

regulation does not specify the types of records that must be retained. To ease institutions' burden and cost of complying with the disclosure requirements of Regulation E (particularly for small entities), the Federal Reserve publishes model forms and disclosure clauses. Regulation E applies to all financial institutions that engage in EFT transactions. The Board has determined that no new requirements or revisions to existing requirements are contained in this final rulemaking.

The estimated annual burden for the entities supervised by the Federal Reserve is approximately 74,141 hours for the 1,172 financial institutions that are deemed respondents for purposes of the PRA. As mentioned in the Preamble, on April 30, 2007, a notice of proposed rulemaking was published in the **Federal Register** (72 FR 21131). No comments specifically addressing the burden estimate were received.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0200), Washington, DC 20503.

#### List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 205 as set forth below:

#### PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 205 continues to read as follows:

**Authority:** 15 U.S.C. 1693b.

■ 2. Section 205.4 is amended by revising paragraph (a)(1), removing paragraph (c), and redesignating paragraph (d) as paragraph (c), and paragraph (e) as paragraph (d), respectively, as follows:

#### § 205.4 General disclosure requirements; jointly offered services.

(a)(1) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep. The disclosures required by this part

may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act)(15 U.S.C. 7001 *et seq.*). A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

\* \* \* \* \*

#### § 205.17 [Removed]

■ 3. Section 205.17 is removed and reserved.

■ 4. In Supplement I to Part 205, section 205.17—Requirements for Electronic Communication is removed and reserved.

By order of the Board of Governors of the Federal Reserve System, October 31, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

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**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 213

[Regulation M; Docket No. R-1283]

#### Consumer Leasing

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; official staff interpretation.

**SUMMARY:** The Board is amending Regulation M, which implements the Consumer Leasing Act, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules addressed the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Because compliance with the 2001 interim final rules has not been mandatory, withdrawal of these provisions from the *Code of Federal Regulations* reduces confusion about the status of the provisions and simplifies the regulation.

In addition, the Board is adopting final amendments to Regulation M to provide guidance on the electronic delivery of disclosures. For example, the final rules provide that when a lease advertisement is accessed by a consumer in electronic form, disclosures may be provided to the consumer in electronic form in the advertisement without regard to the consumer consent and other provisions

of the E-Sign Act. Similar final rules are being adopted under other consumer fair lending and financial services regulations administered by the Board.

**DATES:** The final rule is effective December 10, 2007. The mandatory compliance date is October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** John C. Wood, Counsel, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

#### SUPPLEMENTARY INFORMATION:

#### I. Statutory Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA requires lessors to provide lessees with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed \$25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act. The Board's Regulation M (12 CFR part 213) implements the act. The CLA and Regulation M require disclosures to be provided in writing.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.*, was enacted in 2000. The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice and consent provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, lessors are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulation M if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

## II. Board Proposals and Interim Rules Regarding Electronic Disclosures

On March 30, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation M (66 FR 17,322). Similar interim final rules for Regulations B, E, Z, and DD (implementing the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, the Truth in Lending Act, and the Truth in Savings Act, respectively) were published on March 30, 2001 (66 FR 17,329) (Regulation Z) and April 4, 2001 (66 FR 17,779, 66 FR 17,786, and 66 FR 17,795) (Regulations B, E, and DD, respectively). Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Lessors, financial institutions, creditors, and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act. The interim final rules also incorporated many of the provisions that were part of earlier regulatory proposals issued by the Board regarding electronic disclosures.<sup>1</sup>

Under the 2001 interim final rules, disclosures could be sent to an e-mail address designated by the lessee, or could be made available at another location, such as an Internet Web site. If the disclosures were not sent by e-mail, lessors would have to provide a notice to lessees (typically by e-mail) alerting them to the availability of the disclosures. Disclosures posted on a Web site would have to be available for at least 90 days to allow lessees adequate time to access and retain the information. Lessors also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files.

Commenters on the interim final rules identified significant operational and information security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer.

For example, commenters stated that some consumers who choose to receive electronic disclosures do not have e-mail addresses or may not want personal financial information sent to them by e-mail. Commenters also noted that e-mail is not a secure medium for delivering confidential information and that consumers' e-mail addresses frequently change. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule, would increase costs and would not be necessary for consumer protection.

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41439, August 8, 2001.) Thus, institutions are not required to comply with the interim final rules. Since that time, the Board had not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

In April 2007, the Board proposed to amend Regulation M and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. (72 FR 21135, April 30, 2007.) Similar amendments were also proposed by the Board under Regulations B, E, Z, and DD (72 FR 21125, 72 FR 21131, 72 FR 21141, and 72 FR 21155, respectively).

## III. Summary of the Final Rule

The Board received about 15 comments on the April 2007 proposal from financial institutions and retailers and their representatives. Most of the financial industry commenters generally supported the proposal, although some provided suggestions for clarifications or changes to particular elements of the proposal. A comment letter was also submitted on behalf of four consumer groups. The consumer group

commenters suggested a number of changes to strengthen consumer protections. The comments are discussed in more detail in the Section-by-Section Analysis below.

For the reasons discussed below, the Board is now adopting amendments to Regulation M in final form, largely as proposed in April 2007. As stated in the proposal, because compliance with the 2001 interim final rules has not been mandatory, the final rule will reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. The Board is also adopting certain provisions that are identical or similar to provisions in the 2001 interim rules in order to enhance the ability of consumers to shop for leases online, minimize the information-gathering burdens on consumers, and provide guidance or eliminate a substantial burden on the use of electronic disclosures, as discussed further below.

Since 2001, industry and consumers have gained considerable experience with electronic disclosures. During that period, the Board has received no indication that consumers have been harmed by the fact that compliance with the interim final rules is not mandatory. The Board also has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and "phishing" (i.e., prompting consumers to reveal confidential personal or financial information through fraudulent e-mail requests that appear to originate from a financial institution, government agency, or other trusted entity) that have become more pronounced since 2001. Finally, the Board is eliminating certain aspects of the 2001 interim final rule, such as provisions regarding the availability and retention of electronic disclosures, as unnecessary in light of current industry practices.

With regard to disclosures required to be provided in an electronic lease advertisement, the 2001 interim final rule allowed lessors to provide these disclosures to lessees electronically without regard to the consumer consent or other provisions of the E-Sign Act. The Board reasoned that these disclosures, which would be available to the general public while shopping for a lease, did not "relate to a transaction," which is a prerequisite for triggering the E-Sign consumer consent provisions, and thus were not subject to the consent provisions. Some commenters on the interim final rules agreed with the result but did not agree with the Board's rationale.

<sup>1</sup> On May 2, 1996, the Board proposed to amend Regulation E to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14,528, March 25, 1998) and similar proposals under Regulations B, M, Z, and DD (63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998). Based on comments received on the 1998 proposals, in 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999).

In the April 2007 proposal, the Board stated that, upon further consideration, it did not believe it was necessary to determine whether or not these disclosures are related to a transaction. Instead, pursuant to the Board's authority under section 187 of the CLA, as well as under section 104(d) of the E-Sign Act,<sup>2</sup> the Board proposed to specify the circumstances under which certain disclosures may be provided to a lessee in electronic form, rather than in writing as generally required by Regulation M, without obtaining the lessee's consent under section 101(c) of the E-Sign Act.

Commenters supported the Board's approach with regard to this issue. This final rule adopts the approach in the April 2007 proposal. The Board continues to believe that lessors should not be required to obtain the consumer's consent in order to provide advertising disclosures to the consumer in electronic form if the consumer accesses an advertisement containing those disclosures in electronic form, such as at an Internet Web site. The Board believes that when viewing online lease advertising, consumers would not be harmed if the E-Sign consent procedures do not apply and would obtain significant benefits by having timely access to advertising disclosures in electronic form. The Board also believes that consumers' ability to shop for leases online and compare the terms of various lease offers could be substantially diminished if consumers had to consent in accordance with the E-Sign Act in order to access advertisements that must be accompanied by disclosures. Applying the consumer consent provisions of the E-Sign Act to these disclosures could impose substantial burdens on electronic commerce and make it more difficult for consumers to gather information and shop for leases.

At the same time, the Board recognizes that consumers who shop or apply for leases online may not want to receive other disclosures electronically. Therefore, with respect to the disclosures required prior to the

consummation of a lease, lessors are required to obtain the lessee's consent, in accordance with the E-Sign Act, to provide such disclosures in electronic form, or else provide written disclosures.

Finally, as proposed, certain provisions that restate or cross-reference the E-Sign Act's general rules regarding electronic disclosures (including the consumer consent provisions) are being deleted as unnecessary, because the E-Sign Act is a self-effectuating statute. The revisions to Regulation M and the official staff commentary are described more fully below in the Section-by-Section Analysis.

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

##### 12 CFR Part 213 (Regulation M)

###### *Section 213.3 General Disclosure Requirements*

Section 213.3(a) generally requires lessors to provide disclosures in writing and in a form that the lessee may keep. As proposed, the Board is revising § 213.3(a) to clarify that lessors may provide disclosures to lessees in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some lessors may provide disclosures to lessees both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those lessors, the duplicate electronic form of the disclosures may be provided to lessees without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

The Board also proposed to revise § 213.3(a) to provide that the advertising disclosures required by § 213.7 must be provided to the consumer in electronic form if the consumer accesses an advertisement in electronic form (such as on a home computer), and that, under those circumstances, those disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The Board proposed to add comment 7(c)-3 to clarify this point and also to make clear that if a consumer accesses a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement (and not, for example, by including a reference in the paper advertisement to the Web site where the disclosures are located). Commenters did not address this aspect of the proposal.

In the final regulation, § 213.3(a) is revised to state that if an advertisement is accessed by the consumer in

electronic form, the required disclosures may (rather than must) be provided in electronic form, and comment 7(c)-3 is not being adopted. Section 213.7(d) requires that if a lease advertisement includes trigger terms, the advertisement itself must "contain" the required disclosures. Therefore, under the existing regulation, providing paper disclosures for an advertisement in electronic form, or vice versa, would not comply because the disclosures would not be set forth in the advertisement itself.

The Board believes that for an advertisement accessed by the consumer in electronic form, permitting (although not requiring) lessors to provide lease advertising disclosures in electronic form without regard to the consumer consent and other provisions of the E-Sign Act will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will facilitate shopping for leases by enabling consumers to receive important disclosures at the same time they access an advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online advertisement is potentially burdensome and could discourage consumers from shopping for leases online. Moreover, because these consumers are viewing the advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

Section 213.3(a)(5) in the 2001 interim final rule refers to § 213.6, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is deleting § 213.6, as discussed below, § 213.3(a)(5) is also deleted, as proposed.

###### *Section 213.6 Electronic Communication*

Section 213.6 was added by the 2001 interim final rule to address the general requirements for electronic communications. In the April 2007 proposal, the Board proposed to delete § 213.6 from Regulation M and the accompanying sections of the staff commentary, reserving that section for future use. Financial institution and retailer commenters largely supported the proposed deletion, and § 213.6 and the accompanying commentary are deleted in the final rule.

In the interim rule, § 213.6(a) defined the term "electronic communication" to

<sup>2</sup> Section 187 of CLA provides that regulations prescribed by the Board under CLA "may provide for adjustments and exceptions \* \* \* as the Board considers appropriate." Section 104(d) of the E-Sign Act authorizes federal agencies to adopt exemptions for specified categories of disclosures from the E-Sign notice and consent requirements, "if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers." For the reasons stated in this **Federal Register** notice, the Board believes that these criteria are met in the case of the advertising disclosures. In addition, the Board believes CLA section 187 authorizes the Board to permit institutions to provide disclosures electronically, rather than in paper form, independent of the E-Sign Act.

mean a message transmitted electronically that can be displayed on equipment as visual text, such as a message displayed on a personal computer monitor screen. The deletion of § 213.6(a) does not change applicable legal requirements under the E-Sign Act.

Sections 213.6(b) and (c) incorporated by reference provisions of the E-Sign Act, such as the provision allowing disclosures to be provided in electronic form and the requirement to obtain the lessee's affirmative consent before providing such disclosures. The deletion of these provisions has no impact on the general applicability of the E-Sign Act to Regulation M disclosures.

Sections 213.6(d) and (e) addressed specific timing and delivery requirements for electronic disclosures under Regulation M, such as the requirement to send disclosures to a lessee's e-mail address (or post the disclosures on a Web site and send a notice alerting the lessee to the disclosures). The Board stated in the proposal that it no longer believed that these additional provisions were necessary or appropriate. The Board noted that electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them, and also noted concerns about e-mail related to data security, identity theft, and phishing.

The consumer group commenters urged the Board to require the use of e-mail to provide required disclosures in electronic form, arguing that e-mail is the only reliable way to ensure that consumers are able to actually access, receive, and retain disclosures. The consumer groups also disagreed with the statement that concerns relating to phishing, identity theft, and data security are a valid reason for not requiring the use of e-mail, noting that phishing involves gathering information from the consumer, while disclosures would be provided to the consumer, and need not include sensitive information.

While the consumer's receipt of an e-mail message that is actually from the consumer's financial institution would not in general pose a security risk, consumers might ignore or delete e-mails from such parties (real or purported), in order to avoid falling victim to fraud schemes. Thus, disclosures sent by consumers' financial institutions and retailers may not receive the attention they should. Consequently, some companies may be reluctant to communicate by e-mail. To the extent consumers are instructed not to ignore electronic mail messages from companies they do business with, the risk of consumers being victimized by

fraudulent e-mail might be increased. In any event, the Board believes it is preferable not to mandate the use of any particular means of electronic delivery of disclosures, but instead to allow flexibility for institutions and retailers to use whatever method may be best suited to particular types of disclosure.

With regard to the requirement to attempt to redeliver returned electronic disclosures, lessors would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. As stated in the April 2007 proposal, the Board continues to believe that both requirements would likely be unduly burdensome.

Under the April 2007 proposed rule, the requirement in the 2001 interim final rule for lessors to maintain disclosures posted on a Web site for at least 90 days would be deleted. Industry commenters supported the proposed deletion; consumer group commenters expressed concern about its impact on consumers. The 90-day retention provision is deleted as proposed. However, while the Board is not requiring disclosures to be maintained on an Internet Web site for any specific time period, the general requirements of Regulation M continue to apply to electronic disclosures, such as the requirement to provide disclosures to lessees at certain specified times and in a form that the lessee may keep. The Board expects lessees to maintain disclosures on Web sites for a reasonable period of time so that consumers have an opportunity to access, view, and retain the disclosures. As stated in the April 2007 proposal, the Board will monitor lessors' electronic disclosure practices with regard to the ability of consumers to retain Regulation M disclosures and would consider further revisions to the regulation to address this issue if necessary.

#### *Section 213.7 Advertising*

Section 213.7 contains requirements for lease advertisements and requires that if an advertisement includes certain "trigger terms" (such as the payment amount), the advertisement must also include certain required disclosures (such as the total amount due prior to or at consummation and a statement that an extra charge may be imposed at the end of the lease term).

Section 213.7(c) provides that in a catalog or other multipage advertisement, the required disclosures need not be shown on each page where a "trigger term" appears, as long as each such page includes a cross-reference to

the page where the required disclosures appear. The 2001 interim final rule clarified, in comment 7(c)-2, that the multipage rule for lease advertising also applies to advertisements in electronic form. For example, if a "trigger term" appears on a particular Web page, the additional disclosures may appear in a table or schedule on another Web page and still be considered part of a single advertisement if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). In April 2007, the Board proposed to retain this rule, by amending § 213.7(c) and retaining comment 7(c)-2 with minor wording changes. Commenters did not address this provision. The final rule retains these provisions as proposed.

The Board also proposed to add a new comment 7(c)-3 to clarify that if a consumer accesses a lease advertisement in electronic form, the disclosures required on or with the advertisement must be provided to the consumer in electronic form on or with the advertisement. This comment is not being adopted in the final rule, as discussed above in connection with § 213.3.

Section 213.7(b)(1) requires that any affirmative or negative reference to a charge that constitutes part of the total amount due prior to or at consummation of the lease not be more prominent in the advertisement than the disclosure of the total amount due. In the 2001 interim final rule, comment 7(b)(1)-3 was added to state that in an advertisement using electronic communication, both the reference to the charge and the disclosure of the total amount due must appear in the same location so that they can be viewed simultaneously. Section 213.7(b)(2) requires that a percentage rate in an advertisement not be more prominent than any of the required disclosures, except for a notice required to accompany the rate under § 213.4(s). The interim final rule revised comment 7(b)(2)-1 to state that in an advertisement using electronic communication, both the rate and the accompanying notice must appear in the same location so that they can be viewed simultaneously, and that this requirement is not satisfied by the use of a link that connects the consumer to information appearing at another location.

In the April 2007 proposal, the Board proposed to delete comment 7(b)(1)-3, and to delete the language added to comment 7(b)(2)-1 by the interim final rule, as unnecessary, because the prominence and proximity requirements

of § 213.7(b) continue to apply to electronic advertisements no less than to advertisements in other media. In the supplementary information, the Board stated that requiring the consumer to scroll to another part of the page, or access a link, in order to view the required disclosures would likely not satisfy this requirement.

Some commenters were concerned by the foregoing discussion in the April 2007 proposal, and contended that in the case of small hand-held electronic devices that a consumer might use to view a lease advertisement, the small size of the screen might necessitate scrolling or the use of links for viewing the required disclosures. Commenters also said the proposal was confusing in that the commentary provisions stating that the use of links would not comply were proposed to be deleted, yet the supplementary information appeared to impose the same restrictions.

Comment 7(b)(1)-3 and the language added to comment 7(b)(2)-1 by the interim final rule are being deleted as proposed. As stated in the proposal, the prominence and proximity requirements of § 213.7(b) apply in the electronic context. However, the Board believes that these requirements can be applied with some degree of flexibility, to account for variations in devices consumers may use to view electronic advertisements. Therefore, the use of scrolling or links would not necessarily fail to comply with the regulation in all cases; however, lessors should ensure that electronic advertisements comply with the prominence and proximity requirements.

## V. Other Issues Raised by Commenters

### *Retainable Form*

Several industry commenters requested guidance on how lessors can be sure of meeting the requirement to provide disclosures in a form that the consumer can keep. The consumer group commenters were concerned about retainability of disclosures in light of the deletion of the requirement to maintain disclosures on a Web site for at least 90 days. They urged that the final regulations require that disclosures be delivered in a format that is both downloadable and printable.

The Board believes that lessors satisfy the requirement for providing electronic disclosures in a form the consumer can retain if they are provided in a standard electronic format that can be downloaded and saved or printed on a typical home personal computer. Typically any document that can be downloaded by the consumer can also be printed. The Board will, however,

monitor lessors' practices to evaluate whether further guidance is needed on this issue. In a situation where the consumer is provided electronic disclosures through equipment under the lessor's control—such as a terminal or kiosk in the lessor's offices—the lessor could, for example, provide a printer that automatically prints the disclosures.

### *Expansion of Exceptions from E-Sign Notice and Consent Requirements*

One commenter suggested that the Board adopt another exception from the E-Sign notice and consent requirements in addition to the exception for lease advertisements. The commenter encouraged the Board to allow the delivery of the Regulation M lease consummation disclosures (as well as similar disclosures under the other four regulations involved in the parallel rulemakings) electronically, without regard to the consumer consent provisions of E-Sign, using the Board's authority under the E-Sign Act as well as the statutes underlying the regulations. The commenter argued that, since Internet commerce has expanded greatly over the past few years, when consumers choose to conduct financial transactions online, they presume that they will receive related disclosures online as well. The Board believes that, at this time, there is insufficient evidence that the consent requirements are a burden on electronic commerce in this situation; and that consumers who shop for leases online may not necessarily want to receive disclosures online.

## VI. Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. In the proposal, the Board invited comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand. No comments were received on "plain language" issues involving Regulation M.

## VII. Final Regulatory Flexibility Analysis

The Board prepared an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) in connection with the April 2007 proposal. The Board received no comments on its initial regulatory flexibility analysis.

The RFA generally requires an agency to perform an assessment of the impact

a rule is expected to have on small entities. However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The Board is adopting revisions to Regulation M to withdraw the 2001 interim final rule on electronic communication and to allow lessors to provide certain disclosures to lessees in electronic form on or with an advertisement that is accessed by the lessee in electronic form without regard to the consumer consent and other provisions of the E-Sign Act. The Board is also clarifying that other Regulation M disclosures may be provided to lessees in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

The purpose of the CLA is to assure a meaningful disclosure of the terms of consumer leases, so that the lessee can compare more readily the various lease terms available, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and assure meaningful and accurate disclosures of lease terms in advertisements. 15 U.S.C. 1601. The CLA authorizes the Board to prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1604(a), 1667f. The Act expressly states that the Board's regulations may contain "such classifications, differentiations, or other provisions, \* \* \*, as in the judgment of the Board are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion of [the Act], or to facilitate compliance with [the Act]." 15 U.S.C. 1604(a). The Board believes that the revisions to Regulation M discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute. These revisions facilitate the informed use of leases by consumers in circumstances where a consumer accesses a lease advertisement in electronic form.

2. *Issues raised by comments in response to the initial regulatory flexibility analysis.* In accordance with section 603(a) of the RFA, the Board conducted an initial regulatory

flexibility analysis in connection with the proposed rule. The Board did not receive any comments on its initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* The ability to provide advertising disclosures in electronic form on or with an advertisement that is accessed by the consumer in electronic form applies to all lessors, regardless of their size. Accordingly, the final rule would reduce burden and compliance costs for small entities by providing relief, to the extent the E-Sign Act applies in these circumstances. The number of small entities affected by this final rule is unknown.

4. *Other federal rules.* The Board believes no federal rules duplicate, overlap, or conflict with the final revisions to Regulation M.

5. *Significant alternatives to the proposed revisions.* The Board solicited comment on any significant alternatives that could provide additional ways to reduce regulatory burden associated with the proposed rule. Commenters did not suggest any significant alternatives to the proposed rule.

#### VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this final rulemaking is found in 12 CFR Part 213. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0202.

Sections 105(a) and 187 of TILA (15 U.S.C. 1604(a) and 1667f) authorize the Board to issue regulations to carry out the provisions of the Consumer Leasing Act (CLA). The CLA and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions. The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when

the availability of consumer leases on particular terms is advertised. This information collection is mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, in the event the Board were to retain records during the course of an examination, the information may be kept confidential pursuant to section (b)(8) of the Freedom of Information Act (5 U.S.C. 522 (b)(8)).

Regulation M applies to all types of lessors of personal property. The Federal Reserve accounts for the paperwork burden associated with the regulation only for Federal Reserve-supervised institutions. Appendix B of Regulation M defines the Federal Reserve-supervised institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other lessors for which they have administrative enforcement authority. To ease the compliance cost (particularly for small entities) model forms are appended to the regulation. Lessors are required to retain evidence of compliance for 24 months, but the regulation does not specify types of records that must be retained.

The estimated annual burden for the entities supervised by the Federal Reserve is approximately 3,534 hours for the estimated 270 state member banks that engage in consumer leasing. As mentioned in the Preamble, on April 30, 2007, a notice of proposed rulemaking was published in the **Federal Register** (72 FR 21135). No comments specifically addressing the burden estimate were received.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0202), Washington, DC 20503.

#### List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and record keeping requirements, Truth in lending.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 213 as set forth below:

#### PART 213—CONSUMER LEASING (REGULATION M)

■ 1. The authority citation for part 213 continues to read as follows:

**Authority:** 15 U.S.C. 1604 and 1667f.

■ 2. Section 213.3 is amended by revising paragraph (a) introductory text, to read as follows, and removing paragraph (a)(5):

#### § 213.3 General disclosure requirements.

(a) *General requirements.* A lessor shall make the disclosures required by § 213.4, as applicable. The disclosures shall be made clearly and conspicuously in writing in a form the consumer may keep, in accordance with this section. The disclosures required by this part may be provided to the lessee in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*). For an advertisement accessed by the consumer in electronic form, the disclosures required by § 213.7 may be provided to the consumer in electronic form in the advertisement, without regard to the consumer consent or other provisions of the E-Sign Act.

\* \* \* \* \*

#### § 213.6 [Removed]

■ 3. Section 213.6 is removed and reserved.

■ 4. Section 213.7 is amended by revising paragraph (c), to read as follows:

#### § 213.7 Advertising.

\* \* \* \* \*

(c) *Catalogs or other multipage advertisements; electronic advertisements.* A catalog or other multipage advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

\* \* \* \* \*

■ 5. In Supplement I to Part 213, the following amendments are made:

■ a. Section 213.6—Electronic Communication is removed and reserved.

■ b. In *Section 213.7—Advertising*, under 7(b)(1) *Amount Due at Lease Signing or Delivery*, paragraph 3 is removed.

■ c. In *Section 213.7—Advertising*, under 7(b)(2) *Advertisement of a Lease Rate*, paragraph 1., the last two sentences are removed.

■ d. In *Section 213.7—Advertising*, under 7(c) *Catalogs or Other Multipage Advertisements; Electronic Advertisements*, paragraph 2. is revised.

The amendments read as follows:

**SUPPLEMENT I TO PART 213—  
OFFICIAL STAFF COMMENTARY TO  
REGULATION M**

\* \* \* \* \*

*Section 213.7—Advertising*

\* \* \* \* \*

*7(b)(2) Advertisement of a Lease Rate*

7(c) \* \* \*

2. *Cross references.* A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures required under § 213.7(d)(2)(i) through (v). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog, or in a multiple-page or electronic advertisement, it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, October 31, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E7–21699 Filed 11–8–07; 8:45 am]

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**FEDERAL RESERVE SYSTEM**

**12 CFR Part 226**

**[Regulation Z; Docket No. R–1284]**

**Truth in Lending**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; official staff interpretation.

**SUMMARY:** The Board is amending Regulation Z, which implements the Truth in Lending Act, and the official staff commentary to the regulation, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The 2001 interim final rules addressed the

timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Because compliance with the 2001 interim final rules has not been mandatory, withdrawal of these provisions from the *Code of Federal Regulations* reduces confusion about the status of the provisions and simplifies the regulation.

In addition, the Board is adopting final amendments to Regulation Z to provide guidance on the electronic delivery of disclosures. For example, the final rules provide that when an application for a credit card is accessed by a consumer in electronic form, disclosures may be provided to the consumer in electronic form on or with the application without regard to the consumer consent and other provisions of the E-Sign Act. Similar final rules are being adopted under other consumer fair lending and financial services regulations administered by the Board.

**DATES:** The final rule is effective December 10, 2007. The mandatory compliance date is October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** John C. Wood, Counsel, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Background**

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to promote the informed use of credit and assist in shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings. TILA and Regulation Z require a number of disclosures to be provided in writing.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.*, was enacted in 2000. The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic

disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice and consent provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, creditors are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulation Z if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

**II. Board Proposals and Interim Rules Regarding Electronic Disclosures**

On March 30, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation Z (66 FR 17,329). Similar interim final rules for Regulations B, E, M, and DD (implementing the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, the Consumer Leasing Act, and the Truth in Savings Act, respectively) were published on March 30, 2001 (66 FR 17,322) (Regulation M) and April 4, 2001 (66 FR 17,779, 66 FR 17,786, and 66 FR 17,795) (Regulations B, E, and DD, respectively). Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Creditors and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act. The interim final rules also incorporated many of the provisions that were part of earlier regulatory proposals issued by the Board regarding electronic disclosures.<sup>1</sup>

<sup>1</sup> On May 2, 1996, the Board proposed to amend Regulation E to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14,528, March 25, 1998) and similar proposals under Regulations B, M, Z, and DD (63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998). Based on comments received on the 1998 proposals, in 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999).