

regulations, as well as mandatory inspection of the product to ensure that it meets these minimum requirements. These regulations have helped ensure that quality product reaches the consumer, and have thus helped increase and maintain demand for Washington sweet cherries over the past five decades. The compilation and dissemination of statistical information undertaken by the Committee has helped producers and handlers make production and marketing decisions. Funds to administer the order are obtained from assessments levied against all product handled under the order.

Regarding complaints or comments received from the public concerning the order, AMS did not receive any complaints or comments specific to the order in response to the notice of review and request for comments published on June 20, 2007 (72 FR 33918).

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. Except as discussed herein, AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the order. There is a Washington State commission covering specified tree fruits, including sweet cherries. However, this program—the Washington State Fruit Commission (Commission)—is market-oriented and none of its programs are duplicated by the Federal order. Among other activities, the Commission currently conducts marketing research and development projects, which are authorized—but not currently conducted—under the Federal order.

The order was established in June 1957. During the 50 years the order has been in effect, AMS and the Washington sweet cherry industry have continuously monitored its operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to assure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committee meets once or twice a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration. In addition, in 2001, and again in 2005, the Committee made several recommendations to improve quality regulations and program operations through two separate formal amendments of the order. These formal amendment proceedings resulted in several changes being made to the order, including: Increasing the size of the production area to include all of Washington State east of the Cascade Mountain Range; allowing grading and packing of Washington cherries outside the production area; increasing Committee representation by adding a handler member; providing for late payment and interest charges on delinquent assessments; authorizing the establishment of container marking requirements; adding authority for the Committee to accept voluntary contributions for research and promotion; establishing tenure requirements for Committee members; and adding a requirement that continuance referenda be held every 6 years.

Based on the potential benefits of the order to producers, handlers, and consumers, AMS has determined that the Washington sweet cherry marketing order should be continued. The order was established to help the industry work with USDA to solve marketing problems. The order's regulations on grade, size, quality, maturity, and pack continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the Washington sweet cherry industry in maintaining an effective marketing order program.

Dated: December 10, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-24203 Filed 12-13-07; 8:45 am]

BILLING CODE 3410-02-P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-1281]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board is revising the official staff commentary to Regulation B, which implements the Equal Credit Opportunity Act, to clarify an amendment published on November 9, 2007. The clarification and the earlier amendment relate to the electronic delivery of disclosures under Regulation B.

DATES: The amendment is effective January 14, 2008. The mandatory compliance date is October 1, 2008.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the ECOA. The ECOA and Regulation B require certain disclosures to be provided to applicants, and some of those disclosures must be provided in writing.

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

Recently the Board published amendments to Regulation B and the official staff commentary to the regulation to provide guidance on the use of electronic disclosures, consistent

with the E-Sign Act (72 FR 63,445, November 9, 2007). The amendments take effect on a mandatory basis on October 1, 2008. The Board has received questions about one aspect of the official staff commentary accompanying the November 2007 amendments to Regulation B. The Board is now issuing this clarification to the staff commentary to address the questions raised.

II. The November 2007 Final Rule

Under the Board's November 2007 final rule, creditors may provide certain disclosures required by Regulation B in electronic form without obtaining the consumer's consent pursuant to the E-Sign Act. These include the disclosures required in some circumstances to accompany a credit application (set forth in §§ 202.5, 202.13, and 202.14). Many creditors that commented on the Board's proposed rules, which were published for comment in April 2007, urged that they be permitted to provide these disclosures in paper form in appropriate cases, even when the application is accessed by the consumer electronically. They noted that a consumer or creditor's employee might complete an electronic application by entering information at a terminal or kiosk located in the creditor's office and that paper disclosures would be more appropriate in such cases. In response to the commenters' concerns, the November 2007 final rule states that if an application is accessed by the consumer in electronic form, the required application-related disclosures may (rather than must) be provided in electronic form on or with the application. See 12 CFR 202.4(d)(2).

Because the regulation allows disclosures to be given in either paper or electronic form when consumers access an application electronically, the Board also revised the commentary to Regulation B to provide examples of how creditors can satisfy the requirement that the disclosures be "on or with" the application in particular circumstances. As revised, the commentary reflects that where a consumer accesses and submits an application form using a home computer via the creditor's Web site, the creditor must provide the disclosures electronically with the application form on the Web site to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, the disclosures would not be timely and would not be provided on or with the application. In contrast, if a consumer is physically present in the creditor's office, and accesses and submits an electronic application—such

as via a terminal or kiosk—the revised commentary notes that the creditor could use paper disclosures to comply with the timing and delivery requirements of the regulation ("on or with"). See comment 4(d)–2. For example, a loan officer could give the disclosures to the consumer in paper form, or in the case of an unattended kiosk, the kiosk could have a printer and provide paper disclosures.

III. Revisions to the Staff Commentary

Following publication of the November 2007 final rule, questions have been raised about other situations where creditors could provide paper disclosures in a timely manner to consumers accessing a credit application electronically, even though the consumers are not physically present in the creditor's office. For example, consumers might access a credit application using an electronic terminal or kiosk on the premises of the creditor's affiliate or a third party (such as a retail store) that has arranged with the creditor to provide applications to consumers. In these cases, consumers could receive paper disclosures with the credit application in the same manner as in the creditor's own office. This is consistent with the revised regulation and the Board's intent in issuing the November 2007 final rule. Accordingly, the Board is revising comment 4(d)–2 to clarify that these are additional examples where paper disclosures would satisfy the rule's requirements for providing disclosures "on or with" the application.

The Board is issuing this commentary revision in final form. Under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, publication of a notice of proposed rulemaking is not required for interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A). In this case, the Board has determined that the public notice and comment provisions do not apply to this rulemaking because the revisions are interpretative rules. The commentary revision does not establish new regulatory requirements and merely clarifies, through additional examples, how creditors can meet the existing requirement for providing disclosures "on or with" applications in particular circumstances. Moreover, the commentary revision provides creditors with an expanded safe harbor for complying with the rule by allowing them to use either paper or electronic disclosures in the circumstances described, consistent with the public comments previously received by the Board. The changes, therefore, meet the

requirements for exemption from notice and comment in 5 U.S.C. 553(b)(A).

List of Subjects in 12 CFR Part 202

Aged, Banks, Banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

■ For the reasons set forth in the preamble, the Board amends the Official Staff Commentary to Regulation B, 12 CFR part 202, as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

■ 2. In Supplement I to part 202, in *Section 202.4—General Rules*, under *Paragraph (4)(d)*, paragraph 2 is revised, to read as follows:

SUPPLEMENT I TO PART 202—OFFICIAL STAFF INTERPRETATIONS

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Section 202.4 General Rules

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Paragraph (4)(d).

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2. *Form of disclosures.* Whether the disclosures required to be on or with an application must be in electronic form depends upon the following:

i. If an applicant accesses a credit application electronically (other than as described under ii below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its website) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the applicant, this requirement would not be met.

ii. In contrast, if an applicant is physically present in the creditor's office, and accesses a credit application electronically, such as via a terminal or kiosk (or if the applicant uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

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By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 11, 2007.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E7–24221 Filed 12–13–07; 8:45 am]

BILLING CODE 6210-01-P