

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: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation M, which implements the Consumer Leasing Act. The Board previously published a proposed rule that permits lessors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R-1042, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. 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, N.W. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR §§ 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller, Staff Attorney, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667. Users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

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 consumers 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 to consumers in writing, presuming that lessors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communications for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the “interim rule”), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the “March 1998 proposed rules”). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference this background section uses the terms “financial institutions,” “institutions,” and consumers.”) The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the CLA and Regulation M. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communications before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit financial institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and express their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should

have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and March 1998 proposed

rules. It is intended to provide specific guidance for lessors that choose to use electronic communication to comply with Regulation M's requirements to provide written disclosures, and to ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with electronic communication rules.

The modified proposal does not permit the electronic delivery of Regulation M disclosures where a consumer enters into a lease agreement in person, and the required Regulation M disclosures are provided at that time (either as part of the lease agreement or separately), those disclosures have to be in paper form.

The Regulation M leasing disclosures must be given to consumers before they become obligated for a lease, and must reflect the legal obligation. The disclosures can be made in a separate statement or in the lease contract or other document evidencing the lease. Lessors typically include the disclosures in the lease agreement. Few lessors currently consummate lease agreements electronically; however, as standards are developed for establishing legal agreements by electronic communication, more lease contracts may be entered into by that means.

While leases are typically not consummated on-line, consumers are able to shop on-line and apply for leases. The purpose of the Regulation M disclosures is to ensure that consumers have meaningful information about lease terms and to promote comparison shopping. Therefore, the use of electronic communication may allow lessors to provide Regulation M disclosures to consumers earlier in the leasing process.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, lessors would have to provide specific information about how the consumer can receive and retain electronic disclosures--through a standardized disclosure statement--before obtaining consumers' acceptance of such delivery, with

some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, lessors would be permitted to use electronic communications. As a general rule a lessor would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the lessor by electronic communications, or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer consummates a lease in person, disclosures required to be given at that time must be in paper form.

Lessors would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the lessor's website, for printing or downloading. If the disclosures are posted at a website location, lessors generally must notify consumers at an e-mail address about the availability of the information. (Lessors may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and conspicuous" standard, and the existing format, timing, and retainability rules in Regulation M. For example, to satisfy the timing requirement, if disclosures are due at the time an electronic transaction is being conducted, they would have to appear on the screen before the consumer could consummate the transaction.

Lessors generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A lessor would not otherwise have a duty to verify consumers' actual ability to receive, print, or download the disclosures. Some commenters suggested that lessors should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require lessors to retain evidence of compliance with Regulation M. Specific comment is solicited on the feasibility of complying with a requirement that lessors provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's Federal Register, the Board is publishing similar proposals for comment under Regulations B, E, Z, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 187 of the CLA, the Board proposes to amend Regulation M to permit lessors to use electronic communication to provide the disclosures required by § 213.4. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

The March 1998 proposed rule addressed electronic communication in § 213.3 of the regulation, which contains the general disclosure requirements. In the revised proposal, the rules on electronic communications are contained in § 213.6 for easier reference and to avoid complicating the general Regulation M disclosure requirements.

Section 213.6 Requirements for electronic communication

6(a) Definition

The definition of the term “electronic communication” in the March 1998 proposed rule remains unchanged. Section 213.6(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions

governing electronic communication. When disclosures are sent by facsimile, a lessor should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 6(a)-1 contains this guidance.

6(b) Electronic Communication between Lessor and Consumer

Section 213.6(b)(1) would permit lessors to provide disclosures using electronic communication, if the lessor complies with provisions in new § 213.6(c), discussed below.

1. Presenting Disclosures in a Clear and Conspicuous Format

The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format as is the case for all written disclosures under the act and regulation. See § 213.3(a).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, lessors generally would have no further duty to determine that consumers are able to receive the disclosures. Lessors do have the responsibility of ensuring the proper equipment is in place in instances where the lessor controls the equipment.

2. Providing Disclosures in a Form the Consumer May Keep

As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the 1998 proposals and interim rule, a lessor would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers 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 consumer may not have the ability at a given time to preserve CLA disclosures presented on-screen. Therefore, when a lessor provides disclosures by electronic communication,

to satisfy the retention requirements, the lessor must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 6(b)-1 contains this guidance; see also the discussion under § 213.6(d), below. If a lessor controlled an electronic terminal used to provide electronic disclosures, a lessor could provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the lessor's website.

3. Timing

Lessors must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, disclosures must be provided prior to consummation of a lease. The rule ensures that consumers have an opportunity to read important information about costs and other terms before becoming obligated.

To illustrate the timing requirements for electronic communication, assume that a consumer is interested in leasing a vehicle on-line and uses a personal computer at home to access the lessor's website on the Internet. The lessor provides disclosures to the consumer about the delivery of Regulation M disclosures by electronic communication (the § 213.6(c) disclosures discussed below) and the consumer responds affirmatively. If the lessor's procedures permit the consumer to lease a vehicle at that time, disclosures required under § 213.4 would have to be provided before the consumer becomes obligated on-line. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before consummating the lease on-line. The timing requirements for providing disclosures would not be met if, in this example, the lessor permitted the consumer to

consummate the lease on-line and sent disclosures to an e-mail address thereafter. Proposed comment 6(b)-2 contains this guidance.

On the other hand, assume that a consumer applies for a lease on-line and the lessor delays processing the consumer's request until the required disclosures have been delivered by e-mail. In that case the information would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must be given the opportunity to receive the disclosures before consummation.

6(b)(2) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation M to be provided by electronic communication; in these cases, paper disclosures would be required. The exception, contained in § 213.6(b)(2), seeks to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is an expectation that consumers would have to be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 213.6(b)(2), if a consumer consummates a lease in person, the lessor must generally provide disclosures in paper form. For example, if a consumer goes to a lessor's place of business to consummate a lease, disclosures are required before consummation and they must be provided in paper form; directing the consumer to disclosures posted on the lessor's website would not be sufficient. If, however, a consumer applies for a lease on the Internet, a lessor may send disclosures electronically at or around that time, even though the lessor's procedures require the consumer to visit the lessor at a later time to complete the transaction (for example, to sign a lease agreement). Proposed comment 6(b)(2)-1 contains this guidance.

6(c) Disclosure Notice

Section 213.6(c) would identify the specific steps required before a lessor could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms A-4 and A-5, and Sample Forms A-7 and A-8 are published to aid compliance with these requirements.

6(c)(1) Notice by Lessor

Section 213.6(c)(1) outlines the information that lessors must provide before electronic disclosures can be given. The lessor must: (1) describe the information to be provided electronically and specify whether the information is also available in paper form or whether the lease is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically; and if it will be available at a location other than the consumer's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the lessor's option, an electronic or a postal address for questions about receiving electronic disclosures and for seeking assistance with technical or other difficulties (see proposed comments to 6(c)(1)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

Under the proposal, the § 213.6(c)(1) disclosures must be provided, as applicable, before the lessor uses electronic communication to deliver the disclosures required by § 213.4 of the regulation. The approach of requiring a standardized disclosure statement addresses, in several

ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 6(c)-1). Thus, § 213.6(c)(1) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Commenters generally requested guidance on when the consumer chooses not to receive information by electronic communication. A lessor could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. For example, a lessor could offer particular leases for which disclosures are given only by electronic communication. Section 213.6(c)(1)(i) would require lessors to tell consumers whether or not they have the option to receive disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form A-7) or electronic disclosures only (Form A-8) are contained in appendix A.

6(c)(2) Response by Consumer

Proposed § 213.6(c)(2) would require lessors to provide a means for the consumer to affirmatively indicate that disclosures may be provided electronically, for example, a "check box" on a computer screen. The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily.

6(d) Address or Location to Receive Electronic Communication

Proposed § 213.6(d) identifies addresses and locations where lessors using electronic communication may send information. Lessors may send information to a consumer's electronic address, which is defined in proposed comment 6(d)(1)-1 as an e-mail address that the consumer also may use for receiving communications from parties other than the lessor. For example, a lessor's responsibility to provide disclosures by electronic communication will be satisfied when the information is sent to the consumer's electronic address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of lessors may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 213.6(d), a lessor may make disclosures available to a consumer at a location other than the consumer's electronic address. The lessor must notify the consumer when the information becomes available and identify the lease involved. The notice must be sent to the electronic mail address designated by the consumer; the lessor may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form A-6) is published below.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example, lessors must provide disclosures to consumers prior to consummation of a lease. (12 CFR 213.3(a)(3).)

There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 213.6(d), lessors must post information sent to a location other than the consumer's electronic address for 90 days. Proposed comment 6(d)(2)-1 contains this guidance.

Under the modified proposal, lessors that post information at a location other than the consumer's electronic mail address are required--after the 90 day period--to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 213.8. The Board requests comments on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

Section 213.7 Advertising

7(b) Clear and conspicuous standard

7(b)(1) Amount due at lease signing

Under § 213.7(b)(1), in an advertisement, lessors 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. Also, lessors that advertise a percentage rate must include a statement about the limitations of the rate, which must be as prominent as the rate. Proposed 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), if a lessor includes a rate in an advertisement, the rate cannot be more prominent than any of the disclosures in § 213.4. Comment 7(b)(2)-1 would be revised to provide guidance on how this rule applies in an electronic advertisement.

7(c) Catalogs and multi-page advertisement

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.

Several commenters asked the Board to clarify the rules for electronic advertisements.

Section 213.7(c) would be amended to cover electronic advertisements. Lessors that advertise using electronic communication generally would comply 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. Proposed comment 7(c)-2 contains this guidance.

Appendix A to Part 213 -- Model Forms

The Board solicits comment on three proposed model forms and two sample forms for use by lessors to aid compliance with the disclosure requirements of §§ 213.6(c) and 6(c). Model Forms A-4 and A-5 would implement § 213.6(c), regarding the notice that lessors must give prior to using electronic communication to provide required disclosures. Model Form A-6 would implement § 213.6(d), regarding notices to consumers about the availability of electronic disclosures at locations such as the lessor's website. Use of any modified version of these forms would be in compliance as long as the lessor does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure.

Sample Form A-7 illustrates the disclosures under § 213.6(a)(3) for a vehicle lease transaction. The sample assumes that the lessor also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form A-8 assumes that consumers must accept electronic disclosures if they want to contract for the lease.

Additional Issues Raised by Electronic Communication

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 213.9 of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide lessors with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Section 213.9(b) outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, lessor, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-1042 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. 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 3 ½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation M. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A lessor's use of electronic

communication to provide disclosures required by the regulation is optional. The proposed rule would give lessors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

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 proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). 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 number. The OMB control number is 7100-0202.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR parts 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 Regulation M and the Consumer Leasing Act (CLA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to lease transactions, at or before the time lessees enter into a consumer lease transaction and when the availability of a consumer lease on particular terms is advertised and lessees receive certain disclosures by electronic communication. The respondents/ recordkeepers are for-profit lessors, including small businesses. Lessors are also required to retain records for 24 months. This regulation applies to all types of lessors, 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 proposed revisions would allow lessors the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of lessors. With respect to state member banks, it is estimated that there are 310 respondents/recordkeepers subject to the disclosure requirements with an average frequency of 37,200 responses per respondent each year. It is also estimated of the 310 respondent/recordkeepers, approximately 15 are subject to the advertising requirement. This subset of respondent/recordkeepers has an average frequency of 45 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 11,179 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

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 arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between lessors and the customer.

The Federal Reserve requests comments from lessors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the

collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0202), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 213

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

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation M. New language is shown inside bold-faced arrows and deletions are shown in 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 would continue to read as follows:

Authority: 15 U.S.C. 1604, 1667f.

2. Section 213.6 is added to read as follows:

<§ 213.6 Requirements for electronic communication.

(a) Definition. Electronic communication means a message transmitted electronically between a consumer and a lessor in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(b) Electronic communication between lessor and consumer. (1) General. Except as provided in paragraph (b)(2) of this section, a lessor that has complied with paragraph (c) of this section may provide by electronic communication the disclosures required by § 213.4. Disclosures

required under this section must be made clearly and conspicuously, in writing or by electronic communication, and in a form the consumer may keep.

(2) In-person exception. Prior to consummation of a lease in person, disclosures required under § 213.4 must be provided in paper form, unless the consumer requested the transaction by electronic communication and the lessor provided disclosures in compliance with paragraph (c)(1) and (2) of this section at or around that time.

(c) Disclosure notice. The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form in Appendix A of this part (Model Forms A-4 and A-5).

(1) Notice by lessor. A lessor shall:

(i) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the lease is offered only with electronic disclosures;

(ii) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(iii) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(iv) Provide a toll-free telephone number and, at the lessor's option, an address for questions about receiving electronic disclosures and for seeking technical or other assistance related to electronic communication.

(2) Response by consumer. A lessor shall provide a means for the consumer to accept or reject electronic disclosures.

(d) Address or location to receive electronic communication. A lessor that uses electronic communication to provide the disclosures required by § 213.4 shall:

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

(2) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by paragraph (d)(2) of this section shall identify the lease property in accordance with § 213.4(a), shall be sent to an electronic address designated by the consumer (or to a postal address, at the lessor's option), and shall be substantially similar to the model form set forth in Appendix A of this part (Model Form A-6).=

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

§ 213.7 Advertising.

* * * * *

(c) Catalogs, [and] multiple-page <, and electronic= advertisements. A catalog or other multiple-page advertisement<, or an advertisement using electronic communication= 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]<location where= the table or schedule appears.

* * * * *

4. Appendix A to Part 213 is amended by adding a new Appendix A-4, Appendix A-5, Appendix A-6, Appendix A-7, and Appendix A-8 to read as follows:

APPENDIX A TO PART 213 -- MODEL FORMS

* * * * *

<Appendix A-4 Model Disclosures for Electronic Communication (§ 213.6(c))
(Disclosures Available in Paper or Electronically)

**You can choose to receive important information required by the
Consumer Leasing Act in paper or electronically.**

Read this notice carefully and keep a copy for your records.

C You can choose to receive the following information in paper form or electronically:

(description of Regulation M disclosures).

C How would you like to receive this information

I want paper disclosures.

I want electronic disclosures.

C [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

C To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

Yes

No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

9Yes

9No

C If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A-5 Model Disclosures For Electronic Communication (§ 213.6(c))
(Disclosures Available Only Electronically)

**You will receive important information required by the
Consumer Leasing Act electronically.**

Read this notice carefully and keep a copy for your records.

C The following information will be provided electronically: (description of Regulation M disclosures).

C This lease is not available unless you accept electronic disclosures.

C [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

C To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

9Yes

9No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

Yes

No

C Do you want this lease with electronic disclosures?

Yes

No

C If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A-6 Model Notice For Delivery of Information Posted at Certain Locations (§ 213.6(d))

Information about your (identify lease) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for ___ days.

A-7 Sample Form Electronic Communication (§ 213.6(c))
(Disclosures Available in Paper or Electronically)

**You can choose to receive important information required by the
Consumer Leasing Act in paper form or electronically.**

Read this notice carefully and keep a copy for your records.

C You can choose to receive the following information in paper form or electronically: Cost and Terms of the lease.

C Please indicate how you would like to receive this information:

I want paper disclosures

I want electronic disclosures

C If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

insert address

C To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

Yes

No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

Yes

No

C If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com*.

A-8 Sample Form Electronic Communication (§ 213.6(a)(3))
(Disclosures Available Only Electronically)

**You will receive important information required by the
Consumer Leasing Act electronically.**

Read this notice carefully and keep a copy for your records.

- C The following information will be provided electronically: Cost and Terms of the lease.
- C This lease is available only if you accept these disclosures electronically.
- C Information about your account will be available at our Internet website:
http://www._____.com for 90 days. After that, the information will be available upon request
by contacting us at *1-800-xxx-xxx*. When the information is posted on our website, we will send
you a message at your e-mail address:

insert address

- C To receive this information electronically, you will need: a minimum web browser version of
(Browser name). Do you have access to a computer that satisfies these requirements?
- 9 Yes 9 No
- C Do you have access to a printer, or the ability to download information, in order to keep copies for
your records?
- 9 Yes 9 No
- C Do you want this lease with electronic disclosures?
- 9 Yes 9 No
- C If you have questions about receiving disclosures, or need technical or other assistance concerning
these disclosures, you may contact us by telephone at *1-800-xxx-xxx* or by electronic mail at
_____.help@isp.com.=

5. In Supplement I to Part 213, a new Section 213.6 Requirements for Electronic Communication is added to read as follows:

SUPPLEMENT I TO PART 213--OFFICIAL STAFF COMMENTARY TO
REGULATION M

* * * * *

<Section 213.6--Requirements for Electronic Communication

6(a) Definition

1. Coverage. Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A lessor that provides disclosures by facsimile machine should comply with the requirements for electronic communication unless the lessor knows that the disclosures will be received in paper form.

6(b) Electronic Communication between Lessor and Consumer

1. Retainability. Lessors must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers 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 consumer may not have the ability at a given time to preserve CLA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the lessor also must send them to the consumer's designated electronic mail address or to another location, for example, on the lessor's website, where the information may be retrieved at a later date.

2. Timing and delivery. When a consumer becomes obligated for a lease transaction on the Internet, for example, in order to meet the timing and delivery requirements, lessors must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to consummate the lease before receiving the disclosures. For example, a lessor can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before becoming obligated on the lease.

6(b)(2) In-person exception

1. Disclosures in paper form. If a consumer consummates a lease in person, the lessor must generally provide disclosures in paper form. For example, if a consumer goes to a lessor's place of business to consummate a lease, disclosures are required before consummation and they must be provided in paper form; directing the consumer to disclosures posted on the lessor's website would not be sufficient. If, however, a consumer applies for a lease on the Internet, a lessor may send disclosures electronically at or around that time even though the lessor's procedures require the consumer to visit the lessor at a later time to complete the transaction (for example, to sign a lease agreement).

6(c) Disclosure Notice

1. Consumer's affirmative responses. Even though a consumer accepts electronic disclosures in accordance with § 213.6(c)(2), a lessor may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information; (see sample forms A-7 and A-8 in Appendix A to this part).

6(c)(1) Notice by Lessor

1. Toll-free telephone number. The number must be toll-free for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. Lessor's address. Lessors have the option of providing either an electronic or postal address for consumers' use in addition to the toll-free telephone number.

6(d) Address or location to receive electronic communication.

Paragraph 6(d)(1)

1. Electronic address. A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the lessor.

Paragraph 6(d)(2)

1. Availability. Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 213.6(d)(2) is sent to the consumer, whichever occurs later.=

* * * * *

6. In Supplement I to Part 213, in Section 213.7--Advertising, the following amendments are made:

a. Under 7(b)(1) Amount due at Lease Signing or Delivery, a new paragraph 3. is added;

b. Under 7(b)(2) Advertisement of a Lease Rate, paragraph 1. is revised; and

c. Under 7(c) Catalogs and Multi-Page Advertisements, paragraph 12. is redesignated as paragraph 2. and revised.

The addition and revisions read as follows:

* * * * *

Section 213.7--Advertising

* * * * *

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

* * * * *

<3. Electronic advertisements. A lessor that has an electronic advertisement does not comply with the prominence rule in § 213.7(b)(1) if both the triggering terms and the required disclosures cannot 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 § 213.4 disclosure stated in the advertisement. <A lessor does not comply with the prominence rule in § 213.7(b)(2) if a rate contained in an electronic advertisement and the required disclosures cannot be viewed simultaneously.=

7(c) Catalogs and Multi-Page Advertisements

* * * * *

2. Cross-references. A <catalog, multiple-page, or electronic= [multi-page] 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 other] 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 the prominence rule).= [the page on which the triggering term is used must clearly refer to the specific page where the table, chart, or schedule begins.]

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,
Secretary of the Board.
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