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To All Depository Institutions
in the Second Federal Reserve District:

Enclosed is a copy of the "Official Staff Commentary on
Regulation M -- Consumer Leasing," referred to in Circular No. 9298, dated
May 25, 1982.

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

Official Staff Commentary on Regulation M Consumer Leasing



Official Staff Commentary

Official Staff Commentary
on Regulation M
Consumer Lending

Any inquiry relating to Regulation M should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

June 1982

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Official Staff Commentary on Regulation M

INTRODUCTION

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M, effective April 1, 1981. Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 USC 1640). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under section 213.1(d) of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the *Federal Register*. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until October 1, 1982, only insofar as they interpret that regulation. When compliance with Regulation M becomes mandatory on October 1, 1982, the Board and staff interpretations of the previous Regulation Z leasing provisions will be entirely superseded by Regulation M and this commentary, except with regard to liability under the previous regulation.

4. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."

(b) Throughout the commentary and regulation, reference to the regulation should be construed to refer to Regulation M, un-

less the context indicates that a reference to previous Regulation Z (12 CFR 226) is also intended.

(c) Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment.

5. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to section 213.4(a) are further divided by subparagraph, such as comment 4(a)(1)-1 and comment 4(a)(1)-2. In other cases, comments have more general application and are designated, for example, as comment 4(a)-1. This introduction may be cited as comments I-1 through I-6. The appendixes may be cited as comments app. C-1 and app. C-2.

6. *Cross-references.* The following cross-references to related material appear at the end of each section of the commentary: (a) "Statute"—those sections of the Truth in Lending Act on which the regulatory provision is based; (b) "Other sections"—other provisions in the regulation necessary to understand that section; (c) "Previous regulation"—parallel provisions in previous Regulation Z; and (d) "1981 changes"—a brief description of the major regulatory changes made when the leasing rules were moved from previous Regulation Z to Regulation M.

SECTION 213.1—General Provisions

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents (including resident aliens) of any state as defined in section 213.2(a)(16). The regulation does not apply to a foreign branch of a U.S. bank or leasing company leasing to a

U.S. citizen residing or visiting abroad or to a foreign national abroad.

2. *Issuance of staff interpretations.* This commentary is the method by which the staff provides interpretations that afford formal protection under section 130(f) of the act. This commentary may be amended periodically.

References

Statute: §§ 102(b), 105, and 130(f)

Previous regulation: § 226.1

1981 changes: None

SECTION 213.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(2) "Advertisement"

1. *Coverage.* Only commercial messages that promote consumer lease transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of consumer leases, whether in visual, oral, or print media, are covered by the definition. The list of examples in the definition is not exhaustive; telephone solicitations and letters sent to customers as part of an organized solicitation of business, for example, are also advertisements. The term does *not* include the following:

- Direct personal contacts, such as follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction
- Informational material distributed only to businesses
- Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice
- News articles, the use of which is controlled by the news medium
- Market research or educational materials that do not solicit business

2. *Persons covered.* See the commentary to section 213.5(a).

2(a)(4) "Arrange for Lease of Personal Property"

1. *General.* The definition of lessor in section 213.2(a)(8) includes one who, in the ordinary course of business, regularly arranges for the leasing of personal property. For example:

- An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it to the leasing company (to whom the obligation is payable on its face) for execution is "arranging" for the lease.
- An automobile dealer who, receiving no fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not "arranging" for the lease.

2. *Multiple lessors.* See the commentary to section 213.4(c).

3. *Consideration.* The term "other consideration" refers to an actual payment corresponding to a fee or similar compensation. It does not refer to intangible benefits, such as the advantage of increased business, that may flow from the relationship between the parties.

2(a)(6) "Consumer Lease"

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If some question exists as to the primary purpose for a lease, the lessor is, of course, free to make the disclosures, and the fact that disclosures are made in such circumstances is not controlling on the question of whether the transaction was exempt. The primary purpose of a lease is generally determined before or at consummation, and a subsequent change in primary usage is governed by section 213.4(e).

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four

months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. A lease with a penalty for canceling during the first four months is considered to have a term of more than four months. A month-to-month or week-to-week extension of a lease that was originally for four months or less is not a consumer lease, even if the extension actually lasts for more than four months. For example, a three-month lease extended on a month-to-month basis and terminated after one year does not require consumer lease disclosures.

3. *Organization.* A consumer lease does not include a lease made to an organization, as defined in section 213.2(a)(9). A lease to an organization is outside the requirements of the regulation even if the property is used (by an employee, for example) primarily for personal, family, or household purposes. Likewise, a lease made to an organization is not a consumer lease even if it is guaranteed by or subsequently assigned to a natural person.

4. *Credit sale.* A lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), is not a consumer lease. Regulation Z defines a credit sale, in part, as—

a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer—

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Safe deposit boxes.* A lease of a safe deposit box is not a consumer lease for purposes of this regulation.

6. *Leases of personal property incidental to a service.* The following leases of personal property that are incidental to services are not consumer leases subject to the requirements of the regulation:

- Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming

- Burglar alarm systems requiring the installation of leased equipment that triggers a telephone call when a home is burglarized

2(a)(7) “Lessee”

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(a)(8) “Lessor”

1. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances such as those described in *Ford Motor Credit Co. v. Cenanco*, 452 U.S. 155, 101 S.Ct. 2239 (1981). In that case, the Supreme Court held that an assignee was a creditor for purposes of previous Regulation Z because of its substantial involvement in the credit transaction.

2(a)(9) “Organization”

1. *Coverage.* The term includes joint ventures and persons operating under a business name.

2(a)(12) “Personal Property”

1. *Coverage.* Whether property is considered personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(a)(14) “Realized Value”

1. *General.* Realized value is not a required disclosure. It refers to the value of the property at early termination or at the end of the lease term. It may be either the retail or wholesale value. Realized value is relevant only to leases in which the lessee’s liability at early termination or at the end of the lease term is the difference between the estimated value of the property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may choose any of the three methods for calculating the realized value in determining the lessee’s liability at the end of the lease term or at early termination. If the lessor sells the property prior to making that determination, the price received for the property is the realized value. If the lessor does not sell the property

prior to making that determination, the lessor may choose either the highest offer or the fair market value as the realized value.

3. *Exclusions.* The realized value may exclude any amount attributable to taxes.

4. *Disposition charges.* Disposition charges may not be subtracted in determining the realized value. If the lessor charges the lessee a fee to cover the disposition expenses, the fee must be disclosed at consummation under section 213.4(g)(5). Disposition charges may be estimated in accordance with section 213.4(d), and this does not prevent the lessor from collecting the actual disposition costs incurred.

5. *Offers.* In determining the highest offer for disposition, the lessor need not consider offers that the offeror has withdrawn or is unable or unwilling to perform.

6. *Appraisals.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act and section 213.4(g)(14); those provisions refer to the lessee's right to an independent professional appraisal.

2(a)(15) "Security Interest"

1. *Coverage.* The list of security interests in the definition is not exhaustive. Other than those listed, only interests that are security interests under state or other applicable law are encompassed by the definition. For example, any interest the lessor may have in the leased property falls within this definition only if it is considered a security interest under state or other applicable law.

2. *Disclosable interests.* For purposes of the regulation, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

3. *Insurance.* The lessor's right to insurance proceeds or unearned insurance premiums is

not a security interest for purposes of this regulation.

2(a)(17) "Total Lease Obligation"

1. *Disclosure.* The total lease obligation is disclosed under section 213.4(g)(15)(i). It is relevant only to so-called open-end leases in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value.

2. *Periodic payments: disclosure distinguished.* Certain items that may be paid periodically are not part of the lessee's total lease obligation. Therefore, the amount of the scheduled periodic payments for purposes of calculating the total lease obligation may be less than the amount of the periodic payments disclosed under section 213.4(g)(3).

3. *Periodic payments: inclusions and exclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation is composed of the following items:

- Any portion of the periodic payments attributable to depreciation, cost of money, and profit
- Taxes in some cases (See the commentary to section 213.4(g)(15).)
- The capitalized cost of mechanical breakdown protection contracts

The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation does *not* include the following:

- Any amount not paid periodically
- Any portion of periodic payments attributable to official fees, registration, certificate of title, or license fees
- Taxes in some cases (See the commentary to section 213.4(g)(15).)

At the lessor's option, the capitalized cost of service contracts and insurance premiums may be either included or excluded from this calculation.

4. *Initial payments.* The following amounts are *not* included among the payments at con-

summation when calculating the total lease obligation:

- Refundable security deposits
- Official fees and charges disclosable under section 213.4(g)(4)
- "Other charges" disclosable under section 213.4(g)(5)
- The cost of a mechanical breakdown protection contract purchased at consummation

5. *Estimated value.* See the commentary to section 213.4(d) regarding the use of estimates and section 183(a) of the act regarding the criteria for estimating the value of the leased property at the end of the lease term.

2(a)(18) "Value at Consummation"

1. *Disclosure.* The value at consummation is relevant only to so-called open-end leases and is disclosed and subtracted from the total lease obligation under section 213.4(g)-(15)(i).

2. *Taxes.* The value at consummation includes taxes paid by the lessor in connection with the acquisition of leased property and amortized over the lease term. (See the commentary to section 213.4(g)(15).)

3. *Other amounts.* The definition of the value at consummation explicitly permits the lessor to include a profit or markup (without separate itemization). The lessor may include costs of doing business, such as insurance that the lessor purchases on its own behalf. (See the commentary to section 213.4(g)(6).) The lessor may not include in this amount other items (such as maintenance or extended warranty insurance) that are purchased by the lessee.

2(b) Rules of Construction

1. *Footnotes.* Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law; the regulation does not make that determination. Consummation

does not occur merely because the lessee has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

References

Statute: §§ 103(g) and 181

Previous regulation: § 226.2

1981 changes: "Agricultural purpose" has been slightly revised to conform to the amended act.

SECTION 213.3—Exempted Transactions

References

Statute: § 105(a)

Previous regulation: § 226.3(f)

1981 changes: None

SECTION 213.4—Disclosures

4(a) General Requirements

1. *Basis of disclosures.* The regulation assumes that parties will perform fully according to the lease terms. For example:

- In a three-year lease with a one-year minimum term after which there is no penalty for termination, disclosures should be based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of section 213.4(g)(12), (13), and (14).

2. *Minor variations.* The lessor may disregard the effects of the following in making calculations and disclosures:

- That payments must be collected in whole cents
- That dates of scheduled payments may be changed because the scheduled date is not a business day
- That months have different numbers of days

3. *Form of disclosures.* In making disclosures lessors may cross-reference rather than repeat

items that are disclosed elsewhere in the lease disclosure statement. In addition, when a required disclosure consists of a single charge, lessors do not have to repeat the charge as an itemization and a total amount. (See the commentary to section 213.4(g)(5) and (15).)

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

- When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.
- When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: a single lease transaction or a lease and a credit sale transaction.

5. *Rebates.* In a lease transaction, a seller's or manufacturer's rebate may be offered to prospective lessees. At the lessor's option, these rebates may be either reflected in or disregarded in the lease disclosures required under the regulation. If the lessor chooses to reflect the rebate in the leasing disclosures, it may be taken into account in any manner as part of those disclosures.

Paragraph 4(a)(1)

1. *Clearly, conspicuously, and in meaningful sequence.* This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no particular mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix C contains model forms that meet this standard, although lessors are not required to use these forms. The requirement that disclosures be made clearly and conspicuously does not mean that they must be more conspicuous than other terms in a combined contract-disclosure statement, nor does it preclude the use of a multipurpose disclosure form that enables the lessor to designate the specific disclosures applicable to a given transaction. (See the commentary to appendix C.)

2. *Type size.* The term "point" in the phrase "10-point type" is a printing term that refers to the size of the body of the type, as distinguished from the size of the typeface, which may vary among different print manufacturers.

Paragraph 4(a)(2)

1. *Consummation.* See the commentary to section 213.2(b).

2. *Identification of parties.* While disclosures must always be made clearly and conspicuously, it is not necessary to use the words "lessor" or "lessee" when identifying those parties.

3. *Multiple lessors and multiple lessees.* In transactions involving multiple lessors and lessees, the disclosure statement must identify all the lessors and lessees; however, section 213.4(c) permits a single lessor to make all the disclosures to a single lessee.

4. *Integrated lease/disclosure forms.* Contract terms or disclosures that are not required by the regulation may be added to the disclosure statement so long as the required disclosures are made together on a single page (which may include both sides) and above the place for the lessee's signature. Generally, other terms and disclosures may precede, follow, or be intermingled with the regulation's disclosures within the limits of section 213.4(b) governing the use of additional information and the clear, conspicuous, and meaningful sequence disclosure standard in section 213.4(a)(1).

5. *Lessee's signature.* The regulation does not require the lessee to sign the disclosures but, if disclosures are combined with contract terms, the lessor may require the lessee's signature for contract or evidentiary purposes. In such a case, the disclosures must be made above the place for the lessee's signature. When disclosures and contract terms appear on both sides of a page, the consumer's signature usually appears on the bottom of the second side. For purposes of the regulation, the consumer's signature may appear on the bottom of the first side if all the disclosures appear on that side.

Paragraph 4(a)(4)

1. *Permissible uses.* If the lessor chooses to provide foreign-language translations of the disclosures or is required to do so by state, federal, or local law, the translations are not inconsistent per se with disclosures under the regulation and may be provided as additional information under section 213.4(b).

2. *Advertisements in Puerto Rico.* The requirement for providing English disclosures upon request does not apply to advertisements subject to section 213.5 of the regulation.

4(b) Additional Information

1. *State law disclosures.* If state law disclosures are not inconsistent with the act and regulation under section 213.7, the lessor may make those disclosures in accordance with the first sentence of this paragraph. If state law disclosures are inconsistent under section 213.7 and the lessor elects to make them, it must do so in accordance with the second sentence of this paragraph.

4(c) Multiple Lessors; Multiple Lessees

1. *Multiple lessors.* If a lease transaction involves more than one lessor, the lessors may choose which of them will make the disclosures. All disclosures for the transaction must be given, even if the disclosing lessor would not otherwise have been obligated to make a particular disclosure.

4(d) Unknown-Information Estimate

1. *Time of estimated disclosure.* The lessor may use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

- Section 213.4(g)(4) requires the lessor to disclose the total amount payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes. If these amounts are subject to indeterminable increases or decreases over the course of the lease, the lessor may estimate its disclosures based on the rates or charges in effect at the time of disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The “reasonably available” standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor normally may rely on the representations of other parties in obtaining information. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Estimated value of leased property at termination.* When the lessee’s liability at the end of the lease term is based on the estimated value of the leased property (see section 213.4(g)(15)), the estimate must be reasonable and based on the best information reasonably available to the lessor. That standard permits a lessor to use a generally accepted trade publication listing estimated current or future market prices for the leased property, rather than investing in the most sophisticated computer equipment to derive the estimated value at the end of the lease term. The lessor should rely on other information, its experience, or reasonable belief, if those sources provide the best information. For example:

- An automobile lessor offering a three-year open-end lease intends to assign a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimated value a wholesale value derived from a credible trade publication listing current wholesale values, if the trade publication is the best information available.
- Same facts as above, except that the lessor discloses an estimated value derived by adjusting the value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used-vehicle markets. The lessor may adjust estimated values quoted in trade publications based on the lessor’s experience or reasonable belief that such values will be understated or overstated.

4. *Retail or wholesale value.* The lessor may

choose either a retail or a wholesale value in estimating the value of the leased property at termination, provided that choice is consistent with the lessor's general practice or intention when determining the value of the property at the end of the lease term.

5. *Labelling estimates.* Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate either every affected disclosure or only the disclosure primarily affected.

6. *Understating the estimated value.* In non-purchase-option leases, the lessor may not use a value lower than that indicated by the best information available when disclosing the estimated value of leased property at the end of the lease term under section 213.4(g)(15).

4(e) Effect of Subsequent Occurrence

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

- A change from a monthly to a weekly payment schedule
- The addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease
- An increase in official fees or taxes (See the commentary to section 213.4(d).)
- An increase in insurance premium or coverage caused by a change in law
- Late delivery of an automobile caused by a strike

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under section 213.4(h).

4(g) Specific Disclosure Requirements

1. *Inapplicable disclosures.* The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example, if the lessor does not take a security interest, no disclosure is required

under section 213.4(g)(9). (See the commentary to appendix C.)

2. *Other required disclosures.* The disclosure statement must include the date and identify the lessor and the lessee. (See the commentary to section 213.4(a)(2).) The lessor need only be identified by name; no address is required.

Paragraph 4(g)(1)

1. *Multiple-item lease.* In a multiple-item lease, the property may be described in separate statements as provided in section 213.4(a)(3).

Paragraph 4(g)(2)

1. *Itemization not required.* The lessor must disclose one total initial payment amount and identify the components of this one amount (for example, capitalized cost reduction, mechanical breakdown protection, registration fees). The lessor may, but need not, disclose the dollar amount of each component.

2. *Consummation.* See the commentary to section 213.2(b).

3. *Fees payable upon delivery.* This provision does not apply to fees paid at delivery, when delivery occurs after consummation. For example:

- The lessee agrees to pay registration fees, sales taxes, and a delivery charge in one lump sum on the date the automobile is delivered, some time after consummation. None of these charges is an initial payment under section 213.4(g)(2) because they are paid after consummation of the lease. The registration fees and sales taxes are disclosed under section 213.4(g)(4), and the delivery charge is disclosed as an "other charge" under section 213.4(g)(5).

Paragraph 4(g)(3)

1. *Itemization not required.* Section 213.4(g)(3) does not require the lessor to itemize the components of the periodic payments. Some of the components must be disclosed separately if their disclosure is required by other provisions of the regulation, such as official fees and lessee's insurance.

2. *Periodic payments.* The phrase "number,

amount, and due dates or periods of payments" requires the disclosure of all payments made periodically. The disclosed payments must include all amounts, such as maintenance and insurance charges, that are paid periodically. In addition, the lessor must disclose the total of such periodic payments. In an open-end lease, however, the lessor may disclose as the total of periodic payments the sum of the scheduled periodic payments referred to in section 213.2(a)(17). (See the commentary to section 213.2(a)(17).)

Paragraph 4(g)(4)

1. *Taxes.* Taxes that are included in the value at consummation are not disclosed pursuant to this paragraph. (See the commentary section 213.2(a)(18).)

Paragraph 4(g)(5)

1. *Coverage.* Section 213.4(g)(5) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement. It does not require disclosure of charges that are imposed when the lessee terminates early or fails to abide by the lease agreement, such as charges for:

- Late payment
- Default
- Early termination
- Deferral of payments
- Extension of the lease

2. *Form of disclosure.* Although the disclosure of an "other charge" or the total of all other charges must be clear and conspicuous, the lessor need not use the specific terminology "other charge." Moreover, the regulation does not impose a location requirement for the disclosure of other charges. For example:

- A lessor has a single other charge, which is a disposition fee of \$100. The lessor may disclose the disposition fee with related disclosures about early or scheduled termination. It may but need not repeat the charge as a total with the label of "other charge" or show a total of other charges.
- 3. *Relationship to other provisions.* The other charges mentioned in section 213.4(g)(5) are

charges that are not required to be disclosed under another provision of section 213.4(g). For example:

- A delivery charge that is paid after consummation is disclosed as an "other charge." A delivery charge that is paid at consummation, however, is disclosed as part of the total initial charges under section 213.4(g)(2), not as an "other charge."
- Occasionally, the price of a mechanical breakdown protection (MBP) contract is disclosed as an "other charge." More often, the price of MBP is reflected in the periodic payment disclosure under section 213.4(g)(3), in which case it is not disclosed as an "other charge." In states where MBP is regarded as insurance, however, the cost should be disclosed in accordance with section 213.4(g)(6), not as an "other charge." (See the commentary to section 213.4(g)(6).)

4. *Lessee liabilities at the end of the lease term.* Liabilities that the lease imposes upon the lessee at the end of the scheduled lease term and that must be disclosed include, but are not limited to, disposition and "pick-up" charges.

Paragraph 4(g)(6)

1. *Lessor's insurance.* Insurance that is purchased by the lessor primarily for its own benefit, and that is absorbed as a business expense and not separately charged to the lessee, need not be disclosed under section 213.4(g)(6) even if it provides an incidental benefit to the lessee.

2. *Mechanical breakdown protection.* Whether mechanical breakdown protection (MBP) purchased in conjunction with a lease should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP as insurance, the lessor need not make section 213.4(g)(6) disclosures. The lessor may, however, disclose the section 213.4(g)(6) information in such cases in accordance with the additional information provision in section 213.4(b).

Paragraph 4(g)(7)

1. *Brief identification.* The statement identifying warranties may be brief. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with section 213.4(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other applicable law.

Paragraph 4(g)(8)

1. *Standards for wear and use.* The lessor is permitted, but not required, to set standards for wear and use (such as excess mileage). The disclosure may be omitted by lessors that do not set such standards. (See the commentary to section 213.4(g)(15).

Paragraph 4(g)(9)

1. *Disclosable security interests.* See section 213.2(a)(15) and accompanying commentary to determine what security interests must be disclosed.

Paragraph 4(g)(10)

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under section 213.4(g)(10). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditure of amounts in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under section 213.4(g)(12). The section 213.4(g)(10) and (12) disclosures may be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix C.

3. *Simple-interest leases.* In a simple-interest

accounting lease, the additional lease charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the lease charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. In either case, if the additional charge accrues at a rate higher than the normal lease charge, the lessor must disclose the amount of or the method of determining the additional charge under section 213.4(g)(10).

4. *Extension charges.* Extension charges that exceed the lease charge in a simple-interest accounting lease or that are added separately are disclosed under section 213.4(g)(10).

5. *Reasonableness of charges.* Penalties or other charges for delinquency, default, or early termination may be specified in the lease, but only in an amount that is reasonable. Section 183(b) of the act sets forth the standards for determining a reasonable penalty or charge.

Paragraph 4(g)(11)

1. *Mandatory disclosure of no purchase option.* Although generally the lessor need only make the specific required disclosures that apply to a transaction, it must disclose affirmatively that the lessee has no option to purchase the leased property when the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under section 213.4(g)(11) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase option fees.* A purchase option fee must be disclosed under this paragraph unless the lessor discloses the fee under section 213.4(g)(5) as an other charge.

Paragraph 4(g)(12)

1. *Default.* When default is also a condition for early termination of a lease, default

charges must be disclosed under this paragraph. (See the commentary to section 213.4(g)(10).

2. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized capitalized cost and the realized value at early termination, the amount or the method of determining the amount of the difference must be disclosed under this paragraph.

3. *Reasonableness of charges.* Penalties or other charges for delinquency, default, or early termination may be specified in the lease, but only in an amount that is reasonable. Section 183(b) of the act sets forth the standards for determining a reasonable penalty or charge.

Paragraph 4(g)(14)

1. *Disclosure inapplicable.* When the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use but *not* for the estimated value of the leased property, the lessor need not disclose the lessee's right to an independent appraisal. For example:

- The automobile lessor may reasonably expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it holds the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the lessor is not required to disclose the lessee's appraisal right.

2. *Lessor's appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act, and the lessor still must disclose the lessee's independent right to an appraisal under section 213.4(g)(14).

3. *Time restriction on appraisal.* Neither the act nor the regulation specifies any time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable

time after termination of the lease. The regulation does not define what is a "reasonable time."

Paragraph 4(g)(15)

1. *Coverage.* The disclosure under section 213.4(g)(15) limiting the lessee's liability for the value of the leased property does not apply at early termination.

2. *Total lease obligation.* The requirement that the total lease obligation be itemized is satisfied by disclosing the three components in the definition of total lease obligation in section 213.2(a)(17) with their corresponding amounts. The lessor may cross-reference the individual components disclosed elsewhere in the lease disclosure statement, as done in appendix C-1.

3. *Taxes.* Taxes included in the value at consummation are included in the total lease obligation. Taxes not included in the value at consummation may, but need not, be included in the total lease obligation at the lessor's option. (See the commentary to section 213.2(a)-(18).)

4. *Leases with a minimum term.* If a lease has an alternative minimum term, the section 213.4(g)(15) disclosures governing the liability limitation are not applicable for the minimum term. (See the commentary to section 213.4(a).)

5. *Average payment allocable to a monthly period.* The phrase "average payment allocable to a monthly period" is based on the periodic payment used to compute the total lease obligation. (See the commentary to section 213.2(a)(17).)

6. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability that is based on the estimated value of the property at the end of the lease term. The lessor also may recover additional charges from the lessee at the end of the lease term. Examples of such additional charges include:

- Disposition charges
- Excess-mileage charges
- Late payment and default charges

- Amounts by which the unamortized capitalized cost exceeds the estimated residual value that have accrued in simple interest accounting leases because the lessee has made late payments

4(h) Renegotiations or Extensions

1. *General coverage.* Section 213.4(h) applies only to existing leases that were covered by the requirements of the regulation or previous Regulation Z. It therefore does not apply to the renegotiation or extension of leases with an initial term of four months or less, because such leases are not covered by the definition of consumer lease in section 213.2(a)(6).

2. *Renegotiation defined.* A renegotiation occurs when an existing consumer lease is satisfied and replaced by a new lease undertaken by the same lessee. A renegotiation is a new lease requiring new disclosures. Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

3. *Renegotiation exceptions.* The following events are not renegotiations even if they are accomplished by satisfying and replacing an existing lease:

- A substitution of leased property in a multiple-item lease, provided the average payment is not changed by more than 25 percent
- A reduction in the lease charge
- A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed

4. *Extension defined.* An extension is any continuation of an existing consumer lease beyond the originally scheduled termination date, but only if the continuation is not the result of a renegotiation. The continuation must be agreed to by both the lessor and the lessee. An extension that exceeds six months is a new lease requiring new disclosures.

5. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, new disclosures are required at the time the extension is agreed to. If the lease is extended on a month-to-month basis

and exceeds six months, new disclosures are required at the commencement of the seventh month. If a consumer lease is extended for several terms, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed six months beyond the originally scheduled termination date.

6. *Inapplicable disclosures.* Disclosures that are inapplicable to the terms of a renegotiation or extension need not be given. For example:

- If the term for which extension disclosures are given is one month and the lessee will pay no official fees and taxes during that month, no disclosure of those amounts is necessary.
- If a renegotiation involves no initial charges, no disclosure of initial charges is necessary.

7. *Court proceedings.* No disclosures are required if a renegotiation or extension results from an agreement involving a court proceeding.

8. *Deferrals.* No disclosures are required if one or more payments are deferred, whether or not a fee is charged.

9. *Assumptions.* No disclosures are required when a consumer lease is assumed by another person, whether or not an assumption fee is charged.

References

Statute: §§ 102(b), 121, 122, 124, 182, and 183

Other sections: §§ 213.2, 213.5, and 213.7 and appendix C

Previous regulation: §§ 226.6 and 226.15

1981 changes: Although reorganized, the disclosure requirements are substantially the same as the previous requirements. The sole amendment implements section 121 of the Truth in Lending Act pertaining to multiple lessors and lessees.

SECTION 213.5—Advertising

5(a) General Rule

1. *Persons covered.* All “persons” must comply with the advertising provisions in this section, not just those that meet the definition of “lessor” in section 213.2(a)(8). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. The owner and personnel of the medium in which an advertisement appears or through which it is disseminated, however, are not subject to civil liability for violations under section 184(b) of the act.

2. *“Usually and customarily.”* Section 213.5(a) is not intended to prohibit the advertising of a single item or the promotion of new leasing programs, but to bar the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

5(b) Catalogs and Multipage Advertisements

1. *General rule.* The multiple-page advertisements to which section 213.5(b) refers are advertisements consisting of a numbered series of pages—for example, a supplement to a newspaper. A mailing comprised of several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule clearly stating sufficient information for the reader to determine the disclosures required under section 213.5(c)(1) through (5). If one of the triggering terms listed in section 213.5(c) appears on another page of the catalog or multiple-page advertisement, that page must clearly refer to the specific page where the table, chart, or schedule begins.

5(c) Terms That Require Additional Information

1. *Clear and conspicuous standard.* Section 213.5(c) prescribes no specific rules for the format of the necessary disclosures. The terms need not be printed in a certain type size and need not appear in any particular place in the advertisement.

2. *Triggering terms.* Whenever certain triggering terms appear in lease advertisements, the additional terms enumerated in section 213.5(c)(1) through (5) must also appear. An example of one or more typical leases with a statement of all the terms applicable to each may be used. The additional terms must be disclosed even if the triggering term is not stated explicitly, but is readily determinable from the advertisement. For example, if an advertisement states a five-year lease term with monthly payments, the number of required payments—a triggering term—is readily apparent.

5(d) Multiple-Item Leases; Merchandise Tags

1. *Merchandise tags.* Section 213.5(d) provides a method for using merchandise tags without including all the required disclosures on the tags. As an alternative to this disclosure method, a merchandise tag may state all the necessary terms on one or both sides of the tag. If the terms are on both sides of the tag, both sides must be accessible to the consumer.

References

Statute: §§ 105(a) and 184

Other sections: § 213.2(a)(2) and (6)

Previous regulation: § 226.10(a), (b), (g), and (h)

1981 changes: None

SECTION 213.6—Preservation and Inspection of Evidence of Compliance

1. *Preservation methods.* Lessors must retain evidence that they performed required actions as well as made required disclosures. Adequate evidence of compliance does not require

actual paper copies of disclosure statements or other business records. The evidence may be retained on microfilm, microfiche, or by any other method designed to reproduce records accurately (including computer programs). The lessor need retain only enough information to reconstruct the required disclosures or other records.

References

Statute: § 105(a)

Previous regulation: § 226.6(i)

1981 changes: A uniform two-year record retention rule replaces the previous requirement that records be retained through at least one compliance examination.

SECTION 213.7—Inconsistent State Requirements

1. *Procedures.* Only states (through their authorized officials) may request and receive determinations on inconsistency. The procedures for requesting a Board determination on inconsistency are contained in appendix B.

2. *Inconsistent state disclosures.* A lessor that chooses to make inconsistent state disclosures must do so in the manner prescribed by section 213.4(b).

References

Statute: §§ 111(a)(1) and 186(a)

Other sections: §§ 213.2(a)(16) and 213.4(b) and appendix B

Previous regulation: § 226.6(b)(3)

1981 changes: None

SECTION 213.8—Exemption of Certain State-Regulated Transactions

1. *Classes eligible.* The state determines the classes of transactions for its exemption and makes its application for those classes. Classes might be, for example, all automobile leases or all leases in which the lessor is a bank.

2. *Substantial similarity.* The “substantially similar” standard requires that state statutory or regulatory provisions and state interpreta-

tions of those provisions must be generally the same as the federal act and the regulation. A state will be eligible for an exemption even if its law covers classes of transactions not covered by the federal law. For example, if a state’s law covers leases for agricultural purposes, this will not prevent the Board from granting an exemption for consumer leases, even though leases for agricultural purposes are not covered by the federal law.

3. *Adequate enforcement.* The standard requiring adequate provision for enforcement generally means that appropriate state officials are authorized to enforce the state law through procedures and sanctions comparable to those available to federal enforcement agencies.

References

Statute: §§ 111(a)(2) and 186(b)

Other sections: §§ 213.2(a)(16) and 213.4(b) and appendix A

Previous regulation: § 226.6(b)(3)

1981 changes: None

APPENDIX A—Procedures and Criteria for State Exemptions

References

Statute: § 186(b)

Other sections: § 213.8

Previous regulation: § 226.80 (supplement VI, § I)

1981 changes: None

APPENDIX B—Procedures and Criteria for Board Determination Regarding Preemption

References

Statute: § 186(a)

Other sections: § 213.7

Previous regulation: § 226.80 (supplement VI, § II)

1981 changes: None

APPENDIX C—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. The changes to the model forms may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms. Examples of acceptable changes include:

- Using the first person, instead of the second person, in referring to the lessee
- Using "lessee," "lessor," or names instead of pronouns
- Rearranging the sequence of the disclosures
- Incorporating certain state "plain English" requirements
- Deleting inapplicable disclosures by whitening out, blocking out, filling in "N/A" (not applicable) or "O," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)
- Adding language or symbols to indicate estimates

2. *Model open-end or finance vehicle lease disclosures.* Model C-1 is designed for an open-end or finance lease of a vehicle. An open-end or finance lease is one in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value. Section 213.4(g)(15)(i) requires disclosure of an itemized total lease obligation for such leases. To facilitate this disclosure, model C-1 divides the initial charges (item 3) into two categories: those that are included in the total lease obligation and those that are not. The amount of the monthly payment (item 4) is similarly divided. This format permits the components of the total lease obligation (item

11) to be disclosed simply by cross-reference to the previous items. See the commentary to section 213.2(a)(17). The inclusion of taxes in the basic monthly payment disclosure (mentioned in the instructions to item 4(a)) is not mandatory in all cases. (See the commentary to section 213.4(g)(15).)

3. *Model closed-end or net vehicle lease disclosures.* Model C-2 is designed for a closed-end or net lease of a vehicle. A closed-end or net lease is one in which the lessee's liability at the end of the lease term is *not* based on the difference between the estimated value of the leased property and its realized value. Item 13(c) is included for those closed-end vehicle leases in which the lessee's liability at early termination is based on the vehicle's estimated value. (See section 213.4(g)(14).)

4. *Model furniture lease disclosures.* Model C-3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination that is required under section 213.4(g)(14) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. The disclosure may be added, if it is applicable, without loss of the form's protection from civil liability.

References

Statute: §§ 105, 130, and 185

Previous regulation: §§ 226.1501, 226.1502, and 226.1503

1981 changes: References in the instructions to the previous regulation have been deleted.

APPENDIX D—Federal Enforcement Agencies

References

Statute: § 108

Previous regulation: Appendix E

1981 changes: None