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: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend 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 address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the Code of Federal Regulations would reduce confusion about the status of the provisions and simplify the regulation. The Board is also proposing to amend Regulation M to provide that when an advertisement is accessed by a consumer in electronic form, certain disclosures must be provided to the consumer in electronic form on or with the advertisement, and that in these circumstances the consumer consent and other provisions of the E-Sign Act do not apply. Similar rules are being proposed under other consumer fair lending and financial services regulations administered by the Board.

DATES: Comments must be received on or before **[Insert date that is 60 days after the date of publication in the Federal Register].**

ADDRESSES: You may submit comments, identified by Docket No. R-1283, by any of the following methods:

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless

modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood or David A. Stein, Counsels, 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. 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.

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19,696). 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 proposals under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings) (63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998).

Based on comments received on the 1998 proposals, in September 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49,688, 49,699, 49,713, 49,722 and 49,740, respectively, September 14, 1999). At the same time, the Board published an interim rule under Regulation DD allowing depository institutions to deliver disclosures on periodic statements in electronic form if the consumer agreed (64 FR 49,846, September 14, 1999). While these rulemakings were pending, federal legislation was enacted addressing the use of electronic documents and records, including consumer disclosures.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed into law the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 et seq.). 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 provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions 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 Regulations B, E, M, Z, and DD if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

The Interim Final Rules

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 were published on March 30, 2001 (66 FR 17,329 (Z)) and April 4, 2001 (66 FR 17,779 (B), 66 FR 17,786 (E), and 66 FR 17,795 (DD)). The interim final rules incorporated most of the provisions that were part of the 1999 proposals.

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 2001 interim final rule for Regulation M established uniform requirements for the timing and delivery of electronic disclosures. Under the interim rule, 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 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. Similar provisions were included in the interim final rules adopted under Regulations B, E, Z, and DD.

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 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 41,439, August 8, 2001.) Thus, institutions are not required to comply with the interim final rules. Since that time, the Board has 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.

II. The Proposed Rules

The Board is proposing to amend Regulation M and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule on electronic disclosures 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. (Similar amendments are also being proposed by the Board, in today's issue of the Federal Register, under Regulations B, E, Z, and DD.)

Because compliance with the 2001 interim final rules is not mandatory, removing most portions of the interim rules from the Code of Federal Regulations, while finalizing other provisions, would reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. The Board is proposing to adopt certain provisions that are identical or similar to provisions in the 2001 interim final 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 proposing to eliminate 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.

The 2001 interim final rule allowed lessors to provide certain disclosures to lessees electronically, without regard to the consumer consent or other provisions of the E-Sign Act, for disclosures provided on or with an electronic advertisement. 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 those provisions. Some commenters on the interim final rules did not agree with the Board's rationale. Upon further consideration, the Board does not believe it is necessary to determine whether or not these disclosures are related to a transaction. This proposal does not make such determinations.

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,[1] the Board is proposing 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. The proposed rule would also amend Regulation M, as discussed in detail below, to provide that certain disclosures must be provided to a consumer in electronic form on or with an advertisement that is accessed by the consumer in electronic form.

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 the advertisement containing those disclosures in electronic form, such as at an Internet web site. The Board believes consumers would not be harmed, and in fact would benefit, by having timely access to advertising disclosures in electronic form when they are viewing online lease advertising. 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.

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[1] 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.

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 would be required to provide written disclosures or obtain the lessee's consent in accordance with the E-Sign Act to provide the disclosures in electronic form.

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

The Board solicits comment on all aspects of this proposal. Specifically, the Board seeks comment on the appropriateness of eliminating certain provisions and retaining other provisions contained in the 2001 interim final rule.

III. 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. The Board proposes to revise § 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.

Section 213.3(a) would also be revised to provide that the advertising disclosures required by § 213.7 must be provided to the consumer in electronic form if the consumer accesses the advertisement electronically. 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 believes that, for an advertisement accessed by the consumer in electronic form, permitting 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 proposing to delete § 213.6, as discussed further below, the Board also proposes to delete § 213.3(a)(5).

Section 213.6 Electronic communication

Section 213.6 was added by the 2001 interim final rule to address the general requirements for electronic communications. The Board proposes to delete § 213.6 from Regulation M and the accompanying sections of the staff commentary, reserving that section for future use.

In the interim rule, § 213.6(a) defines the term "electronic communication" to 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) would not change applicable legal requirements under the E-Sign Act.

Sections 213.6(b) and (c) incorporate 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 will have no impact on the general applicability of the E-Sign Act to Regulation M disclosures.

Sections 213.6(d) and (e) address 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 website and send a notice alerting the lessee to the disclosures). The Board no longer believes that these additional provisions are necessary or appropriate. Electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them. Although many institutions offer e-mail alert notices to consumers, some consumers may choose not to receive notifications by e-mail and the Board sees no reason to require e-mail alert notices. In addition, the Board 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 that have become more pronounced since 2001.

With regard to the requirement to attempt to redeliver returned electronic disclosures, as the commenters noted, 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. The Board believes that both requirements would likely be unduly burdensome. In addition, the concerns that have

been raised about the requirement to use e-mail for the initial delivery of a disclosure or notice apply equally to the use of e-mail for an attempted redelivery.

Under the proposed rule, the Board would not require lessors to maintain disclosures posted on a web site for at least 90 days as provided in the 2001 interim final rule. While the Board is not proposing to require 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 a specified time and in a form that the lessee may keep. Although these general requirements apply to electronic disclosures, the Board does not believe that the 90-day time period set out in § 213.6(d) of the 2001 interim final rule is needed to ensure that lessors satisfy these requirements when they provide electronic disclosures. The Board, however, will monitor lessors' electronic disclosure practices with regard to the ability of lessees to retain Regulation M disclosures and will consider further regulatory action if it appears necessary.

The official staff commentary to § 213.6 of the interim final rule provides guidance on the provisions set forth in § 213.6 such as delivery of disclosures or alert notices by e-mail, redelivery if disclosures or a notice is returned undelivered, and retention of disclosures on a web site for 90 days. As noted above, because the Board is proposing to delete § 213.6 of the regulation, the Board also proposes to delete the accompanying provisions of the official staff commentary.

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) relates to catalogs and other multipage advertisements and (under this proposal) to electronic advertisements. The Board is proposing 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. A consumer accesses an advertisement in electronic form when, for example, the consumer views the advertisement on his or her home computer. On the other hand, if a consumer receives a written advertisement in the mail, the lessor would <u>not</u> satisfy its obligation to provide the disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located.

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). The Board proposes to retain the rule allowing the use of links or other cross-references in electronic credit advertisements to provide guidance on how the advertising rules apply to web sites, by amending § 213.7(c), as well as by retaining comment 7(c)-2 with minor wording changes.

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.

The Board proposes 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. The prominence requirements of § 213.7(b) continue to apply to electronic advertisements no less than to advertisements in other media. 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.

IV. 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 proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (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 believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the objectives of the proposal. The Board is proposing 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 proposing to clarify 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 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. 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. Small entities affected by the proposal. 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 proposed revisions 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 proposal is unknown.

3. Other federal rules. The Board believes no federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation M.

4. Significant alternatives to the proposed revisions. The Board solicits comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with this proposed rule.

VI. 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 (OMB). The collection of information that is required by this proposed rule is found in 12 CFR 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 regarding consumer leases during the course of an examination, the information regarding the consumer and the lease would 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 twenty-four 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 270 State member banks that engage in consumer leasing. As mentioned in the Preamble, § 213.3 would be revised to clarify the disclosure requirements in §§ 213.4 and 213.7. The Federal Reserve estimates that 270 respondents would take approximately 6.5minutes per transaction to comply with the existing

disclosure requirements in § 213.4 and estimates the annual burden to be 3,509 hours. The Federal Reserve estimates that 15 respondents would take approximately 2.5 minutes per transaction to comply with the existing disclosure requirements in § 213.7 and estimates the annual burden to be 25 hours. The Federal Reserve requests specific comment on whether the revisions in this proposed rule would change the burden on respondents.

Comments are invited on: a. whether the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent 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.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation M. New language is shown inside bold-faced arrows, while language that would be removed is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 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 and 1667f.

2. Section 213.3 would be amended by revising paragraph (a) and removing paragraph (a)(5), to read as follows:

§ 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 must be provided to the consumer in electronic form on or with the advertisement. The § 213.7 disclosures may be made in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.◄

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

3. Section 213.6 would be removed and reserved.

4. Section 213.7 would be 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 would be made:

a. Section 213.6 would be removed and reserved.

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

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

d. In Section 213.7—Advertising, under 7(c) Catalogs or Other Multipage Advertisements; Electronic Advertisements, paragraph 2. would be revised and new paragraph 3. would be added.

The amendments read as follows:

SUPPLEMENT I TO PART 213—OFFICIAL STAFF INTERPRETATIONS

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Section 226.7—Advertising

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

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[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

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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 **[**(but see comments under § 213.7(b) about rules regarding the prominence of disclosures)**]**.

►3. Electronic form of disclosures. For an advertisement that is accessed by the consumer in electronic form (such as an advertisement appearing on an Internet web site), the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement. Providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would not satisfy its obligation to provide the disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located.◄

By order of the Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson (signed)
Jennifer J. Johnson,
Secretary of the Board