Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any 1-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988—Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and Visas.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.1(f)(3), currently in effect, is amended by adding ''Colombia,'' in proper alphabetical sequence effective April 2, 2001.

3. Section 212.1(f)(2), as redesignated and revised at 66 FR 1018, effective April 6, 2001, is amended by adding ''Colombia,'' in proper alphabetical sequence effective April 6, 2001.

Dated: March 23, 2001.

Mary Ann Wyrsch,

Acting Commissioner, Immigration and Naturalization, Service.

[FR Doc. 01–7914 Filed 3–29–01; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1042]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for comments.

SUMMARY: The Board is adopting an interim rule amending Regulation M, which implements the Consumer Leasing Act, to establish a uniform standard for the timing of the electronic delivery of disclosures required by the act and regulation. The rule provides guidance on the timing and delivery of electronic disclosures to ensure lessees have adequate opportunity to access and retain cost information when shopping for a lease or becoming obligated for a lease. (Similar rules are being adopted under other consumer financial services and fair lending regulations administered by the Board.) Under the rule, lessors may deliver disclosures electronically if they obtain lessees' affirmative consent in accordance with the Electronic Signatures in Global and National Commerce Act. The rule is being adopted as an interim rule to allow for additional public comment.

DATES: The interim rule is effective March 30, 2001; however, to allow time for any necessary operational changes, the mandatory compliance date is October 1, 2001. Comments must be received by June 1, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1042, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 in the Board's Martin Building between 9 a.m. and 5 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, or David A. Stein, Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667.

SUPPLEMENTARY INFORMATION:

I. 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, presuming that lessors provide paper documents. Under the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.), however, electronic documents and signatures have the same validity as paper documents and handwritten signatures.

Board Proposals Regarding Electronic Disclosures

Over the past few years, the Board has published several interim rules and proposals regarding the electronic delivery of disclosures. In 1996, after a comprehensive review of Regulation E (Electronic Fund Transfers), the Board proposed to amend the regulation to permit financial institutions to provide

disclosures by sending them electronically. (61 FR 19696, May 2, 1996) Based on comments received on the 1996 proposal, on March 25, 1998, the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528) and similar proposals under Regulation M (63 FR 14538), and other financial services and fair lending regulations administered by the Board. The 1998 interim rule and proposed rules were similar to the 1996 proposed rule under Regulation E.

The 1998 proposals and interim rule allowed depository institutions, creditors, lessors, and others to provide disclosures electronically if the consumer agreed, with few other requirements. For ease of reference, this background section uses the terms ''institutions'' and ''consumers.''

Industry commenters generally supported the Board's 1998 proposals and interim rule, but many of them sought specific revisions and additional guidance on how to comply with the disclosure requirements in certain transactions and circumstances. In particular, they expressed concern that the rule did not specify a uniform method for establishing that an ''agreement'' was reached for sending disclosures electronically. Consumer advocates, on the other hand, generally opposed the 1998 proposals and the interim rule. They believed that consumer protections in the proposals were inadequate, especially in connection with transactions that are typically consummated in person (such as automobile loans and leases, home-secured loans, and door-to-door credit sales).

September 1999 Proposals

In response to comments received on the 1998 proposals, the Board published revised regulatory proposals in September 1999 under Regulations B, E, M, Z, and DD, (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999) (collectively, the ''1999 proposals''), and an interim rule under Regulation DD (64 FR 49846). The interim rule under Regulation DD allowed depository institutions to deliver disclosures on periodic statements electronically if the consumer agrees.

Generally, the 1999 proposals required institutions to use a standardized form containing specific information about the electronic delivery of disclosures so that consumers could make informed decisions about whether to receive disclosures electronically. If the consumer affirmatively consented, most disclosures could be provided electronically. To address concerns about potential abuses, the 1999 proposals generally would have required disclosures to be given in paper form when consumers transacted business in person. The proposals contained rules for disclosures that are made available to consumers at an institution's Internet web site (governing, for example, how long disclosures must remain posted at a web site).

Comments on the September 1999 Proposals

The Board received letters representing 115 commenters expressing views on the revised proposals. Industry commenters generally supported the Board's approach of establishing federal rules for a uniform method of obtaining consumers' consumer to the receipt of electronic disclosures instead of deferring to state law. Still, many sought specific additional guidance and in some cases wanted more flexibility. They were concerned about the length of time the proposals would have required electronic disclosures to remain available to a consumer at an institution's Internet web site or upon request. In addition, they believed the proposed rule requiring paper disclosures for mortgage loans closed in person was not sufficiently flexible. Consumer advocates believed the 1999 proposals addressed many of their concerns about the 1998 proposals. Nevertheless, they urged the Board to incorporate greater protections for consumers, such as restricting the delivery of electronic disclosures to only those consumers who initiate transactions electronically.

The Board also obtained views through four focus groups with individual consumers, conducted in the Washington-Baltimore metropolitan area. Participants reviewed and commented on the format and content of the proposed sample consent forms, as well as on alternative revised forms.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed the E-Sign Act, which was enacted to encourage the continued expansion of electronic commerce. The E-Sign Act generally provides that electronic documents and signatures have the same validity as paper documents and handwritten signatures. The act contains special rules for the use of electronic disclosures in consumer transactions. Consumer disclosures may be provided in electronic form only if the consumer affirmatively consents after receiving certain information specified in the statute.

The Board and other government agencies are permitted to interpret the E-Sign Act's consumer consent requirements within prescribed limits, but may not impose additional requirements for consumer consent. In addition, agencies generally may not re-impose a requirement for using paper disclosures in particular transactions, such as those conducted in person.

The consumer consent provisions in the E-Sign Act became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to use electronic disclosures under Regulations B, E, M, Z and DD if the consumer affirmatively consents in the manner required by the E-Sign Act.

II. The Interim Rule

The Board is adopting an interim final rule to establish uniform standards for the electronic delivery of disclosures required under Regulation M. Consistent with the requirements of the E-Sign Act, lessors must obtain lessee's affirmative consent to provide disclosures electronically.

The interim rules also establish uniform requirements for the timing and delivery of electronic disclosures. Disclosures may be sent by e-mail to an electronic address designated by the lessee, or they may be made available at another location, such as an Internet web site. If the disclosures are not sent by e-mail, lessees must receive a notice alerting them to the availability of the disclosures. Disclosures posted on a web site must be available for at least 90 days, to allow lessees adequate time to access and retain the information. With regard to the timing of electronic disclosures, lessees are required to access the disclosures before becoming obligated on a lease. Under the interim rule, lessors must make a good faith attempt to redeliver electronic disclosures that are returned undelivered, using the address information available in their files. Similar rules are being adopted under Regulations B, E, Z, and DD.

III. Request for Comment

Interim Rules

The interim rules include most of the revisions that were part of the 1999 proposals and were not affected by the E-Sign Act. The Board is adopting these rules with some minor changes discussed below. The rules are adopted as interim rules, to allow commenters to

present new information or views not previously considered in the context of the 1998 and 1999 proposals. Since the Board's 1999 proposals were issued, more institutions have gained experience in offering financial services electronically. The Board believes that additional comments, beyond those previously considered in connection with the Board's earlier proposals, might inform the Board whether any developments in technology or industry practices have occurred that warrant further changes in the rules. The comment period ends on June 1, 2001. The Board expects to adopt final rules on a permanent basis prior to October 1, 2001.

Interpreting E-Sign Provisions

Under section 104(b) of the E-Sign Act, the Board and other government agencies are permitted to interpret the act, within prescribed limits. The Board may issue rules that interpret how the E-Sign Act's consumer consent requirements apply for purposes of the laws administered by the Board. Also, the Board may, by regulation, exempt a particular category of disclosures from the E-Sign Act's consumer consent requirements if it will eliminate a substantial burden on electronic commerce without creating material risk for consumers.

The Board requests comment on whether the Board should exercise its authority under the E-Sign Act in future rulemakings to interpret the consumer consent provisions, or other provisions of the act, as they affect the Board's consumer protection regulations. Comment is requested on whether the statutory provisions relating to consumer consent are sufficient, or whether additional guidance is needed. For example, is interpretative guidance needed concerning the statutory requirement that lessees confirm their consent electronically in a manner that reasonably demonstrates they can access information in the form to be used by the lessor? Is clarification needed on the effect of lessees withdrawing their consent, or on requesting paper copies of electronic disclosures? Lessors must also inform lessees of changes in hardware and software requirements if the change creates a material risk that the lessee will not be able to access or retain the disclosure. The Board solicits comment on whether regulatory standards are needed for determining a ''material risk'' for purposes of Regulation M and other financial services and fair lending laws administered by the Board, and if so what standards should apply.

Under section 104(d) of the E-Sign Act, the Board is authorized to exempt specific disclosures from the consumer consent requirements of section 101(c) of the E-Sign Act, if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. The Board requests comment on whether it should consider exercising this exemption authority.

Study on Adapting Requirements to Online Banking and Lending

The E-Sign Act eliminated legal impediments to the use of electronic records and signatures. The Board requests comment on whether other legislative or regulatory changes are needed to adapt current requirements to online banking and lending and facilitate electronic delivery of consumer financial services.

The comments may assist the Board in future efforts to update the regulations. The comments may also be used in connection with a study required under the Gramm-Leach-Bliley Act of 1999. That act requires the federal bank supervisory agencies to conduct a study of banking regulations that affect the electronic delivery of financial services and to submit to the Congress a report recommending any legislative changes that are needed to facilitate online banking and lending.

IV. Section-by-Section Analysis

Pursuant to its authority under section 187 of the CLA, the Board amends Regulation M to establish uniform standards for the use of electronic communication to provide disclosures required by this regulation. Electronic disclosures can effectively reduce compliance costs without adversely affecting consumer protections. Leasing disclosures are typically provided in the lease contract, but disclosures can be provided in a separate statement or in the lease contract or other document evidencing the lease. Leases are not typically be consummated on-line, but consumers are able to shop and apply for leases on-line. The purpose of the Regulation M disclosures is to ensure that consumers have meaningful information about lease terms and to promote comparison shopping. The use of electronic communication may allow lessors to provide Regulation M disclosures to consumers earlier in the leasing process. To the extent that a lessor may make electronic disclosures available at its Internet web site instead of providing the disclosures directly to the lessee, the Board finds that such an exception is warranted, acting pursuant to its authority under section 105(a) of TILA. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to changes in the official staff commentary.

Section 213.3 General Disclosure Requirements

3(a) General Requirements

Section 213.3(a)(5) is added to provide a cross reference to rules governing the electronic delivery of disclosures in § 213.6.

Section 213.6 Electronic Communication

6(a) Definition

As adopted, the definition of the term ''electronic communication'' remains substantially unchanged from the 1999 proposals. Section 213.6(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text; an example is a message displayed on a personal computer monitor screen. Thus, audio- and voice-response telephone systems are not included. Because the rule permits the use of electronic communication to satisfy the statutory requirement for written disclosures that must be clear and conspicuous, the Board believes visual text is an essential element of the definition.

Some commenters asked for clarification that the definition was not intended to preclude the use of devices other than personal computers, which also can display visual text. The equipment on which the text message is received is not limited to a personal computer, provided the visual display used to deliver the disclosures meets the ''clear and conspicuous'' format requirement, discussed below.

6(b) General Rule

Effective October 1, 2000, the E-Sign Act permits lessors to provide disclosures using electronic communication, if the lessor complies with consumer consent requirements in section 101(c). Under section 101(c) of the E-Sign Act, lessors must provide specific information about the electronic delivery of disclosures before obtaining the lessee's affirmative consent to receive electronic disclosures. The consent requirements in the E-Sign Act are similar but not identical to the Board's 1999 proposal. Accordingly, § 213.6(b) sets forth the general rule that lessors subject to Regulation M may provide disclosures electronically if the lessor complies with section 101(c) of the E-Sign Act.

The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under the CLA other than a requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. Comment 6(b)–1 contains this guidance.

Presenting Disclosures in a Clear and Conspicuous Format

Electronic disclosures must be clear and conspicuous as is the case for all written disclosures under the CLA and Regulation M. See § 213.3(a). A lessor must provide electronic disclosures using a clear and conspicuous format. Also in accordance with the E-Sign Act: (1) The lessor must disclose the requirements for accessing and retaining disclosures in that format; (2) the lessee must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and (3) the lessor must provide the disclosures in accordance with the specified requirements. Comment 6(b)–2 contains this guidance.

Commenters asked about the use of navigational tools with electronic disclosures. For example, some believed that such tools might be helpful in directing consumers to related information that explains the terminology used in the disclosures. Many Internet web sites use navigational tools that are conspicuous through the use of bold text, larger fonts, different colors, underlining, or other methods of highlighting. Such tools are not per se prohibited so long as they are not used in a manner that would violate the clear and conspicuous standard.

Providing Timely Disclosures

Disclosures delivered electronically must comply with existing timing requirements under the CLA and Regulation M. See § 213.3(a)(3). Disclosures generally must be provided before the lessee becomes obligated. For example, if a lessor permits the lessee to lease a vehicle on-line, the lessee must be required to access the disclosures required under § 213.4 before becoming obligated. A link to the disclosures satisfies the timing rule if the lessee cannot bypass the disclosures before becoming obligated. Or the disclosures in this example must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. Comment 6(b)–3 contains this guidance.

The CLA and Regulation M require that disclosures be given to lessees. It is not sufficient for lessors to provide a bypassable navigational tool that merely gives lessees the option of receiving disclosures. Such an approach reduces the likelihood that lessees will notice and receive the disclosures. The final rule ensures that lessees see cost disclosures provided electronically so that they have the opportunity to read them when shopping for a lease or before becoming obligated for a lease.

Commenters on the various proposals requested guidance regarding an institution's duty in cases where the institution cannot provide timely disclosures because automated equipment controlled by the institution malfunctions or otherwise fails to operate properly. To the extent applicable in connection with a lease transaction, if a lessor controls the equipment and disclosures are required at that time, a lessor might not be liable for failing to provide timely disclosures if the defense in section 130(c) of TILA is available.

Providing Disclosures in a Form the Consumer May Keep

Under the CLA and Regulation M, disclosures required to be in writing also must be in a form the consumer can retain. (See § 213.3(a).) Electronic disclosures are subject to this requirements. Comment 6(b)–4 contains guidance on this requirement.

Lessees may communicate electronically with lessors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a lessee may not have the ability at a given time to preserve CLA disclosures presented on-screen. To ensure that lessees have an adequate opportunity to access and retain the disclosures, the lessor also must send them to the lessee's designated e-mail address or make them available at another location, for example, on the lessor's Internet web site, where the information may be retrieved at a later date.

To the extent applicable in connection with a lease transaction, if a lessor controls the equipment providing the electronic disclosures (for example, a computer terminal located in the lessor's place of business) the lessor must ensure that the lessee has the opportunity to retain the required information. Comment 6(b)–5 contains guidance on this requirement.

6(c) When Consent is Required

Under the E-Sign Act, consumers must affirmatively consent before they receive electronic disclosures ''relating to a transaction'' if the disclosures are required by law or regulation to be in writing. Section 213.6(c) is added to provide that disclosures required in advertisements are not deemed to be related to a transaction for purposes of the E-Sign Act's consumer consent provision.

6(d) Address or Location to Receive Electronic Communication

Consistent with the 1999 proposals, the interim rule provides that lessors may deliver electronic disclosures by sending them to a lessee's e-mail address. Alternatively, the rule provides that lessors may make the disclosures available at another location such as an Internet web site. If the lessor makes a disclosure available at such a location, the lessor effectively delivers the disclosure by sending a notice alerting the lessee when the disclosure can be accessed and preserving the disclosure at the location for at least 90 days. The time period for keeping disclosures available at a location such as a lessor's Internet web site under the interim rule differs from the 1999 proposals, based on commenters' concerns as discussed below.

6(d)(1)

For purposes of § 213.6(d), a lessee's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the lessor. This guidance is contained in comment 6(d)(1)–1.

6(d)(2)

As proposed, under § 226.36(d)(2)(ii) of the interim rule, disclosures provided at an Internet web site must remain available for at least 90 days. The requirement seeks to ensure that lessees have adequate time to access and retain a disclosure under a variety of circumstances, such as when a lessee may not be able for an extended period of time to access the information due to computer malfunctions, travel, or illness. Comment 6(d)(2)–1 is added to provide that during this period, the actual disclosures must be available to the lessee, but the lessor has discretion to determine whether they should be available at the same location for the entire period.

Some commenters on the various proposals believed the 90-day time period is reasonable and feasible. About an equal number of commenters believed it was too burdensome and costly; some of these commenters suggested periods that ranged from 30 to 60 days.

The 1999 proposals provided that after the 90-day time period, disclosures would be available upon consumers'

request, generally for 24 months, in the same format as initially provided to the consumer. The 24-month period is consistent with a lessor's duty to retain records that evidence compliance. Consumer advocates supported the proposed retention period; some recommended that disclosures should be available upon request for the length of the contractual relationship with the consumer.

Industry commenters strongly opposed the 24-month period. Many believed that keeping copies of electronic disclosures actually provided to consumers for that period of time would be costly and burdensome. Moreover, industry commenters believed that once a consumer has accessed the disclosures, the consumer rather than the lessor should have the duty to retain them for future reference. They also noted that under existing record retention requirements applicable to paper disclosures, a lessor need only demonstrate compliance with the rules, but need not retain copies of the actual disclosure provided to consumers.

The requirement for lessors to provide duplicate disclosures upon request for 24 months has not been adopted. A lessor's duty to retain evidence of compliance for 24 months remains unchanged.

6(d)(3) Exception

Section 213.6(d)(3) is added to make clear that the requirements of paragraphs (i) and (ii) of § 213.6(d)(2) do not apply to disclosures in lease advertisements (§ 213.7).

6(e) Redelivery

Industry commenters on the 1998 proposal asked for clarification that sending the electronic disclosures complies with the regulation, and the institutions are not required to confirm that the consumer actually received them. Consumer advocates asked that institutions be required to verify the delivery of disclosures by return receipt, in the case of e-mail. In the 1999 proposals, the Board solicited comment on the need for and the feasibility of such a requirement.

Consumer advocates believe that e-mail systems are not yet sufficiently reliable, and that safeguards are necessary to ensure that consumers actually receive disclosures. Industry commenters stated that a return receipt requirement would be costly and burdensome, and would require lessors to monitor return receipts in every case to determine that an individual consumer received the disclosures.

Section 101(c) of the E-Sign Act requires that consumers consent electronically, or confirm their consents electronically, in a manner that reasonably demonstrates that the consumer can access the information that the lessor will be providing. This requirement seeks to verify at the outset that the consumer is actually capable of receiving the information in the electronic format being used by the lessor. After the consumer consents, the E-Sign Act also requires lessors to notify consumers of changes that materially affect consumer's ability to access electronic disclosures.

The interim rule does not impose a verification requirement because the cost and burden associated with verifying delivery of all disclosures would not be warranted. When electronic disclosures are returned undelivered, however, § 213.6(e) imposes a duty to attempt redelivery (either electronically or to a postal address) based on address information in the lessor's own files. Unlike paper disclosures delivered by the postal service, there generally is no commonly-accepted mechanism for reporting a change in e-mail or for forwarding e-mail. Where a lessor actually knows that the delivery of an electronic disclosure did not take place, the lessor should take reasonable steps to effectuate delivery in some way. For example, if an e-mail message to the lessee (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if the lessor sends the disclosure to a different e-mail address or postal address that the lessor has on file for the lessee. Sending the disclosures a second time to the same electronic address would not be sufficient if the lessor has a different address for the lessee on file. Comment 6(e)–1 provides this guidance.

This redelivery requirement is limited to situations where the electronic communication cannot be delivered and does not apply to situations where the disclosure is delivered but, for example, cannot be read by the lessee due to technical problems with the lessee's software. A lessor's duty to redeliver a disclosure under § 213.6(e) does not affect the timeliness of the disclosure. Lessors comply with the timing requirements of the regulation when a disclosure is sent in a timely manner, even though the disclosure is returned undelivered and the lessor is required under § 213.6(e) to take reasonable steps to attempt redelivery.

Section 213.7 Advertising

7(b) Clear and Conspicuous Standard

7(b)(1) Amount Due at Lease Signing or Delivery

Under § 213.7(b)(1), a lease advertisement cannot refer to a component of the total amount due prior to or at consummation or by delivery (except for the periodic payment amount) more prominently than the total amount due. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any other § 213.4 disclosure stated in the advertisement. Comment 7(b)(1)–3 contains guidance on how this rule applies in an electronic advertisement.

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

Under § 213.7(b)(2), a lessor that advertises a percentage rate must include a statement about the limitations of the rate in close proximity to the rate without any other intervening language or symbols. Comment 7(b)(2)-1 is revised to provide guidance on how this rules applies in an electronic advertisement.

7(c) Catalogs and Other Multi-Page Advertisements; Electronic Advertisements

Stating certain credit terms in an advertisement for a lease triggers the disclosure of additional terms. Section 213.7(c) permits lessors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering lease terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. The Board proposed to extend the multiple-page advertisement provisions to electronic advertisements and provided that lessors complied with § 213.7(c) if the table or schedule with the additional information is set forth clearly and conspicuously and the triggering lease terms appearing anywhere else in the advertisement clearly refer to the page or location where the table or schedule begins. Comment 7(c)-2 is revised to reflect this guidance.

Additional Issues

Document Integrity

The interim rule does not impose document integrity standards. Consumer advocates and others expressed concerns that electronic documents can be altered more easily than paper documents. They say that consumers' ability to enforce rights under the consumer protection laws could be impaired, in some cases, if the

authenticity of disclosures they retain cannot be demonstrated.

Institutions are generally required to retain evidence of compliance with the Board's consumer regulations. Accordingly, the Board requested comment on the feasibility of requiring institutions to have systems in place capable of detecting whether or not information has been altered, or to use independent certification authorities to verify disclosure documents.

Consumer advocates strongly supported document integrity requirements (including the use of certification authorities) that would apply to all-electronic disclosures. Signatures, notary seals, and verification procedures such as recordation are used to protect against alterations for transactions memorialized in paper form. Consumer advocates believe that comparable verification procedures are needed for electronic disclosures as well.

Industry commenters opposed mandatory document integrity standards for electronic disclosures. Because the technology in this area is still evolving, they believe that mandatory standards would be premature. Others believe that imposing document integrity standards or requiring the use of certification authorities would be costly to implement.

The Board recognizes the concerns about document integrity, but believes it is not practicable at this time to impose document integrity standards for consumer disclosures or mandate the use of independent certification authorities. Effective methods may be too costly. Other less costly methods may deter alterations in some cases, but would not necessarily ensure document integrity.

Moreover, the issue of document integrity affects electronic commerce generally and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Section 104(b)(3) of the E-Sign Act authorizes federal or state regulatory agencies to specify performance standards to assure the accuracy, record integrity, and accessibility of records that are required to be retained, but prohibits the agencies from requiring the use of a particular type of software or hardware in order to comply with record retention requirements. Technology is likely to develop to protect electronic contracts and other legal documents. Thus, it seems premature for the Board to specify any particular standards or methods for consumer disclosure at this time.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1042, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format.

VI. Regulatory Flexibility Analysis

The Board has reviewed these interim amendments to Regulation M, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604). Two of the three requirements of a final regulatory flexibility analysis under the Act are (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of those issues, and a statement of the changes made in the final rule in response to the comments. These two areas are discussed above.

The third requirement of the analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. This interim final rule is designed to provide lessors with an alternative method of providing disclosures; the rule will relieve compliance burden by giving lessors flexibility in providing disclosures required by the regulation. Overall, the costs of providing electronic disclosures are not expected to have significant impact on small entities. The expectation is that providing electronic disclosures may ultimately reduce the costs associated with providing disclosures.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. 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.

The collection of information that is revised by this rulemaking is found in 12 CFR Part 213.3, 213.4, 213.5, 213.7, 213.8 and in Appendix A. This information is mandatory (15 U.S.C. 1667 *et seq.*) to evidence compliance with the requirements of the Regulation M and the Consumer Leasing Act (CLA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of depository institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The revisions provide that lessors may deliver disclosures electronically upon obtaining consumers' affirmative consent in accordance with the E-Sign Act. The revisions provide guidance to institutions on the timing and delivery of electronic disclosures, to ensure that consumers have adequate opportunity to access and retain the information. With respect to state member banks, it is estimated that there are 310 respondent/recordkeepers and an average frequency of 6,200 responses per respondent each year. The current annual burden is estimated to be 11,179 hours. No comments specifically addressing the burden estimate were received, therefore, the numbers remain unchanged. There is estimated to be no additional cost burden and no capital or start up cost associated with the interim final rule.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act.

The Board has a continuing interest in the public's opinions of the Federal Reserve's 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.

VIII. Solicitation of Comments Regarding the 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. The Board invites comments on whether the interim rule is clearly stated and effectively organized, and how the Board might make the rule easier to understand.

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 Regulation M, 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; 1667f.

2. Section 213.3 is amended by adding a new paragraph (a)(5) to read as follows:

§ 213.3 General disclosure requirements.

(a) *General requirements.* * * *

(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 213.6.

3. Section 213.6 is added to read as follows:

§ 213.6 Electronic communication.

(a) *Definition.* ''Electronic communication'' means a message transmitted electronically between a lessor and a lessee in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a lessor may provide by electronic communication any disclosure required by this part to be in writing.

(c) *When consent is required.* Under the E-Sign Act, a lessor is required to obtain a lessee's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under § 213.7 are deemed not to be related to a transaction.

(d) *Address or location to receive electronic communication.* A lessor that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the consumer's electronic address; or

(2) Make the disclosure available at another location such as a web site; and

(i) Alert the lessee of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the lessor's option). The notice shall identify the transaction involved and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the lessee of the disclosure, whichever comes later.

(3) *Exceptions.* A lessor need not comply with paragraph (d)(2)(i) and (ii) of this section for the disclosures required under § 213.7.

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a lessor undelivered, the lessor shall take reasonable steps to attempt redelivery using information in its files.

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

a. A new *Section 213.6—Electronic Communication* is added.

b. *In Section 213.7—Advertising,* under *7(b)(1) Amount due at Lease Signing or Delivery,* a new paragraph 3. is added.

c. In *Section 213.7—Advertising,* under *7(b)(2) Advertisement of a Lease Rate,* paragraph 1. is revised.

d. In *Section 213.7—Advertising*, the heading *7(c) Catalogs and Multi-Page advertisements* is revised and paragraph 12 is redesignated as paragraph 2 and revised.

The amendments read as follows:

Supplement I to Part 213 Official Staff Commentary to Regulation M

* * * * *

Section 213.6—Electronic Communication

6(b) General rule

1. *Relationship to the E-Sign Act.* The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. For example, to satisfy the clear and conspicuous standard for disclosures, electronic disclosures must use visual text.

2. *Clear and conspicuous standard.* A lessor must provide electronic disclosures using a clear and conspicuous format. Also in accordance with the E-Sign Act:

i. The lessor must disclose the requirements for accessing and retaining disclosures in that format;

ii. The lessee must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and

iii. The lessor must provide the disclosures in accordance with the specified requirements.

3. *Timing and effective delivery.* When a lessor permits the lessee to consummate a lease transaction on-line, the lessee must be required to access the required disclosures before becoming obligated. A link to the disclosures satisfies the timing rule if the lessee cannot bypass the disclosures before becoming obligated. Or the disclosures in this example must automatically appear on screen, even if multiple screens are required to view the entire disclosure. The lessor is not required to confirm that the lessee has read the disclosures.

4. *Retainability of disclosures.* A lessor satisfies the requirement that disclosures be in a form that the lessee may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001(c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

5. *Disclosures provided on lessor's equipment.* To the extent applicable in connection with a lease transaction, a lessor that controls the equipment providing electronic disclosures to lessees (for example, a computer terminal in a lessor's place of business) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the lessee may keep. For example, if disclosures are required at the time of an on-line transaction, the disclosures must be sent to the lessee's e-mail address or must be made available at another location such as the lessor's Internet web site, unless the lessor provides a printer that automatically prints the disclosures.

6(d) Address or Location to Receive Electronic Communication

Paragraph 6(d)(1)

1. *Electronic address.* A lessee's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the lessor.

Paragraph 6(d)(2)

1. *90-day rule.* The actual disclosures provided to a lessee must be available for at least 90-days, but the lessor had discretion to determine whether they should be available at the same location for the entire period.

6(e) Redelivery.

1. *E-mail message returned as undeliverable.* If an e-mail message to the lessee (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the lessor sends the disclosure to a different e-mail address or postal address that the lessor has on file for the lessee. Sending the disclosures a second time to the same electronic address is not sufficient if the lessor has a different address for the lessee on file.

Section 213.7—Advertising

* * * * *

7(b)(1) Amount Due at Lease Signing or Delivery

* * * * *

3. *Electronic advertisements.* For advertisements using electronic communication, to satisfy the prominence rule in § 213.7(b)(1), both the triggering terms and the required disclosures must appear in the same location so that they can be viewed simultaneously.

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

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any other § 213.4 disclosure stated in the advertisement. For advertisements using electronic communication, to comply with proximity rule in, both the rate and the accompanying notice must appear in the same location so that they can be viewed simultaneously. The prominent rule in § 213.7(b)(2) is not met if the disclosures can be viewed only by use of a link that connects the consumer to the information appearing at another location.

7(c) Catalogs or Other Multipage Advertisements; Electronic Advertisements

* * * * *

2. *Cross references.* A catalog or other multiple-page advertisement or an electronic advertisement 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 (but see comments under § 213.7(b) about rules regarding the prominence of disclosures).

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 23, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–7726 Filed 3–29–01; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1043]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for comments.

SUMMARY: The Board is adopting an interim final rule amending Regulation Z, which implements the Truth in Lending Act, to establish uniform standards for the electronic delivery of disclosures required by the act and regulation. The rule provides guidance on the timing and delivery of electronic disclosures to ensure consumers have adequate opportunity to access and retain cost information when shopping for credit or before becoming obligated for an extension of credit. (Similar rules are being adopted under other consumer financial services and fair lending regulations administered by the Board.) Under the rule, creditors may deliver disclosures electronically if they obtain consumers' affirmative consent in accordance with the Electronic Signatures in Global and National Commerce Act. In addition, the regulation is revised to allow creditors to provide disclosures in foreign languages. The rule is being adopted as an interim rule to allow for additional public comment.

DATES: The interim rule is effective March 30, 2001; however, to allow time for any necessary operational changes, the mandatory compliance date is October 1, 2001. Comments must be received by June 1, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1043, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 in the Board's Martin Building between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel; Kathleen Ryan, Senior Attorney; or Deborah J. Stipick, Attorney; Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667.

SUPPLEMENTARY INFORMATION:

I. 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, presuming that creditors provide paper documents. Under the Electronic Signatures in Global and National Commerce Act (the E-Sign Act)(15 U.S.C. 7001 *et seq.*), however, electronic documents and signatures have the same validity as paper documents and handwritten signatures.

Board Proposals Regarding Electronic Disclosures

Over the past few years, the Board has published several interim rules and proposals regarding the electronic delivery of disclosures. In 1996, after a comprehensive review of Regulation E (Electronic Fund Transfers), the Board proposed to amend the regulation to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696, May 2, 1996). Based on comments received on the 1996 proposal, on March 25,1998, the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528) and similar proposals under Regulation Z (63 FR 14548) and other financial services and fair lending regulations administered by the Board. The 1998 interim rule and proposed rules were similar to the 1996 proposed rule under Regulation E.

The 1998 proposals and interim rule allowed depository institutions, creditors, lessors, and others to provide disclosures electronically if the consumer agreed, with few other requirements. For ease of reference, this background section uses the terms ''institutions'' and ''consumers.''

Industry commenters generally supported the Board's 1998 proposals and interim rule, but many of them sought specific revisions and additional guidance on how to comply with the