approval, to reapportion membership between cooperative producer and handler members and independent producer and handler members as necessary to assure equitable representation on the committee. Such changes are authorized in order to reflect structural changes within the industry and changes in the amount of fruit handled by cooperative handlers in relation to fruit handled by independent handlers.

On August 27, 1996, the committee met to discuss, among other issues, committee representation and to determine whether any changes were warranted to foster more equitable representation. Changes in the Texas citrus industry have resulted in a reduction of the number of cooperative handlers in that industry subsequently resulting in a decrease in the amount of fruit handled by cooperative handlers. According to the committee's records, there were four cooperative organizations operating until 1984, prior to a freeze in the production area. From 1985 to 1995, there were two cooperative organizations handling Texas citrus. Presently, only one cooperative handler remains in operation.

As the number of cooperative handlers has decreased, so has the volume of fresh fruit accounted for by cooperatives. At the time committee membership was last reapportioned in 1969, cooperatives accounted for about 30 percent of fresh fruit shipments and about 45 percent of fruit harvested (which includes processed citrus). The volume of fresh fruit shipments accounted for by cooperatives has declined since that time, particularly after the last two freezes.

The committee is concerned that the cooperative segment of the industry is currently over-represented on the committee and that committee representation no longer reflects the current structure of the industry. The present situation has recently made it difficult to acquire cooperative representation on the committee, which could lead to potential problems in the future.

This proposed rule would change the composition of the committee by reducing cooperative producer positions on the committee from four to two, and increasing independent producer member positions from five to seven. In addition, cooperative handler representation would be reduced from two member positions to one, and independent handler positions would be increased from four to five. The proposed change would bring committee representation more in line with the Texas citrus industry's current structure. This change was unanimously recommended by the committee at its August 27 meeting.

The committee further recommended that current committee members complete their current terms of office where possible and new members be nominated where applicable to provide for full three-year terms of office for unexpired terms. Presently, the term of office of one of the four cooperative producer members expires on July 31, 1997, and three expire on July 31, 1999. The 1997 position, in addition to one of the 1999 positions, would be relinquished to independent producers. Also, there are presently two cooperative handler members, one of whose terms expires on July 31, 1998, and the other on July 31, 1999. One of those positions would be relinquished to independent handlers. The three terms of office relinquished to the independents would terminate on July 31 of the appropriate term. Determination of which cooperative producer and handler members currently serving unexpired terms would remain in their respective positions would be made by lot at the committee's subsequent nomination meetings.

The Texas citrus industry has historically demonstrated a policy of maintaining equitable representation among cooperative and independent producers and handlers. When the order was promulgated in 1960, two of the nine producer member positions and one of the six handler positions were allocated to cooperative members. In 1969, committee membership was reallocated to the present apportionment to reflect changes in the composition of the industry.

Cooperative producer member positions were increased from two to four and cooperative handler representation was increased from one to two. The changes also provided for a reduction in the number of independent producer and handler positions. Following the two major freezes, only one cooperative handler remains in operation. The committee recommended returning to the order's original apportionment to accommodate the shift in production. Reducing the total number of cooperative positions to three would bring representation closer in line with the proportion of fresh fruit shipments accounted for by the cooperative. Therefore, the committee's recommendation to revert to the committee's original apportionment would be achieved by removing § 906.122, which would result in reallocation of cooperative and independent producers and handlers to that reflected in § 906.18 of the order. Section 906.122, which provides that the production area be considered as one district for purposes of committee representation, would not be affected by this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is proposed to be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.122 is removed.

Dated: December 26, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–33328 Filed 12–31–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0955]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation B (Equal Credit Opportunity). The revisions would implement recent amendments to the Equal Credit Opportunity Act (ECOA). These amendments create a legal privilege for information developed by creditors as a result of ''self-tests'' that they voluntarily conduct to determine the level of their compliance with the ECOA. The Department of Housing and Urban Development will be publishing for comment a substantially similar proposal to revise the regulations implementing the Fair Housing Act.

DATES: Comments must be received on or before January 31, 1997.

ADDRESSES: Comments should refer to Docket No. R–0955, and may be mailed

to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: James A. Michaels, Senior Attorney, or Manley Williams, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, 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, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The act is implemented by the Board's Regulation B (12 CFR Part 202).

On September 30, 1996, the President signed into law amendments to the ECOA as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) (1996 Act). Section 2302 of the 1996 Act creates a legal privilege for information developed by creditors through ''self-tests'' that are conducted to determine the level or effectiveness of their compliance with the ECOA, provided that appropriate corrective action is taken to address any possible violations that may be discovered. Privileged information may not be obtained by a government agency or credit applicant for use in an examination or investigation relating to fair lending compliance, or in any civil proceeding in which a violation of the ECOA is alleged. The 1996 Act also provides that a challenge to a creditor's claim of privilege may be filed in any court or administrative law proceeding with appropriate jurisdiction.

The Act directs the Board to issue implementing regulations, including a definition of what constitutes a ''self-test.'' After consultation with the federal agencies responsible for enforcing the ECOA and with the Department of Housing and Urban Development (HUD), the Board is publishing proposed rules to implement the 1996 Act's amendments to the ECOA. The 1996 Act also establishes a privilege for creditor self-testing under the Fair Housing Act (42 U.S.C. 3601 *et seq*). HUD will be publishing for comment substantially similar rules to implement the amendments to the Fair Housing Act.

II. Proposed Regulatory Provisions

The proposed amendment to Regulation B would implement the 1996 Act by defining what constitutes a privileged self-test. The Board proposes to define a ''self-test'' as any program, practice, or study that creates data or factual information about the creditor's compliance with the ECOA that is not available or derived from loan files or other records related to credit transactions. This includes but is not limited to the practice of using fictitious loan applicants (testers). The privilege would apply to the factual evidence generated by the self-test as well as any analysis or conclusions contained in reports prepared about the self-test. A self-test would not include any collection of data required by law or a creditor's review or evaluation of loan files.

The Board expects to publish a final rule in March 1997, which would become effective 30 days later. The 1996 Act provides that once the rule is issued, self-tests will become privileged even if they were conducted before the regulation's effective date. As an exception to this, self-tests previously conducted will not become privileged on the regulation's effective date if a court action or administrative proceeding has already commenced against the creditor alleging a violation of the ECOA or Regulation B or the Fair Housing Act. In addition, a self-test previously conducted will not become privileged on the regulation's effective date if any part of the report or results has already been disclosed.

III. Section-by-Section Analysis

Section 202.15 Incentives for Self-Testing and Self-Correction

15(a) General Rule

Proposed paragraph 15(a) states the general rule that the report or results of a creditor's self-test are privileged if the conditions specified in this rule are satisfied. The privilege applies whether the creditor conducts the self-test or employs the services of a third party. A self-test must, however, be conducted voluntarily; self-tests that are required by a government authority (including those conducted pursuant to a judicial order) would not qualify for the privilege. Similarly, any collection of data required by law would not be considered voluntary under this section. The privilege for self-testing is in addition to and independent of any other privilege that may exist, such as the attorney-client privilege or the privilege for attorney work product.

This paragraph would also implement the requirement imposed by the 1996 Act that a creditor take appropriate corrective action to address any possible violations identified by the self-test in order for the privilege to apply. A creditor must take whatever actions are reasonable in light of the scope of the possible violations to fully remedy both their cause and effects. This may include both prospective and retroactive relief. Guidance on a creditor's responsibility for taking appropriate corrective action is provided under paragraph 15(c).

Although corrective actions are required when a possible violation is found, a self-test is also privileged when it does not identify any possible violations and no corrective action is necessary. The Board believes that the effectiveness of the privilege as an incentive to self-test would be significantly undermined if it only applied when violations were discovered. If that were the case, the mere assertion of the privilege would be tantamount to an admission that violations had occurred. Under such circumstances, some creditors might be reluctant to use self-testing in light of the fact that the mere assertion of the privilege might prompt the filing of legal claims.

The Board also notes that a creditor's determinations about the type of corrective action needed, or a finding that no corrective action is required, would not be conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, it would be necessary to assess the need for corrective action or the type of corrective action that is appropriate based on a review of the self-testing results. Such an assessment might be accomplished by an adjudication where a judge may conduct an *in camera* inspection of the privileged documents.

Under the statute, the privilege applies only if the creditor has already taken or is in the process of taking appropriate corrective action. In some cases, the issue of whether certain information is privileged may arise before the corrective actions are fully underway. The rule requires, at a minimum, that the creditor establish a plan for corrective action, a means for monitoring the creditor's progress in implementing the plan, and activity to begin carrying out the plan. A schedule may be imposed by the court or agreed to by an agency or the other parties affected. A creditor's failure to fully implement planned corrective action may be cause for subsequently reevaluating whether the privilege applies.

15(b) Self-test defined

15(b)(1) Definition

Proposed paragraph 15(b)(1) states what constitutes a ''self-test'' for purposes of this rule. The 1996 Act does not define ''self-test'' and authorizes the Board to define by regulation the practices to be covered by the privilege. The Board proposes to define a ''self-test'' as any program, practice, or study used to create data or factual information about the creditor's compliance with the ECOA and Regulation B that is not available and cannot be derived from loan or application files or other records related to credit transactions. This definition of self-test includes but is not limited to the practice of using testers. For example, self-testing would also include a survey of mortgage customers conducted by a creditor for fair lending purposes, or a program specially designed to test loan officers' knowledge about fair lending laws.

In establishing the self-testing privilege, the Congress sought to encourage lenders to undertake voluntary efforts to assess their compliance with fair lending laws. The proposed definition is an incentive for creditors to use self-testing to monitor the pre-application stage of the loan process in particular; the pre-application process does not typically produce the type of documentation that lends itself to traditional file reviews. The privilege serves as an incentive by assuring that evidence of possible discrimination voluntarily gathered through a self-test will not be used against a creditor, provided the creditor takes appropriate corrective actions for any discrimination that is found. Although the legislative history focuses on the traditional use of matched-pair testers, it also recognizes that other testing methods may also be useful.

Under the proposed rule, the principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new factual evidence that otherwise would not be available from credit records. The proposed rule does not define ''self-test'' so broadly as to include all types of self-evaluation or self-assessment performed by a creditor. Self-evaluations involving creditor reviews of loan or application files, and reviews of HMDA data or similar types of records (such as broker or loan officer compensation records) that do not produce new data or factual evidence about a creditor's compliance would not be covered by the privilege. Accordingly, a compilation of data or a regression analysis derived from the data in existing loan files would not be privileged.

Although a broader definition encompassing such audits or evaluations would be within the Board's rulemaking authority under the statute, the Board does not believe that this broader definition of self-test is necessary. Principles of sound lending dictate that a creditor have adequate policies and procedures in place to ensure compliance with applicable laws and regulations, and that lenders adopt appropriate audit and control systems. These may take the form of compliance reviews, file analyses, the use of second-review committees, or other methods that examine creditor records kept in the ordinary course of business. Notwithstanding any evaluation performed by the creditor, the underlying loan records are themselves subject to examination by the regulatory and enforcement agencies and must usually be disclosed to a private litigant alleging a violation. The Board believes that creditors already have adequate incentive to conduct such routine compliance reviews and file analyses as a good business practice and to avoid or minimize potential liability for violations.

Insured financial institutions also have an incentive to conduct such audits to assist the regulatory agencies in streamlining the bank examination process and thereby minimizing the burden and costs associated with that process. A broader definition of self-test would allow creditors to withhold information relating to self-audits from a regulatory agency. At this time, the Board does not believe it is necessary to extend the privilege to audits of existing business records, which could have an unintended negative effect on the levels of cooperation between creditors and the regulatory agencies. The Board solicits public comment, however, on the scope of the proposed definition of ''self-test'' and whether a broader definition would adversely affect the ability of supervisory or enforcement agencies or private parties to obtain needed information or whether it would provide needed incentive for creditor monitoring and self-correction.

In order to qualify for the privilege, a self-test must be designed and conducted to assess the level and effectiveness of the creditor's compliance with the rules prohibiting discrimination or discouraging loan applications on a prohibited basis. Testing for compliance with the other regulatory requirements of Regulation B is not privileged. For example, a test to determine whether adverse action notices are mailed within applicable time limits would not be privileged. A self-test designed for other purposes, such as a self-test designed to observe employees' efficiency and thoroughness in meeting customer needs, is not covered by the privilege even if evidence of discrimination is uncovered incidentally.

15(b)(2) Examples

Proposed paragraph 15(b)(2) gives examples of some activities that would and would not be included as self-tests for purposes of this section.

15(b)(3) Types of information covered

Under the 1996 Act, the privilege covers the report or results of a self-test. Proposed paragraph 15(b)(3) clarifies that this includes any data generated by the self-test and any analysis of such data, and any workpapers or draft documents.

15(b)(4) Types of information not covered

The 1996 Act does not prohibit an agency or applicant from requesting information about whether a creditor has conducted a self-test. Proposed paragraph 15(b)(4) clarifies the right of a government agency or private litigant to obtain sufficient information about the existence of the self-test, including its scope or the methodology used in conducting the test, to determine whether to challenge a creditor's claim of privilege. The 1996 Act provides that a challenge to a creditor's claim of privilege may be filed in any court or administrative law proceeding with appropriate jurisdiction. The Board expects such challenges to be resolved according to the laws and procedures used for other types of privilege claims. This may include the use of *in camera* proceedings, the filing of documents and pleadings with the court under seal,

or the production of documents to other parties under an appropriate protective order that limits the purpose for which they may be used.

15(c) Appropriate corrective action

Proposed paragraph 15(c) clarifies that a determination of whether a creditor has taken appropriate corrective action must be made on a case-by-case basis. Under the statute, an issue regarding the sufficiency of the corrective action may be resolved in a court or administrative law proceeding. A creditor must take whatever actions are reasonable given the nature and scope of the possible violations to fully remedy both their cause and effects. To determine the appropriate corrective action, the creditor must: (1) identify the policies or practices that are the cause of the possible violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and (2) assess the extent and scope of any possible violation, by determining the stages of the application process and the areas of operations likely to be affected by those policies or practices, and the particular branches or offices involved.

The Board proposes to provide additional guidance in the Official Staff Commentary to Regulation B, by including a list of sample corrective actions, including both prospective and retroactive relief. Not all of the listed corrective measures would be appropriate in every case. Comments are solicited on this approach.

In 1994, the Interagency Task Force on Fair Lending, representing the ten federal agencies responsible for implementing and enforcing the fair lending laws, issued a policy statement on credit discrimination (59 FR 18266, 18270–71 (April 15, 1994)). That policy statement advised lenders that discover discriminatory practices as a result of a self-test to ''make all reasonable efforts to determine the full extent of the discrimination and its cause'' and to ''determine whether the practices were grounded in defective policies, poor implementation or control of those policies, or isolated to a particular area of the lender's operations.'' The policy statement also provided a list of prospective and retroactive corrective actions that might be appropriate depending on the circumstances.

The proposed regulation and revisions to the Official Staff Commentary substantially follow the discussion of self-testing and the list of sample corrective actions set out in the Interagency Policy Statement. Appropriate corrective action may include, but is not limited to, one or more of the following:

1. Identifying persons whose applications may have been inappropriately processed; offering to extend credit if the applications were improperly denied; compensating applicants for damages, both out-of-pocket and compensatory; and notifying them of their legal rights.

2. Correcting institutional polices or procedures that may have contributed to possible discrimination, and adopting new policies as appropriate;

3. Identifying and then training and/or disciplining the employees involved;

4. Developing outreach programs, marketing strategies, or loan products to more effectively serve segments of the lender's markets that may have been affected by the possible discrimination; and

5. Improving audit and oversight systems to avoid a recurrence of the possible violations.

A creditor must take corrective action that is commensurate with the scope of the discrimination and is specifically tailored to address the particular type of problem identified by the self-test. For example, if self-testing reveals that minority applicants do not receive the same level of assistance during the pre-application stage, but reveals no discrepancy in loan decisions, underwriting criteria or credit terms for loan applications that were actually filed, it may be sufficient for a creditor to take prospective action relating to the creditor's policies and employee training. On the other hand, if a self-test reveals that loan officers treat the submission of loan applications by minorities differently by quoting more onerous loan terms such as larger down-payments or higher interest rates, in addition to prospective action (such as outreach efforts) retroactive relief may also be required; appropriate corrective action would include a review of existing loan files to determine if minority borrowers were actually granted loans on less favorable terms.

15(d)(1) Scope of privilege

Proposed paragraph 15(d)(1) explains the nature of the qualified privilege afforded by the new law. This paragraph states that privileged documents may not be obtained by a government agency for use in an examination or investigation relating to fair lending compliance, or by a government agency or applicant (including prospective applicants alleging they were discouraged from pursuing an application on a prohibited basis) in any civil proceeding in which a violation of the ECOA or Regulation B is alleged. There may be other proceedings where the privilege would not apply, for example, if the documents were sought in litigation unrelated to fair lending issues. Comment is solicited on how the rule should apply to state agencies for purposes of the ECOA.

15(d)(2) Loss of privilege

Proposed paragraph 15(d)(2) describes the circumstances that would result in documents losing their privileged status. As provided in the 1996 Act, the results or report of a self-test, including any data generated by the self-test, will not be considered privileged under this section once the creditor has voluntarily disclosed all or part of the contents to any government agency, loan applicant, or the general public. This is explained in proposed paragraph 15(d)(2)(i).

If a creditor elects to rely on the self-testing results as a defense to alleged violations of the ECOA in court or administrative proceedings, the privilege would not apply if the documents are sought in connection with those proceedings—the disclosure would be treated as a voluntary disclosure under this paragraph. This loss of privilege is covered in proposed paragraph 15(d)(2)(ii). However, a creditor's involuntary production of records in response to a judicial order does not evidence the creditor's intent to give up the privilege. Accordingly, if such disclosures are made in a limited fashion that does not constitute a disclosure to the general public, for example under a protective order, that disclosure would not affect the privileged status of the documents.

The 1996 Act provides that the report or results of a self-test are not privileged if they are disclosed by a person with lawful access to the report or results. The statute draws no distinction based on whether the person was authorized by the creditor to make the particular disclosure.

The Board solicits comments on whether it should establish by regulation an exception to the general rule in paragraph 15(d)(2)(i), whereby creditors could voluntarily share privileged information with a federal or state bank supervisory agency or law enforcement agency without causing the information to lose its privileged status when it is subsequently sought by private litigants. However, such disclosures would cause the documents or information to lose their privileged status with respect to all supervisory or enforcement agencies. The purpose of the exception would be to encourage greater cooperation between creditors and enforcement agencies in monitoring compliance and to encourage creditors

to seek guidance from the agencies in developing appropriate corrective action.

As noted above, a creditor's claim of privilege may be challenged in an appropriate court or administrative law proceeding. Proposed paragraph 15(d)(2)(iii) addresses the situation where a creditor seeks to assert the privilege but fails or is unable to produce information pertaining to the self-test that is necessary for determining whether the privilege applies. The results or report of a self-test would not be privileged in such cases. The judge may determine in each case whether the creditor has met its burden of producing the relevant evidence.

15(d)(3) Limited use of privileged information

Proposed paragraph 15(d)(3) implements the statutory provision that allows for a limited use of privileged documents. The report or results of a privileged self-test may be obtained and used for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. The production of privileged documents for this purpose does not evidence the creditor's intent to give up the privilege. If such disclosures are made in a limited fashion that does not constitute a disclosure to the general public, the disclosure would not affect the privileged status of the documents.

A finding by a government agency, as part of a bank examination or investigation, that discrimination has occurred would not constitute an adjudication for this purpose. If such findings lead to a formal adjudication or an admission by the creditor, the limited use of privilege documents under this paragraph would apply.

The 1996 Act also provides that information disclosed for purposes of determining a penalty or remedy may be used only for the particular proceeding in which the adjudication or admission is made. Accordingly, parties who obtain such information are prohibited from any further dissemination and the judge in that proceeding may issue an appropriate order.

15(e) Record retention

Proposed paragraph 15(e) provides that a creditor has a duty to retain self-testing records for a limited time. This retention is necessary to facilitate a determination about whether the results or report of the self-test are privileged or for the purpose of determining the appropriate penalty or remedy when a violation has been adjudicated or admitted. The Board proposes to adopt the same standard for the retention of self-testing records as applies to other records, which must be retained for 25 months.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–0955. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3.5 inch or 5.25 inch computer diskettes, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a paper version.

The comment period ends on January 31, 1997. Normally the Board provides a 60-day comment period, in keeping with the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). In this case, the 1996 Act directs the Board to prescribe final regulations by March 31, 1997. The Board believes that an abbreviated comment period is necessary in order to meet this schedule.

V. Regulatory Flexibility Analysis

The proposed amendments implement the legal privilege created by the 1996 Act for certain information that creditors may voluntarily develop about their compliance with the fair lending laws through self-testing. The regulation does not impose any significant regulatory requirements on creditors. Consequently, the proposed amendments are not likely to have a significant impact on institutions' costs, including the costs to small institutions.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C.3506), the Board has reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget (OMB). 5 CFR 1320 Appendix A.1. Comments on the collection or disclosure of information associated with this regulation should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Regulation B applies to individuals and businesses that regularly extend credit or participate in the decision of whether or not to extend credit. This includes all types of creditors. Under the Paperwork Reduction Act, however, the Board accounts for the paperwork burden associated with Regulation B only for state member banks. Any estimates of paperwork burden for other financial institutions would be provided by the federal agency or agencies that supervise those lenders. There are 1,028 state member banks that are respondents and/or recordkeepers, with an estimated average frequency of 4,765 responses per bank each year. The current estimated burden for Regulation B ranges from fifteen seconds to five minutes per response. The combined annual burden for all state member banks under Regulation B is estimated to be 129,015 hours.

The collection of information requirements in the proposed regulation are found in 12 CFR 202.15(e). The recordkeepers are for-profit financial institutions, including small businesses. Records relating to self-tests must be retained for at least twenty-five months. The purpose is to facilitate the determination about whether the results or report of a creditor's self-test are privileged. The recordkeeping burden associated with the proposal consists of the additional effort necessary to retain self-testing records; it does not include the effort necessary to conduct and document the self-test.

The privilege for information developed through self-tests is intended to serve as an incentive for lenders to undertake voluntary efforts to assess their compliance with fair lending laws. The Federal Reserve welcomes comments that would help it estimate the number of state member banks that would use self-testing under the proposal. At a typical state member bank that conducts one self-testing program per year, it is estimated to take between one and eight hours (or an average of two hours) for the additional effort to retain the relevant records. Some portion of banks that conduct self-tests will find errors in compliance and will have to take appropriate corrective action. The amount of time needed would depend on the nature and scope of the possible violation. The Federal Reserve estimates that the recordkeeping associated with corrective action would take an additional two to twenty hours, with an average of eight recordkeeping burden hours annually. There is estimated to be no annual cost burden over the annual hour burden, and no capital or start up costs.

Because the records would be maintained at state member banks, no

issue of confidentiality under the Freedom of Information Act arises.

Comments are also invited on: a. whether the proposed 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 proposed 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.

An agency may not collect or sponsor the collection or disclosure of information, and an organization is not required to collect or disclose information unless a currently valid OMB control number is displayed. The OMB control number for Regulation B is 7100–0201.

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 proposes to amend 12 CFR part 202 as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for Part 202 would continue to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.15 would be added to read as follows:

§ 202.15 Incentives for self-testing and self-correction

(a) *General rule.* If a creditor voluntarily conducts or authorizes a third party to conduct a self-test, the report or results of the self-test are privileged as provided in this section if the creditor has taken or is taking appropriate corrective action to address any possible violations identified by the self-test. A self-test required by any government authority is not privileged.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions; and

(ii) Is used to determine the extent or effectiveness of the creditor's compliance with the regulation's prohibition on discrimination in § 202.4 or the prohibition on discouraging applications for credit in § 202.5(a).

(2) *Examples.* Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers). Self-testing does not include the collection of data required by law or by any government authority, or a creditor's review or evaluation of loan files.

(3) *Types of information covered.* The privilege applies to the report or results of a self-test, including any data generated by the self-test and any analysis of such data, and any workpapers or draft documents.

(4) *Types of information not covered.* The privilege does not cover information about whether a creditor has conducted a self-test, or information concerning the scope of or the methodology used in conducting the self-test.

(c) *Appropriate corrective action.* Whether a creditor has taken or is taking appropriate corrective action will be determined on a case-by-case basis. A creditor must take whatever action is reasonable in light of the scope of the possible violations to fully remedy both their cause and effects. Corrective action includes both prospective and retroactive relief, as may be appropriate. To determine the appropriate corrective action, the creditor must:

(1) Identify the policies or practices that are the likely cause of the possible violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and

(2) Assess the extent and scope of any possible violation, by determining the stages of the application process, the areas of the creditor's operations likely to be affected by the policies or practices identified, and the particular branches or offices involved.

(d)(1) *Scope of privilege.* The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the act or the regulations in this part; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § 202.5(a)) in any proceeding or civil action in which a violation of the act or regulation is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the self-test:

(i) Voluntarily discloses all or any part of the report or results of the self-test or any privileged information to an applicant or government agency or to the public; or

(ii) Refers to or describes the report or results of the self-test or any privileged information as a defense to charges that the creditor has violated the act or the regulations in this part; or

(iii) If the creditor fails or is unable to produce required records or information pertaining to the self-test that are necessary to determine whether the privilege applies.

(3) *Limited use of privileged information.* Notwithstanding the provisions of paragraph (d)(1) of this section, the report or results of a privileged self-test may be obtained and used by an applicant or government agency for the sole purpose of determining a penalty or remedy for a violation of the act or this regulation that has been adjudicated or admitted. Disclosures made for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made, and remains privileged under paragraph (d)(1) of this section.

(e) *Record retention.* For 25 months after a self-test has been conducted, the creditor shall retain information about the self-test, including any corrective action taken to address possible violations identified by the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In that case, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the agency or court order.

3. Supplement I to Part 202 would be amended by adding *Section 202.15—Incentives for Self-Testing and Self-Correction,* to read as follows:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.15—Incentives for Self-Testing and Self-Correction

15(a) General rule

1. The privilege for self-testing is in addition to and independent of any other privilege that may exist, such as the attorney-client privilege or the privilege for attorney work product.

2. Although corrective actions are required when a possible violation is found, a self-test that identifies no possible violations and requires no corrective action is also

privileged. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results. Such an assessment might be accomplished by an adjudication where a judge conducts an in camera inspection of the privileged documents.

3. The privilege applies only if the creditor has taken or is taking the appropriate corrective action. In some cases, the issue of whether certain information is privileged may arise before the corrective actions are fully underway. The rule requires, at a minimum, that the creditor establish a plan for corrective action, a means for monitoring the creditor's progress in implementing the plan, and activity to begin carrying out the plan. A schedule may be imposed by the court or agreed to by an agency or the other parties affected.

15(b) Self-test defined

15(b)(1) Definition

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. A ''self-test'' includes but is not limited to the practice of using fictitious loan applicants (also known as testers or mystery shoppers). For example, self-testing would also include a survey of mortgage customers conducted by a creditor for fair lending purposes or a program specially designed to test loan officers' knowledge about fair lending laws. Self-evaluations involving creditor reviews of loan files, and reviews of HMDA data or similar types of records (such as broker or loan officer compensation records) do not produce new information about a creditor's compliance and would not be covered by the privilege. Accordingly, a compilation of data or a regression analysis derived from the data in existing loan files would not be privileged.

2. To qualify for the privilege, a self-test must be designed and conducted to assess the level and effectiveness of the creditor's compliance with the rules prohibiting discrimination or discouraging loan applications on a prohibited basis. Self-testing for compliance with other regulatory requirements of Regulation B is not privileged.

15(c) Appropriate corrective action

1. A creditor must take whatever action is reasonable in light of the scope of the possible violations to fully remedy both their cause and effects. Appropriate corrective action may include, but is not limited to, one or more of the following:

i. Identifying persons whose applications may have been inappropriately processed; offering to extend credit if the applications were improperly denied; compensating applicants for damages, both out-of pocket and compensatory; and notifying them of their legal rights;

ii. Correcting institutional polices or procedures that may have contributed to possible discrimination, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to more effectively serve segments of the lender's markets that may have been affected by the possible discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the possible violations.

15(d)(2) Loss of privilege

Paragraph 15(d)(2)(iii)

1. A creditor's claim of privilege may be challenged in an appropriate court or administrative law proceeding. The results or report of a self-test are not privileged if the creditor fails or is unable to produce the relevant information pertaining to the self-test that is necessary for determining whether the privilege applies. A judge may determine in each case whether the creditor has met its burden of producing the relevant evidence.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 20, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–32919 Filed 12–31–96; 8:45 am]

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12 CFR Part 213

[Regulation M; Docket No. R–0952]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. The proposed revisions primarily implement amendments to the act contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which streamline the advertising disclosures for lease transactions. In addition, the proposal contains several technical amendments that would be made to the regulation.

DATES: Comments must be received by February 7, 1997.

ADDRESSES: Comments should refer to Docket No. R–0952, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller or Obrea O. Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667. Users of Telecommunications Device for the Deaf *only* may contact Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on the Consumer Leasing Act and Regulation M

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 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. Under the act, lessors are required to provide uniform cost and other information about consumer lease transactions.

The Board was given rulewriting authority, and its Regulation M (12 CFR part 213) implements the CLA. An official staff commentary interprets the regulation.

The Board recently completed a review of Regulation M, pursuant to its policy of periodically reviewing its regulations, and approved a final rule in September 1996 substantially revising the regulation to update the disclosure requirements and to carry out more effectively the purposes of the Act (61 FR 52246, October 7, 1996).

II. Proposed Regulatory Provisions

This proposed rulemaking contains a few technical amendments to the regulation. For example, the model clause for providing a description of the leased property is added and the example of an annual charge as an other charge is deleted on the open- and closed-end model forms. All the proposed technical amendments are discussed in detail in the section-by-section analysis.