yet available. For this reason, the rule requires that associations must always have a physical location for the annual meeting. The online meeting is an option that is available.

Unlike associations, banks are not required to hold annual meetings or to elect their directors or the nominating committee as a part of the annual meeting process. For Farm Credit banks not using floor nominations, no physical meeting space is required. Thus, bank business can be conducted exclusively online, including conducting director elections and the election of the nominating committees, if the bank provides an online medium for casting votes or uses mail ballots.

c. Stockholder Attendance [New § 611.110(d)]

We received 25 comments, including one from the FCC and multiple letters from members of individual associations, on the proposed requirement that Farm Credit banks and associations actively encourage stockholder attendance at the annual meeting. Commenters stated that the requirement, while well intended, was not practical or necessary. Fourteen (14) commenters from the same association remarked that stockholder participation is achieved outside the annual meeting, such as in focus group meetings, education programs for young, beginning, and small farmers, and customer appreciation days. These same commenters observed that annual meetings are probably the least effective at obtaining stockholder participation, particularly in those associations with larger territories. Commenters from another association remarked that directors are the main source of attendance at annual meetings and that each stockholder receives notice of the meetings and has the freedom to attend or not. One commenter remarked that the regulatory provision would be difficult to enforce. One Farm Credit bank remarked that stockholder participation at annual meetings is overrated, especially when mail ballots are used. This bank also stated that this participation is not as important as regular communication between institutions and stockholders and a sound patronage program. One commenter also remarked that the farming needs of stockholders also play an important role in attendance at annual meetings. Still another commenter asked us to approach member involvement more broadly, instead of focusing on annual meetings. The FCC commented that the proposed provision was arbitrary and asked FCA to allow institutions to determine the best methods for enhancing stockholder participation. The FCC also commented that this provision partially conflicts with the provision to use the Annual Meeting Information Statement (AMIS) for communicating other stockholder participation opportunities. One commenter objected to using the AMIS as a vehicle to enhance stockholder participation, indicating that the AMIS is already filled with information, and more data may dissuade stockholders from reading the AMIS. A few commenters stated that it would be more appropriate for FCA to require institutions to adopt policies encouraging stockholder participation in the management, ownership, and control of their respective institutions. One association remarked that making encouragement of stockholder participation a requirement would not be beneficial or effective to the stated objective.

We agree with comments that the proposed requirement in § 611.110(d), which would have required Farm Credit banks and associations to actively encourage stockholder attendance at the annual meeting, would be difficult to implement and are withdrawing it. However, we do not agree with the comments that encouraging stockholder attendance at stockholder meetings is not necessary and is overrated since there are other means of communication that take place between the institution and members. Stockholder participation and involvement in annual meetings reinforce communications between the institution and members and may suggest a need to improve communications. In response to the comment that FCA should require institutions to adopt policies that encourage stockholder participation in the management, ownership, and control of their institution, we believe that institution boards should undertake this on their own initiative. FCA encourages System institutions to be creative in finding ways to reach out to member-stockholders beyond the lending relationship, provision of related services, and the distribution of annual and quarterly reports and other required disclosures.

d. Quorums

The proposed rule would have clarified, in part, that a quorum count may not include mail ballots. We received 72 comments on this provision, most objecting to preventing institutions from including mail ballots in a quorum count. A minority of commenters either supported the provision or understood its objective. The FCC expressed strong objections to removing mail ballots from quorum counts, arguing that using mail ballots in a quorum count is as logical as allowing proxy ballots in quorum counts. The FCC further contested that including mail ballots in quorum counts is in keeping with cooperative principles because it results in larger stockholder participation. Several commenters also remarked that including mail ballots in quorum counts increases stockholder participation, giving examples whereby participation at annual meetings increased from 3.66 to 12.76 percent when the institution began counting mail ballots in the quorum requirement or that using mail balloting instead of in-person voting tripled stockholder participation. Other commenters argued that eliminating mail ballots from quorum counts will result in lower stockholder participation, lower quorum requirements, and increased annual meeting costs. Commenters also asked for confirmation that quorums be determined by the institutions. An association remarked that online meetings do not justify removing mail ballots from quorum counts. A couple of commenters also observed that the premise that mail balloting occurs after a meeting is convened does not take into consideration that the ballot itself is approved by the institution's board before the meeting. Another commenter explained its institution requires mail ballots to be returned before the annual meeting so voter participation is verified

by the start of the meeting. Still another commenter remarked that in-person quorums are difficult to achieve through regional meetings, so mail ballots are necessary to the count.

Commenters supporting the proposed rule on quorums remarked that while proxy ballots may be used for quorums, mail ballots are used to tally voting results. However, these same commenters suggested it is better left to each institution to decide the matter. In a separate comment, AgriBank commented that it recognized the legal issue involved in using mail ballots in a quorum count, as discussed in the proposed rule preamble, but suggested FCA could overcome that by issuing a rule allowing for the practice. AgriBank offered the perspective that stockholder participation encompasses the entire meeting and election process, from the start of the meeting to the announcement of election results, so including mail ballots in quorum counts is justifiable.

A quorum is the minimum number of voting stockholders needed for a meeting to begin and business conducted. Stockholder participation is separate and distinct from a quorum count. In response to comments on ballot approval, we note that the board's approval of the ballot format in advance of the meeting has no bearing on the quorum requirement. In response to the commenter who noted that his institution requires mail ballots to be returned before the annual meeting so its voter participation is verified by the start of the meeting, our regulations do not permit mail ballots to be distributed prior to the end of an annual meeting.

After considering the comments, we are not finalizing § 611.120 in this rulemaking. As suggested by commenters, this provision of the proposed rule may be better suited to the continued discretion of each institution's business judgment. We continue to expect institutions to establish sound quorum requirements for director elections. We are retaining the requirement that each institution's bylaws identify quorum requirements. Due to other changes in this rulemaking, we are moving this requirement to § 611.110(a).

2. Eligibility for Membership on Board of Directors [§ 611.310]

We received four comments on new paragraph (e), which clarifies 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. We received related comments on the companion provision in § 611.325(c) and address those comments here as well. One commenter expressed no objection to the rule. Another commenter suggested relaxing the rule to allow attendance at an organizational meeting if no director nominees are discussed. Still another commenter asked that the existing rule be left alone, explaining that it is understandable, removes the appearance of being self-serving, and is well received by the nominating committee. One commenter argued that committee members should be allowed to recuse themselves from discussions or decisions and then be nominated to run for the board as long as the nominating committee still has a quorum after that person leaves the committee. The FCC raised a concern that nominating committee members may become floor nominees after presenting the nominating committee report and believes that such a person should not be eligible to be nominated as a director candidate from the floor. One commenter asked for clarification on when the prohibition attaches.

While we appreciate the comments supporting our existing rule, we believe it is important to clarify that the existing rule addresses a change in a person's status after election to, but before service on, a nominating committee. The rule provides that individuals elected to the nominating committee are permitted to resign from the committee and run for election to the board only if they did not attend any meetings of the nominating committee. We encourage institutions to elect alternate members so the committee can function without interruption if one of its members were to resign. In this rule, nominating committees will be required to keep minutes of their meetings, including meeting attendance, which will enable the institution to verify that the resigning member did not attend any committee meetings. As we explained in the proposed rule, 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. As long as a nominating committee member does not attend any nominating committee meeting, the person may resign from the committee to run for election to the board in the same election cycle. Thus, we are finalizing this provision in § 611.310(e), and the related provision at § 611.325(c), as proposed.

We received comments from the FCC, a Farm Credit Bank, and two associations on new paragraph (f) in § 611.310, requiring associations to inform out-of-territory borrowers as to the borrower's eligibility to serve as a director. We received related comments on the companion provision in § 611.325(a) and address those comments here as well. The FCC and one association asked that we revise the requirement on giving notice of eligibility, remarking that associations should not have to make extraordinary disclosures to out-of-territory borrowers for this purpose. They instead suggested that disclosures on out-of-territory borrowers' eligibility to serve as directors be part of other communications to all stockholders on director qualifications. The FCC then asked that if FCA finalizes the provision for special disclosures to out-of-territory borrowers, the disclosure only be required if an association's bylaws do not prohibit such borrowers from serving as directors. One association asked that the disclosure be limited to those associations prohibiting out-of-territory borrowers from serving as directors. The bank raised no objection to allowing out-of-territory borrowers to serve as directors and suggested that this type of disclosure should be provided to all borrowers because a borrower within the territory may later move outside the territory. One association objected to the entire provision due to the difficulty in knowing whether borrowers are stockholders in multiple associations.

We agree with those commenters who suggested that notice should only be provided to out-of-territory borrowers holding voting stock in those associations that prohibit such borrowers from running for election. Voting stockholders have an assumed right to run for election, so notice is not necessary. However, because the rule allows associations to limit this right in the case of out-of-territory borrowers, those borrowers should be notified of such. Thus, we revise our proposal in both § 611.310(f) and § 611.325(a) to only require disclosure when an association's bylaws prohibit out-of-territory borrowers who hold voting stock in the association from serving as a director or on the nominating committee.

The FCC and one association remarked that section 4.15 of the Act directs association nominating committees to only consider director candidates from the institution's territory. We disagree because these commenters fail to recognize that any voting stockholder in an association is potentially eligible to be elected as a director of that institution, whether

nominated by the nominating committee or through a floor nomination. While the language of section 4.15 directs the nominating committee to consider all territories of the institution when identifying nominees, it does not prevent the committee from also considering other eligible voting stockholders, such as out-of-territory borrowers that hold voting stock. In addition, the legislative history behind section 4.15 indicated Congress' intent to make sure the nominating committee gave due consideration to all aspects of the institution's borrower base in order to have a board of directors that is knowledgeable of the agriculture financed by the institution.

We received no comments on the other provisions of § 611.310 and finalize those as proposed.

3. Impartiality in the Election of Directors [§ 611.320]

a. Institution Resources [§ 611.320(c)]

We received seven comments on the proposed clarifications to § 611.320(c), including one from the FCC. Two commenters agreed with the proposed change to recognize associations' standing as stockholders in their funding banks, thereby allowing stockholder-associations to use their resources in support of a candidate to the bank board. The FCC agreed that each institution should adopt procedures equitable to all candidates, including floor nominees, and emphasized that use of institution resources should be a choice. The FCC and one other commenter, however, objected to limiting use of institution resources for election activities to Farm Credit Banks. The System's only agricultural credit bank (CoBank) commented that this provision would not be "workable" for agricultural credit banks due to the mixed stockholder structure of affiliated associations and retail borrowers.

We clarify in the final rule text that we are not requiring any bank, including CoBank, to permit its stockholder-associations to campaign for bank director candidates. This type of activity can only occur to the extent permitted by the bank's own policies and procedures. We explained in the proposed rule that the bank must authorize this activity 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 associations' property, facilities, and resources in support of bank director candidates, no stockholder-association in that district would be authorized to do so in any manner. On the other hand, if a bank has permitted its stockholder-associations to engage in this activity in the past and intends to allow the activity to continue, it must now adopt policies and procedures that comply with the regulatory requirements of § 611.320(c).

The FCC and a couple of associations suggested extending the use of institution resources to the associations for campaign activities in their own elections, as long as it is done in an equitable and prudent manner. The FCC explained that voter access to candidate campaign information is essential to an informed voting public and that many candidates are unable to finance distribution costs, especially in larger territories. The FCC also argued that young, beginning, and small farmers who might run for a director position are most disadvantaged in the current restrictions on an association's ability to pay distribution costs for candidates. The FCC stated that an association could not express or imply an endorsement of any candidate. The FCC further remarked that existing rules and FCA guidance on this issue unduly hamper voting stockholders' access to meaningful information.

Our rule in § 611.320(c) allows candidates for directors to make use of an institution's property, facilities, and resources provided the property, facilities, and resources are simultaneously available and it is made known that they are available for use by all declared candidates. As we explained in the proposed rule, our rules are designed to ensure fairness and equal access to the reimbursement opportunity. Use of an institution's financial resources must be reasonable, prudent, and consistent with supporting an election that is fair and unbiased. We do not, however, agree with the comments that associations should be able to distribute campaign material for or on behalf of candidates running for election to the association's board of directors and, therefore, we are not changing § 611.320(e).

We recognize that the larger geographic territories of some System institutions make it unrealistic to expect stockholders to have meaningful knowledge of most director candidates without some supplemental information beyond the required disclosures. We also acknowledge that the large number of stockholders in many associations also makes it impractical or cost-prohibitive for candidates to mail or distribute information themselves. In an FCA bookletter, "Distribution of Director Candidate Information" (BL–056), dated September 11, 2008, we clarified the meaning of "campaign material" for purposes of § 611.320(e) by differentiating campaign material from educational material. The bookletter explained that System institutions may provide, to stockholders, supplemental material on director candidates without violating the prohibition on distributing campaign material when that material is educational in nature and all candidates have a fair and equal opportunity to provide educational material. In providing this clarification, we wanted to ensure that the interpretation of "campaign material" did not limit the distribution of appropriate information on director candidates to stockholders.

We received one comment seeking clarification on whether non-incumbent candidates must be provided reimbursement for travel if an incumbent director travels at the institution's expense to a regional meeting before being named by the nominating committee as a director-nominee. We direct the commenter to our frequently asked questions (FAQs) on the governance rule, specifically FAQ 36, posted on FCA's Web site under "FCS Information."

We received no comments on the other provisions of § 611.320(c) and finalize those as proposed.

b. Involvement of Directors in Board Elections [New § 611.320(f)]

We received a comment from the FCC and 78 other commenters, including multiple letters from members of individual associations, on adding a new paragraph (f) to address the involvement of directors in board elections. The FCC and several other commenters stated strong objection to prohibiting director activity in board elections, citing fundamental free speech. One commenter expressed no objection to the rule and another stated strong support of it. A third of the commenters asked that the provision be eliminated entirely, arguing directors should be allowed to offer an opinion on fellow board members and that doing so presents no conflict.

Many commenters argued that the requirement is an infringement on free speech and unduly undermines the notion of cooperative, open elections. Several of these commenters further stated that good governance encourages communication. One Farm Credit bank and a few associations stated that stockholder-elected directors should be permitted to make such statements, but only in the director's capacity as a

stockholder. The FCC and several other commenters expressed concern about the message such a restriction would send to stockholders and questioned the need for the rule, stating an unawareness of any problems in this area. A few associations commented that the prohibition would make finding willing and qualified candidates more difficult, while directors from a couple of associations argued that the provision would limit their ability to be effective directors. Others asserted that directors have a duty to relate information on candidates if the directors believe the candidate holds views that may cause harm to the institution. Another commenter remarked that the prohibition could have unintended consequences, such as being misinterpreted by stockholders or preventing the board or board chairman from providing guidance to the nominating committee on desirable director qualifications.

Some commenters explained that the views of incumbent directors are important to voting stockholders, many arguing that corporate elections do not have similar restrictions. Commenters also expressed the view that limiting director speech might be difficult to monitor, especially oral communication. Others considered the limitation on making statements for other director candidates an extreme measure that is better addressed through standards of conduct policies.

We understand and have thoroughly considered the sentiments of the commenters, and, as a result, we are modifying the provision to limit the prohibition to active campaigning as a "director" of an institution. We are mindful of the dual role that elected directors play (as both stockholders and directors) in the cooperative, and we do not want to prohibit a stockholder's right to support a candidate. At the same time, we continue to believe a director's active support of a candidate creates a potential for conflicts of interest. We also clarify that our rule does not prevent board members from offering guidance to nominating committees on desirable director qualifications. This type of guidance is not specific to any one person, but rather addresses the board's overall needs. We do not believe the final language will, as suggested, adversely affect either the ability of directors to do their jobs or recruitment efforts for open board positions.

The final provision, as modified, prevents a director from using his or her official authority as a director to influence or otherwise affect the result of an election on another's behalf. Examples of active campaigning for a director candidate (except one's self) that would be prohibited include writing and delivering speeches on behalf of a candidate, organizing and officially appearing at campaign events on another's behalf (attendance as an audience member is permissible if the director is not receiving compensation, or reimbursement, from the institution for the time or travel to the event), preparing and distributing campaign literature for a candidate, and using official institution stationery or titles accorded the director for board positions (such as audit committee chairman or board chairman) for personal endorsements or recommendations. Likewise, a director would not be allowed to use any authority associated with his or her official "director" title in a manner that could reasonably be construed to imply that the institution either sanctions or endorses the director's activities on another's behalf for nomination or election. With this modification, we want to be sure that any activity undertaken by a director on another's behalf remains personal in his role as a stockholder and is not presented in a manner that represents the director in his or her official capacity or implies official sanction by the institution of a candidate. We believe this modification addresses commenter concerns and provides an appropriate balance between a stockholder-elected director's responsibilities to remain officially neutral in institution elections, while still preserving the director's personal rights as a stockholder.

We appreciate comments concerning difficulties in monitoring oral communications between directors and the membership and encourage institutions to address this matter through the institution's standards of conduct policy and procedures.

4. Nominating Committees [Existing § 611.325]

We received comment letters from the FCC and 47 other commenters, including multiple letters from members of individual associations, on the proposed changes to this section, only one of which supported all the proposed changes. Of the other 47 comments, seven were directed at the introductory paragraph of § 611.325. In this paragraph, we clarified that each institution may have only one nominating committee in any one election cycle. The FCC and another commenter stated that multiple committees are more efficient for those institutions holding regional elections. The FCC then requested FCA to clarify whether subcommittees may be used if the rule is finalized as proposed. If so, the FCC recommended that only final actions on nominees require full committee vote. One commenter asked why subcommittees are appropriate but multiple nominating committees are not. Two commenters suggested permitting nominating committees to be formed on a state or regional basis instead of just one committee for the institution's entire territory.

We are not changing the rule to allow for multiple nominating committees within a single institution because we do not believe multiple nominating committees were intended by the Act. Section 4.15 of the Act states that each year the voting stockholders will elect a nominating committee at the annual meeting. Congress used the singular, and we are not persuaded that a different interpretation is appropriate. As a committee of voting stockholders, the nominating committee has the significant task of identifying qualified voting stockholders to stand for election to the entire board of directors and not a portion of the board. A single nominating committee working in concert makes the best possible selections for director nominees. However, we believe there is value in using subcommittees to aid the full committee in its task, especially in institutions with large territories. Our rule permits institutions' nominating committees to work in subcommittees for the express purpose of identifying possible director-nominees in director nomination regions for the nominating committee's review and consideration. The rule is clear that the nominating committee as a whole must decide on the director-nominees for the recommended slate of candidates.

Four Farm Credit banks expressed concern with the requirement that banks have nominating committees. The commenter explained that the nominating committee is a group of individuals who are not stockholders in the bank and have no investment in the bank, and thereby lack an incentive for locating good candidates. The commenter also asserted that Congress recognized the distinction between associations and banks when crafting section 4.15 of the Act, which is why the Act does not require nominating committees for banks. The commenter requested that FCA remove the bank nominating committee requirement to allow stockholder-associations to nominate their own candidates to the bank board or, in the alternative, make bank nominating committees an optional requirement.

We addressed similar comments on bank nominating committees in the initial rulemaking for nominating committees and have not changed our position on this issue.[2] As a clarification, our rule requires bank nominating committees to be elected by voting stockholders who, at the bank level, are stockholder-associations, and the candidates for service on a nominating committee also come from the stockholder-associations. Further, each bank may allow floor nominations for director candidates. Therefore, stockholder-associations are not prohibited from participating in the nomination process.

We received no comments opposed to the reorganization of § 611.325 and finalize it as proposed.

a. Nominating Committee Composition [Existing § 611.325(a)]

We received four comments on requiring associations to inform out-of-territory borrowers as to the borrower's eligibility to serve on an institution's nominating committee and addressed these comments in the companion provision of § 611.310(f) and discussed in section III.B.2. of this preamble. Consistent with changes made on the companion provision, we are modifying the language in 611.325(a) to require notice to out-of-territory borrowers only when the institution's bylaws prohibit out-of-territory borrowers who hold voting stock from being eligible to serve on the nominating committee.

b. Nominating Committee Election [New § 611.325(b)]

We received 26 comments, including multiple letters from members of individual associations, on adding new paragraph (b) on nominating committee elections. Of these, 19 comments were on the provision 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. Four commenters asked for clarification on how such a ballot would be structured and votes tabulated. Other commenters expressed support for only having a vote on the committee as a slate, but some of these questioned the need for the matter to be included in the regulation. A Farm Credit bank remarked that individual votes enable larger stockholder-associations to control the committee composition and asked that the provision be removed from the rule. One commenter supported the proposed rule provision on nominating committee elections. One commenter asked if we favor the use of floor nominations for nominating committees. Another commenter objected to the slate vote provision, explaining that voting for individual committee members facilitates identifying alternates.

We agree with commenters that our proposed language in § 611.325(b)(1) was unclear on how the ballot would be structured and how votes would be tabulated, which might have created confusion for the voting stockholders in casting such a vote. In reviewing the issue, we believe that discussion on the manner of achieving the "opportunity" for stockholders to vote either on a slate of candidates or individuals is better suited to informal guidance. Consequently, we have modified this provision to state only that institutions must provide stockholders the opportunity to vote on candidates for each nominating committee position, simultaneously clarifying that the vote is for candidates running for each position on the committee. As to the comment on allowing write-in candidates for nominating committees, institutions may choose to use that method in addition to others. However, while write-in candidates on a ballot for election to the nominating committee are not likely to garner the number of votes needed for election, we remind institutions that they may permit nominations from the floor for nominating committee candidates. In this manner, a floor nominee's name can be added to the ballot before the vote occurs, thus significantly increasing the floor nominee's chances for election.

We received comments from the FCC on § 611.325(b) that association nominating committee members may only be elected to serve a 1-year term. The FCC asked us to clarify that nominating committee members may serve consecutive terms. A few other commenters asked us to clarify that nominating committee members may serve on the following year's committee.

We agree with commenters and for that reason did not propose limits on the number of consecutive 1-year terms association nominating committee members may serve. However, individual members of an association nominating committee must stand for and be reelected in order to serve another 1-year term, and we have clarified this requirement in the rule. We do not set the term that a bank nominating committee member serves because there is no statutory provision specifying the term of a bank nominating committee member. We encourage institutions to establish safeguards against self-perpetuation of the nominating committee's membership.

We received no comments on the provision regarding the use of in-person (including use of an online medium) or mail balloting procedures to elect a nominating committee, but we clarify that using proxy ballots to elect a nominating committee is also permitted. We also received no comments on the provision in § 611.325(b)(2) that Farm Credit banks must use weighted voting with no cumulative voting permitted when electing members to serve on a nominating committee and we finalize this portion of the rule as proposed.

c. Nominating Committee Conflicts of Interest [New § 611.325(c)]

We received two comments regarding when a nominating committee member may resign from the committee and run for election to the board of directors. These comments are addressed in section III.B.2. of this preamble, where we discuss eligibility to serve as a director in the companion § 611.310(e).

d. Nominating Committee Duties [Redesignated § 611.325(d)]

We received 44 comments, including one from the FCC and letters from multiple members of individual associations, on clarifying that nominating committees may not be used for other institution business. The FCC and many other commenters agreed that nominating committee duties should be limited to the business of the nominating committee, but strongly objected to preventing the nominating committee from identifying candidates for the following year's nominating committee. These commenters asked to use the current nominating committee as a vehicle for identifying members for the following year. Several commenters said that often nominating committee members come across future potential committee members in the search for director candidates. A few commenters questioned who would perform the task of finding new committee members if the sitting nominating committee were prevented from doing so. These commenters expressed potential conflicts with other FCA regulations if management has to step in and perform the task. One association commented that the Act does not prohibit using the nominating committee for other duties. Still others commented that allowing other types of committees to identify potential future nominating committee members does not support cooperative principles nor is it cost-effective. One commenter suggested FCA regulate

[2] *See* preamble to final governance rule, 71 FR 5762 (February 2, 2006).

terms, providing for nominating committee term limits to prevent self-perpetuation, while others suggested institutions use their nominating committee policies to control self-perpetuation matters. One commenter suggested the listed duties in the rule be the minimum, not the only, duties the committee may perform. Another stated that the existing rule is sufficient and needs no change.

We agree with commenters that nominating committees are well suited to aid in the identification of candidates for the next nominating committee, and we are amending the rule to reflect that it is permissible. We do not, however, believe that the nominating committee should perform other duties. We believe that having other duties diverts the nominating committee from its significant role in the director election process. Further, a nominating committee may not be given the task of verifying the eligibility or credentials of a floor nominee.

One commenter asked that we clarify whether the nominating committee must nominate all eligible candidates for open director seats. This commenter stated that prohibiting such an action would be objectionable. Yet another commenter stated that it wanted to limit the nominating committee to only naming two candidates for each open director seat.

The nominating committee's responsibilities are to identify, evaluate, and nominate candidates for open director positions. The committee must evaluate their qualifications and nominate at least two candidates for each open director position, while also endeavoring to ensure representation from all areas of the territory and, as nearly as possible, all types of agriculture practiced within the territory. An evaluative process must occur, and it is within the discretion of the nominating committee to select those candidates who it believes are the best qualified to serve as directors. It rests with the nominating committee to decide which director nominees will be on the slate of recommended candidates. Thus, we want to clarify that the nominating committee is not limited to providing just two names for each open director position.

The FCC and two other commenters asked for clarification on how votes are tallied when the stockholders are presented with more than two nominees for one director position. The FCC used the example of the nominating committee identifying two nominees for a position and then also getting a floor nomination, which may result in there not being a majority of votes for any one candidate.

We have no regulatory provision that requires a winning candidate for a director position to receive a majority of the votes cast. In the situation the FCC describes, the winning candidate could receive a "plurality" of votes. An institution's policies and procedures on impartiality in director elections should recognize that a winning director candidate may receive less than a majority of the votes cast when there are more than two candidates for one director position. Should a contest result in a tie vote between two candidates, most institution bylaws have provisions for dealing with it.

A bank asked for confirmation that § 611.325(d)(1), regarding representation from the institution's territory, is a guide and not a requirement. In response, we clarify that this aspect of the rule is a guide based on the legislative history of the Act, and it is not a requirement.

e. Nominating Committee Resources [Redesignated § 611.325(e)]

We received one comment on adding a requirement that institutions provide their nominating committees with FCA rules and other FCA-issued guidance on the operation of nominating committees. The commenter asks us to instead require institutions to provide nominating committees a comprehensive listing of resources available, indicating those that must be provided. The commenter explained that presenting all the material listed in the rule would be counterproductive and might overwhelm the committee.

We disagree with the commenter and 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. We are hesitant to require instead a comprehensive listing of resources as suggested because it might actually discourage the nominating committee from asking for all the material that it should have access to without delay. Consequently, we finalize this provision as proposed.

We also note that the final rule requires nominating committees to maintain records of its meetings. We believe it is appropriate that the nominating committee record, within its meeting minutes, whether it obtained the resources it requested from the institution. We further encourage nominating committees to record in their meeting minutes whether they were satisfied with the resources provided or if the resources were insufficient for the nominating committee to fulfill its duties.

5. Floor Nominations [New § 611.326]

We received, from the FCC and 10 others, comments on incorporating into our rules previous guidance provided to System institutions in FCA bookletter, "Floor Nomination Procedures for System Associations and Banks" (BL–055), dated February 14, 2008, and other floor nomination procedural requirements. In addition to comments specific to this section, many comment letters included statements affirming that floor nominations are an express right of association stockholders.

The FCC and four other commenters asked that the manner of conducting floor nominations be left to each association. The FCC and one association further remarked that floor nominations should not be used to circumvent the nominating committee's efforts and that institutions should be allowed to balance election procedures to provide equal and fair treatment to all nominees. One commenter explained that the procedure for making floor nominations varies by the size of the institution. The FCC and an association also suggested that the number of individuals needed to support a floor nomination be equal to the number of people serving on the nominating committee or the number of votes given by nominating committee members to those on the nominating committee slate, rather than just a second to the nomination.

Voting stockholders of every association have the express right of making nominations from the floor. We reaffirm that this right may not be unduly restricted in a way that effectively weakens it, nor can the procedures for making floor nominations be unduly burdensome. We believe that asking for more than one voice in support of a floor nomination weakens the process. Further, permitting variations in the procedures for making floor nominations based solely on the size of the institution is not appropriate because floor nominations are an express right of the voting stockholders and are not dependent on institution size. To ensure the right to make floor nominations is not unduly inhibited, this rulemaking sets minimum procedural limits for the level of voting stockholder support that can be required by the institution before accepting a floor nomination. We do not believe that floor nominations are easier than being

nominated through the nominating committee. A floor nominee must meet the same eligibility and disclosure requirements as all other nominees and must gain the support of the voting stockholders in order to be elected. The voting stockholders make the final decision on who is elected to the board of directors, and the manner of nomination may or may not influence the stockholders' vote.

The rule also seeks to address the concern that allowing nominations from the floor may create delays and inefficiencies at stockholders' meetings 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 proceed. Floor nominations are public nominations of candidates that are not previously vetted by any person or committee. In the interest of running an efficient stockholders' meeting, it is the responsibility of the association to have ready access to a current stockholders' list and any other needed documentation that would allow the association to verify that the nominee from the floor meets the eligibility requirements to run as a candidate for a director position, particularly if the voting stockholders are casting their ballots at the meeting and are not voting solely by mail ballot after the stockholders' meeting is concluded.

One commenter supported the floor nomination process, but stated that director eligibility should be the same regardless of the manner in which a person is nominated. Another commenter stated that nominating committee members should not be eligible to be floor nominated director candidates until one election cycle has passed. We agree, and while § 611.326(a) does not specifically address eligibility to serve as a floor nominated director, our other rules do. Our rules in §§ 611.310(e) and 611.325(c) specifically address the commenter's concern. Both provisions make it clear that an individual cannot be a candidate for a bank or an association board of directors in the same election cycle during which that individual was a member of the institution's nominating committee and attended any meetings of the nominating committee. Regardless of how the individual may be nominated, including a nomination from the floor, his or her membership on the nominating committee makes the individual ineligible to run as a director-nominee for the duration of that election cycle.

One commenter asked if FCA favors the use of floor nominations for service on the nominating committee. The FCA takes no position on whether nominations from the floor should be permitted for the nominating committee. This is a decision that the board of directors should make and include in the association's bylaws so that voting stockholders know whether floor nominations for the nominating committee are accepted.

A bank commented that if banks do not hold meetings for elections, it cannot offer floor nominations. The bank asserted that, given this and the fact that there is no prohibition in the Act against other forms of nomination, the bank has allowed its stockholder-associations to name nominees for vacant director seats outside the nominating committee process. In response, we expect the bank to let the nominating committee complete its duties before allowing any other type of nominations. We do not require or prohibit Farm Credit banks from using floor nominations. The use of floor nominations in bank elections is at the discretion of each bank; however, banks choosing to allow floor nominations must follow the provisions of § 611.326, and we have modified this provision to make that clear.

We received no comments on other provisions of new § 611.326 and finalize them as proposed.

6. Director-Nominee Disclosures [New § 611.330]

We received three comments on § 611.330(a) objecting to disclosing family relationships that would be reportable under part 612 because the disclosure unduly infringes on privacy rights of nominees and nominees' family members. We address this issue in our Governance FAQ 39.

The FCC and three associations commented on § 611.330(c)(1), stating that including candidate disclosures as part of the AMIS complicates the election process. The FCC explained that the inability to obtain disclosure statements from floor nominees until after the annual meeting has led to an increase in the use of mail ballots, resulting in reduced stockholder attendance at annual meetings. Commenters asked that we allow institutions to set the process for director candidate disclosures and only address the process to ensure equitable treatment. The commenters further asked that floor nominee disclosures be reconciled with other disclosure procedures. Two associations commented that floor nominee disclosures should be left to the institution's policies as the rule is favorable to floor nominations. One of these associations specifically asked that floor nomination disclosures be obtainable in advance of a meeting.

We decline the suggestion that disclosure statements from floor nominees be obtained before the start of the stockholders' meeting. Floor nominations, by their very nature, occur during the meeting. It is therefore impossible to obtain disclosures in advance of a floor nomination. While we understand the commenters' concerns regarding potential delays in the meeting process to obtain these disclosures, doing as the commenters suggest would deny stockholders the express right to make floor nominations. We recognize that those institutions using only mail ballots encounter no such difficulties because floor nominees provide their disclosures to the institution before the mail ballots are prepared. We received no comments on the other provisions of § 611.330 and finalize those as proposed.

7. Regional Voting in Director Elections [New § 611.335 and Existing § 615.5230]

We received three comments on our proposal to consolidate the regional election provisions in new § 611.335. We had proposed moving the existing requirements on regional elections of directors from existing §§ 615.5230(a)(3) and 620.21(d)(4)(ii) to a new § 611.335 called "Regional voting in director elections." One commenter questioned whether the proposed rule changed the provisions for regional voting. Another commenter asked us to clarify that regional voting rules only address voting and not eligibility requirements for directors or nominating committee members.

We did not intend our proposed reorganization of the regional election rules to change any provisions or cause confusion on its applicability. We intended no change in our rules on this topic and, therefore, to avoid any such confusion, we are not finalizing the movement of the regional election provisions from § 615.5230 into a new § 611.335. The regional election provisions will remain in § 615.5230, but in a new paragraph (b) due to the effect of other reorganization efforts. We received no comments on the proposed grammatical corrections to the regional election provisions and finalize those as proposed at § 615.5230. We are also finalizing the deletion of those regional voting provisions from § 620.21(d)(4)(ii) because existing § 620.21 is an interim report to stockholders (AMIS) and the regional election provisions from that section address the distribution of ballots in regional elections, which is addressed elsewhere in the rule. As a

conforming technical change, we are changing the reference to § 615.5230 in § 611.1210(f) to reflect this organizational change and adding a cross-citation to § 611.350 in § 615.5230.

8. Confidentiality and Security in Voting [new § 611.340]

We received no comments on adding language to paragraph (d) to explain that only proxy ballots may be accepted before stockholders' meetings are convened for election or other voting purposes. However, a few comments on other areas of our rule discuss the value of proxy ballots and we address those comments here. A bank and a few associations commented on the difficulty of using proxy ballots with floor nominations, explaining that there is no advance knowledge of floor nominations for stockholders to provide voting guidance to proxy holders. Three commenters remarked that having to use proxy ballots instead of mail ballots creates a disadvantage to floor nominees. Commenters also stated proxy ballots are more confusing for stockholders. A few commenters asked us to explain why proxy ballots are better than mail ballots for quorum counts, arguing that proxy ballots are harmful to the floor nomination process and reliance on them for quorum counts would be unfair to floor nominees.

Proxy ballots should not be problematic for floor nominations. 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. In addition, the bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the designated proxy provided the proxy is also a voting stockholder. In such a case, the designated proxy would have the discretion to vote for a floor nominee. Proxy ballots are counted towards the quorum requirement because a proxy is an authorization for a named agent to act for a voting stockholder at a meeting, including casting the vote of the stockholder, and are treated as "present" and voting members when determining if a quorum is present.

As discussed earlier in section III.B.1.a. of this preamble, we are modifying paragraph (d) of this section to clarify that when a stockholders' meeting is held to conduct elections, mail ballots may not be issued before the conclusion of that meeting. Revisions to § 611.340(d) explain that only proxy ballots may be accepted before stockholders' meetings are convened for election or other voting purposes. Distributing and accepting mail ballots before an annual meeting results in those stockholders being unable to consider any candidate nominated from the floor since mail ballots cannot be revoked once received by the institution.

We received a comment from a bank asking us to clarify that confidentiality in voting does not prevent institution staff from assisting the independent tabulator, such as reminding stockholders of voting deadlines or providing replacement ballots when asked. Our rule does not prevent institution staff from providing administrative assistance when that assistance is limited to the type of tasks described by the commenter. Institution staff may not provide assistance to either the tellers committee or the independent third-party tabulator if that assistance compromises the security or the confidentiality of the ballots or the balloting process. We received no comments on other changes to revised § 611.340 and finalize them as proposed.

9. Cooperative Principles in Elections [existing §§ 611.350 and 615.5230]

We received one comment on moving the existing requirement to disclose the types of agriculture in which directors of an institution engage to the AMIS and address that comment in section III.B.10. of this preamble. We received a comment from CoBank, asking for clarification on whether the language in §§ 611.350(a) and 615.5230(a)(3), regarding FCA approval of a voting scheme, included past FCA approvals. The language regarding exceptions to voting provisions approved by FCA was intended to include existing exceptions. Thus, CoBank's existing voting provisions, approved by FCA several years ago, would stand without requiring further approval. For clarity's sake, this language in both sections has been modified to make clear that any FCA-approved voting structure, whether past or present, satisfies the rule.

We received no comments on other changes to § 611.350, but have made conforming changes to this section to restore the location of rule text on regional voting to § 615.5230, as discussed in section III.B.7. of this preamble, and to address the comment of CoBank, also discussed in that section of this preamble. We finalize all other language as proposed.

We did receive a few comments, including one from the FCC, asking that each System institution be allowed to adopt its own election policies and procedures without the FCA's imposing additional regulatory requirements. They suggested that FCA establish a governance policy that addresses delineated areas and then examine each institution on its implementation of the policy in light of the institution's own circumstances. Given the absence of any problems with the election of bank directors, the commenters believe that FCA would not be burdened by examining the institution's compliance with a governance policy. The commenters further suggest that, like an existing regulatory provision that allows the bank to eliminate cumulative voting in director elections upon an affirmative vote of 75 percent of the bank's voting stockholders, the same concept should be adopted for the balance of the bank's election procedures.

We addressed the general comments on rulemaking versus informal guidance in section III.A.1. of this preamble, but believe the specifics of these comments should be further responded to in this section. The FCA's final rule on governance for Farm Credit banks and associations, adopted in April 2006, had the stated objective of identifying a set of standards for banks and associations to follow in their director elections.[3] Nearly 4 years have passed since the governance rule was put into place, and our examination of the implementation of the governance rule demonstrates that having these standards in place has not only allowed for an orderly process in examining an institution's compliance with the governance rules, but has helped minimize the amount of time examiners must spend in this area for those institutions with a strong governance structure. For institutions whose governance needs strengthening, the rules enable the examiners to focus on weaknesses that need to be eliminated through corrective action by the board. Providing a regulatory option that would allow the bank's stockholders to vote to overturn the bank's director elections procedures as prescribed by regulation in favor of the bank's own unique governance policy would not move FCA in the direction it has taken in building a strong governance framework for banks and associations.

The FCC also requested clarification on whether cumulative voting is required to be used by institutions if not

[3] *Id.*

adopted by the institution's bylaws. As stated earlier, we proposed moving voting rights of each type of System institution from § 615.5230(a)(1)(iii) to § 611.350(d). We intended no change in the application of the rules, and we did not intend for our proposed reorganization and consolidation of election rules to cause confusion on their interpretation. Stockholder-associations have the right to cumulate votes unless the Farm Credit Bank's bylaws provide otherwise. A Farm Credit Bank may eliminate cumulative voting only if 75 percent of its stockholder-associations vote to eliminate it. Each stockholder-association has only one vote that is not a weighted vote in eliminating the provision. The provision has been in existence for many years.[4] Similarly, voting stockholders of an association may vote on a proposition to eliminate cumulative voting in director elections if they approve a change in the association's capitalization bylaws to eliminate cumulative voting.

10. Annual Meeting Information Statement (AMIS)

We received a comment from the FCC that Farm Credit banks should not have to comply with all AMIS provisions, as bank elections are conducted outside the framework of an annual meeting. The FCC suggested that an AMIS issued by a bank only has to have information for potential director candidates regarding resources available to the candidates.

We disagree with the FCC's suggestion. We believe that the AMIS requirement remains relevant for the banks regardless of whether they choose to elect their directors in the context of an annual meeting or separate and apart from an annual meeting. It is important that the bank include in the AMIS the information identified in our rule. Stockholder-associations are entitled to updated financial information and information on current directors regardless of why the AMIS is being prepared. However, because Farm Credit banks are not required to hold annual meetings, we have modified § 620.21(a)(1) to reflect that disclosure of meeting date, time, and location need not be part of a Farm Credit bank AMIS if no meeting is held. However, all other information identified in paragraph (a) must be part of a bank's AMIS.

We received no comments on other organizational changes to this section of our rule, including renaming subpart E to clarify that an AMIS is used for more than an annual meeting, 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, and 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. We finalize these organizational changes as proposed.

a. Preparing and Distributing the AMIS [New § 620.20]

We received four comments on the proposed outside timeframe of 30 business days for distributing the AMIS to stockholders. A System bank commented that the 30-day timeframe creates difficulties, as it allows stockholder-associations in its district to make director nominations for an extended period of time. This commenter also remarked that including the slate of nominees from the nominating committee in the AMIS causes scheduling difficulties based on the bank's director nomination process and questions the need for this time limit. We address the comment from the bank on its director nomination process in section III.B.4. of this preamble.

The bank commented that the 45 calendar days it currently uses provide ample time for stockholder-associations to deliberate and vote. The bank acknowledges that its 45 calendar day timeframe is "roughly equivalent" to the proposed 30 business days, but notes that setting any timeframe removes flexibility. Another Farm Credit bank and one association asked that the timeframe be expanded from 30 business days to 45 days to assist larger institutions. These commenters did not specify if the suggestion was for calendar or business days. Another association suggested a 45 business day time limit to accommodate larger associations.

The existing rule requires an AMIS be provided to stockholders at least 10 days before a meeting or election to ensure the stockholders' 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 that the stockholders' meeting or director elections take place. We carefully considered the timeframes offered by the commenters, but decline to change the rule. The suggested 45 business days would allow the AMIS to be distributed 9 weeks in advance of the annual meeting or director elections versus the 6 weeks we proposed. We continue to believe that more than 6 weeks is too long for the AMIS to still provide current information. We also note that the suggested 45 business days might coincide with a quarterly report issuance, causing confusion in the financial data that is being reported and or updated in the AMIS. We considered using the suggested 45 calendar days since it is essentially equivalent to 30 business days, but believe that mixing calendar days and business days would create confusion while only providing three additional days. Therefore, we are finalizing the timeframes as proposed.

We received one comment from a bank on the overall procedural requirements for the AMIS, including the signature requirements, timeframes, Web site posting, and public access. The bank remarked that these requirements adversely affect the bank, since the requirement is designed to get information to stockholders before a meeting. Specifically, this bank objects to the signature and public availability requirements, stating these are not "particularly meaningful" for its stockholder-associations. We also received a comment from another bank that the signatures on an AMIS do not need to be the same as for annual and quarterly reports, stating that the AMIS is not as formal a report. This bank suggested that the AMIS be signed by one senior officer, instead of the chief executive officer, chief financial officer, and a board designee. We further received a comment from the FCC and an association on § 620.20(a)(3), which permits an AMIS to be posted on an institution's Web site after the AMIS is mailed to stockholders. The commenters asked us to clarify that the posting of the AMIS on a Web site is optional. Both commenters explain that the AMIS should not be required to be on a Web site since it is not a public document, and institutions should not be required to make it one.

We disagree with the commenter that the AMIS does not require the same signatures as the annual and quarterly reports. The AMIS is a supplement of those reports. Further, this is not a new requirement. Our existing rules in § 620.3(b) apply for all reports, including the AMIS, which is why we are adding a reference in § 620.20 to facilitate compliance with our rules. We are not requiring institutions to post the AMIS on their Web sites, but are establishing timeframes for keeping an AMIS on a Web site should an institution decide to do so. Also, the AMIS is a report that must be available for public inspection as required by § 620.2(b).

[4] The cumulative voting rule was last changed in 1997 to permit a less than unanimous consent to overturn cumulative voting in bank director elections. (*See* 62 FR 49907, September 24, 1997).

We received no comments on other provisions in § 620.20 and finalize them as proposed.

b. Contents of the AMIS [existing § 620.21]

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

We received one comment on the existing requirement to disclose the types of agriculture in which directors of an institution engage. The commenter stated that the information, already contained in the annual report, does not need to be restated in the AMIS. We proposed no change to this requirement. We only proposed moving the provision from existing § 615.5230(b)(5) to paragraph (a)(4) of this section. Further, we remind the commenter that an AMIS provides pertinent information on directors and institution business in preparation for an annual meeting or election. As meetings and elections do not always coincide with the issuance of annual reports, we do not believe it is unduly burdensome to reference this information in the AMIS.

We received no other comments on changes to this paragraph and, except for the modification to § 620.21(a)(1) regarding meeting notice for banks mentioned earlier, we finalize those changes as proposed.

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

We received two comments on the provision in paragraph (b) requiring the names of the director candidates nominated by the nominating committee to be listed. A bank remarked that it customizes its AMIS based on regions within the territory, providing only that director candidate information applicable to a region. The commenter asked us whether the rule would prohibit this process and also stated that it sends out to all stockholders the nominating committee report 6 weeks before the AMIS is issued.

As stated earlier, the AMIS updates information contained in the annual and quarterly reports, which are available to all stockholders regardless of regional locations. The AMIS is also a tool that voting stockholders can use in the election process. We believe it is important for stockholders to have background information on all incumbent directors and director candidates for their institution. Restricting information on directors to regions inhibits the ability of stockholders to decide whether the composition of the board meets their needs since, once elected, a director represents the entire membership, not just the region from where he or she was nominated. For these reasons, we finalize changes to this paragraph as proposed. We received no other comments objecting to them. We did receive a few comments, including one from the FCC, agreeing with the requirement in § 620.21(b)(3) that procedures for making floor nominations be disclosed in the AMIS.

11. Other Miscellaneous Changes

a. Similar Entity Participation Lending Limit Voting [§ 613.3300]

We received no comments on the proposed clarification to § 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. We finalize this change as proposed.

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

We received one comment on the proposed clarification to § 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 commenter expressed appreciation for the clarification. We finalize this change as proposed.

c. Definitions [New § 619.9320]

We received no comments on the proposed clarification that the terms "stockholder" and "shareholder" have the same meaning for purposes of our rules. We finalize this change as proposed.

d. Reorganization of Existing Rules

We received three comments supporting the consolidation of our general director election rules, currently located throughout our rules, into subpart C of part 611, "Election of Directors and Other Voting Procedures." We received no comments on other organizational changes to our rule. We finalize the changes associated with this consolidation and reorganization as proposed, except where noted (e.g., § 615.5230).

e. Technical Corrections

In the process of this rulemaking, we noted cross-citations that were not updated in prior rulemakings and make those corrections now. In a 2006 rulemaking, the paragraphs of § 620.2 were renumbered; however, the cross-citation to § 620.2 contained in § 620.5(i)(2) was not updated to reflect the renumbering of paragraphs.[5] The cross-citation should read "§ 620.2(b)." Likewise, in the process of addressing a comment on cumulative voting in newly redesignated § 615.5230(a)(3), we noted that the rule does not specify the bylaws involved are capitalization bylaws.[6] The original rulemaking is clear that the bylaws involved are capitalization bylaws, but a 1995 rulemaking to this section mistakenly omitted the word "capitalization" from the sentence.[7] Nothing in the 1995 rulemaking indicates this omission was intentional and FCA has consistently interpreted the provision to mean capitalization bylaws. We make that correction now.

We are correcting a grammatical error in our rule at § 615.5330. Paragraph (a)(1) has an "a" when referring to the ratio needed instead of an "at" and paragraph (b)(1) has an "a" instead of an "at" when referring to the percentage needed. We also incorporate changes to § 620.21(a)(3)(ii) made in a prior rulemaking regarding external auditors. These changes became final in July 2009, which was after publication of our proposed rule.

IV. 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 final 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.

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.

[5] *See* 71 FR 76111, December 20, 2006.

[6] *See* 53 FR 40033, October 13, 1988.

[7] *See* 60 FR 57919, November 24, 1995.

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 amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 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, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2243, 2244, 2252, 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 611.110, to read as follows:

Subpart A—General

Sec.
611.100 Definitions.
611.110 Meetings of stockholders.

Subpart A—General

§ 611.100 Definitions.

The following definitions apply for the purpose of this part:

(a) *Mail ballot* means a ballot cast by regular or electronic mail.

(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 people or objects at remote locations 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) *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.

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

(f) *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 have annual meetings of stockholders for the purpose of conducting annual director elections. Farm Credit banks are encouraged to hold annual or periodic meetings of stockholders. The bylaws of each Farm Credit bank and association must specify the quorum requirements for stockholder meetings. Associations must elect at least one director at each annual meeting, but the vote on the election of a director or directors by mail ballot may only occur in the period following an annual meeting. An online meeting space may be used in addition to a physical meeting space to conduct a stockholders' meeting or director election. A physical meeting space must always exist for association meetings involving director elections and other stockholders' votes.

(b) *Notice.* Each association, and those Farm Credit banks holding annual meetings, must issue an Annual Meeting Information Statement in accordance with the requirements of §§ 620.20 and 620.21 of this chapter.

(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.

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 meeting 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. If an association's bylaws prohibit it, that association must inform, in writing and at the time of loanmaking, each out-of-territory borrower that out-of-territory borrowers may not serve as directors.

■ 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 Farm Credit bank may allow its stockholder-associations to use stockholder-association property, facilities, or resources in support of bank director candidates. Any Farm Credit bank permitting this activity by its stockholder-associations must have a policy in place approved by its board of directors establishing reasonable standards that stockholder-associations must follow, and those standards 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, in his or her capacity as a director, make any statement, either orally or in writing, which may be construed as intending 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's board of directors 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 hold voting stock may serve as members of an association's nominating committee. If an association's bylaws prohibit it, that association must inform, in writing and at the time of loanmaking, each out-of-territory borrower that out-of-territory borrowers may not serve on the association's nominating committee.

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

(1) Farm Credit banks and associations must provide voting stockholders the opportunity to vote on the candidates for each nominating committee position.

(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. Farm Credit banks and associations may permit nominating committee members to be re-nominated and stand for re-election to serve successive terms.

(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 who 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.

(5) Identify, evaluate, and nominate eligible individuals for service on the next nominating committee, if permitted by the institution.

(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)(1) 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.

(2) If floor nominations are permitted by a Farm Credit bank's election policies and procedures, voting stockholders must be allowed to make floor nominations for every open stockholder-elected director position and a physical meeting space must exist. Before every director election by a Farm Credit bank, the bank must inform voting stockholders whether floor nominations will be accepted.

(c) Each association's board of directors must adopt policies and procedures for making and accepting floor nominations of candidates to stand for election to its board of directors. Each Farm Credit bank's board of directors 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, 611.340, and 611.350 to read as follows:

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

(a) Each Farm Credit bank and association's board of directors 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 (AMIS) 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 AMIS.

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

§ 611.340 Confidentiality and security in voting.

(a) Each Farm Credit bank and association's board of directors 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 an 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 and mail ballots may only be distributed after the conclusion of the 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 another voting scheme has been

approved by the Farm Credit Administration.

(b) If an 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.

(c) 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

■ 8. Amend § 611.1210 by revising the first sentence of paragraph (f) to read as follows:

§ 611.1210 Advance notices—commencement resolution and notice to equity holders.

* * * * *

(f) *Special class of stock.* Notwithstanding any requirements to the contrary in § 615.5230(c) of this chapter, you may adopt bylaws providing for the issuance of a special class of stock and participation certificates between the date of adoption of a commencement resolution and the termination date. * * *

■ 9. 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

■ 10. 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]

■ 11. 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

■ 12. The authority citation for part 615 is revised 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, 8.8, 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–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart I—Issuance of Equities

■ 13. Amend § 615.5230 by:
■ a. Revising paragraph (a);
■ b. Redesignating existing paragraph (b) as paragraph (c);
■ c. Adding a new paragraph (b);
■ d. Revising newly redesignated paragraph (c)(1); and
■ e. Removing newly redesignated paragraph (c)(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, including those set forth in § 611.350 of this chapter. Except as otherwise required by statute or regulation, and except as modified by paragraphs (b) and (c) of this section, the voting rights of each voting shareholder are as follows:

(1) Each voting stockholder of a Farm Credit Bank has only one vote that is assigned a weight proportional to the number of that association's voting stockholders and has the right to vote in the election of each stockholder-elected director and to cumulate such votes and distribute them among the candidates in the stockholder's discretion, except that cumulative voting for directors may be eliminated if 75 percent of the associations that are 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.

(2) Each voting stockholder of an agricultural credit bank has only one vote, unless another voting scheme has been approved by the Farm Credit Administration.

(3) 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. Unless regional election of directors is provided for in the bylaws pursuant to § 615.5230(b), each voting stockholder of an association or bank for cooperatives has the right to vote in the election of each stockholder-elected director. Unless otherwise provided in the capitalization bylaws, each voting stockholder of an association or bank for cooperatives is allowed to cumulate such votes and distribute them among the candidates in the stockholder's discretion. Cumulative voting is not allowed in the regional election of stockholder-elected directors.

(b) The regional election of stockholder-elected directors is only permitted under the following conditions:

(1) A bylaw establishing regional elections is approved by a majority of voting stockholders, voting in person or by proxy, prior to implementation.

(2) The bylaw provides that the use of regional election of stockholder-elected directors does not prevent all voting stockholders of the institution, regardless of the region where they reside or conduct agricultural or aquatic operations, from voting in any stockholder vote to remove a director.

(3) There are an approximately equal number of voting stockholders in each of the institution's 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 institution must count the number of voting stockholders in each region and, if the regions do not have an approximately equal number of stockholders, the regional boundaries must be adjusted to achieve such result.

(4) An institution may provide for more than one director to represent a region. Institutions providing for more than one director to represent a region will determine the equitability of the regions 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.

(5) Each voting stockholder is accorded the right to vote in the election of each stockholder-elected director for his or her region.

(c) * * *

(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;

* * * * *

Subpart K—Surplus and Collateral Requirements

§ 615.5330 [Amended]

■ 14. Amend § 615.5330 by removing the words, "a least" and adding in their place, the words "at least" in the first sentence of paragraphs (a)(1) and (b)(1).

PART 619—DEFINITIONS

■ 15. The authority citation for part 619 continues 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. Add a 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 is revised 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; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

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 B—Annual Report to Shareholders

■ 19. Amend § 620.5 by revising the last sentence of paragraph (i)(2) introductory text as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(i) *Compensation of directors and senior officers.*

* * * * *

(2) *Senior officer compensation.* * * * Associations exercising this option must include a reference in the annual report stating that the senior officer compensation information is included in the AMIS and that the AMIS is available for public inspection at the reporting association offices pursuant to § 620.2(b).

* * * * *

Subpart E—Annual Meeting Information Statements and Other Information To Be Furnished in Connection with Annual Meetings and Director Elections

■ 20. Revise the heading of subpart E to read as set forth above.

■ 21. 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 not more than 30 business days, before any annual meeting or any director elections.

(2) Each Farm Credit bank and association must provide 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.

■ 22. Section 620.21 is revised 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. This information does not need to be part of an AMIS issued by a Farm Credit bank if no meeting is held.

(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 association 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 a Farm Credit institution has had a change or changes in its external auditor(s) since the last annual report to shareholders, or if a disagreement with an external auditor 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 any 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 reelection 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 as well.

(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, the director-nominee 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: March 31, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

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