

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 10805]
October 2, 1995]

REGULATION M — CONSUMER LEASING

Proposed Amendments to the Regulation and its Commentary

*To All Depository Institutions, and Others
Concerned, in the Second Federal Reserve District:*

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has requested comment on proposed amendments 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 proposal is the result of the increased use of automobile leasing over the last several years and the Board's review of Regulation M, pursuant to its policy of periodically reviewing its regulations and to more effectively carry out the purposes of the Act.

Comment is requested by November 17, 1995.

The proposed amendments include:

- additional disclosure requirements about early termination charges;
- disclosure of the gross costs of leases, the residual value, and the estimated lease charge;
- a requirement that certain leasing disclosures be segregated from other information; and,
- pursuant to a statutory change, new advertising provisions for radio and television.

The Board also proposed changes to the official staff commentary on Regulation M.

Enclosed is the text of the Board's official notice in this matter, as published in the *Federal Register*. Comments thereon should be submitted by November 17, 1995, and may be sent to the Board, as specified in the notice, or to our Compliance Examinations Department.

WILLIAM J. McDONOUGH,
President.

Federal Register

Wednesday
September 20, 1995

Part II

Federal Reserve System

12 CFR Part 213
Consumer Leasing; Proposed Rules

[Enc. Cir. No. 10805]

FEDERAL RESERVE SYSTEM**12 CFR Part 213****[Regulation M; Docket No. R-0892]****Consumer Leasing****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed rule.

SUMMARY: The Board is issuing this proposal to revise Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. The Board has reviewed Regulation M, pursuant to its policy of periodically reviewing its regulations, and proposes revisions to simplify and clarify its provisions to carry out more effectively the purposes of the act. The proposal contains several substantive revisions, for example: additional disclosure requirements about early termination charges, disclosure of the gross cost of leases, the residual value, and the estimated lease charge; a requirement that certain leasing disclosures be segregated from other information; and pursuant to a statutory change, new advertising provisions for radio and television. The proposal also simplifies the language and format of the regulation, deleting obsolete provisions and eliminating the footnotes or moving them to the Official Staff Commentary. A proposal to revise the commentary is being published elsewhere in today's issue of the *Federal Register*.

DATES: Comments must be received by November 17, 1995.

ADDRESSES: Comments should refer to Docket No. R-0892, and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, 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, NW (between Constitution Avenue and C Street) any time. Comments may be inspected in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR section 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller, Obrea O. Poindexter, or W. Kurt Schumacher, 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; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, 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 Board was given rulewriting authority, and its Regulation M (12 CFR part 213) implements the CLA. An official staff commentary that interprets the regulation has also been published (Supplement I-CL-1 to 12 CFR 213).

The CLA generally applies to consumer leases of personal property involving \$25,000 or less and a term of more than four months. An automobile lease is the most common type of consumer lease covered by the CLA. Like the credit provisions of the TILA, the CLA requires lessors to provide uniform cost and other disclosures in consumer lease transactions and lease advertising. Prior to entering into a lease agreement, lessors must give consumers 15 to 20 disclosures, including the amount of initial charges to be paid, an identification of leased property, a payment schedule, the responsibilities for maintaining the leased property, and the liability for terminating a lease early. The law also regulates balloon payments by limiting liability at the end of a lease term to no more than three times the monthly payment.

II. The Review of Regulation M

The Board's Regulatory Planning and Review Program calls for the periodic review of a regulation with four goals in mind: to clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. Regulation M has not been substantially revised or reviewed since it was first issued. The Board began a review of Regulation M in November 1993 by publishing an advance notice of proposed rulemaking (58 FR 61035, November 19, 1993). While comment was solicited generally on the provisions of Regulation M and the CLA, the Board identified three specific issues on which comment was desired: (1) Disclosure of early termination charges, (2) broadcast media advertising of leases, and (3) segregation

of leasing disclosures from other information.

The Board received 70 comment letters on the advance notice of proposed rulemaking. Most commented only on the three issues addressed in the advance notice. Based on its review and on the comments received, the Board now proposes revisions to Regulation M. While several revisions would make substantive changes to the regulation, including new disclosure requirements, the proposal leaves many provisions substantively unchanged. In addition to seeking comment on the proposed regulatory changes, the Board again solicits views on whether specific legislative revisions to the CLA may also be warranted. For example, several commenters on the advance notice suggested that CLA coverage be expanded to cover leases that exceed the current \$25,000 total contractual obligation limitation.

The proposal simplifies the language and format of the regulation to state the requirements more clearly. Footnotes have been either moved to the staff commentary or deleted as unnecessary. Obsolete provisions have been deleted and explanatory material transferred to the commentary. In addition to comments on the proposed changes, the Board requests specific suggestions for other revisions that would facilitate compliance without causing an adverse impact on consumer protections.

Although the regulation applies to all consumer leases covered by the CLA (for example, automobile leases and furniture leases), much of the focus of the review has been on automobile leasing. The Board solicits specific comment on whether any of the proposed rules are more appropriately limited to automobile lease transactions.

It is anticipated that proposed revisions to Regulation M will be adopted in final form in the Spring of 1996 with compliance optional until October 1, 1996, the uniform effective date for mandatory compliance.

III. Discussion of Proposed Revisions

The following discussion covers the proposed revisions section-by-section. In many cases, the proposed changes would simplify or clarify the current text, with no substantive change intended. Captions have been added to each paragraph, to conform with current Board style; the addition or wording of captions alone is not meant as a substantive change in the meaning of the paragraph itself. The entire proposed regulation and its appendices have been printed in full.

Section 213.1—Authority, Scope, Purpose, and Enforcement

1(b) Scope and Purpose

This paragraph is revised to add a sentence about the scope of the law and to more closely parallel the purpose clause in § 102 of the TILA, 15 U.S.C. 1601.

1(d) Issuance of Staff Interpretations.

Current paragraph 1(d) has been moved to appendix C.

Section 213.2—Definitions

2(a) Definitions

Most of the definitions remain unchanged and are not discussed below. The current definitions of "Period" and "Real Property" in paragraphs (a) (10) and (13) respectively have been deleted as unnecessary. Definitions of "gross cost," "estimated lease charge," "residual value," and of a "closed-" and an "open-end lease" are added.

The following definitions are redesignated as indicated below:

Current	Proposed
"Arrange for lease of personal property" in 2(a)(4).	moved to comment 2(a)(10)-1.
"Board" in 2(a)(5)	moved to section 2(a)(4).
"Lessee" in 2(a)(7) ...	moved to section 2(a)(9).
"Lessor" in 2(a)(8)	moved to section 2(a)(10).
"Organization" in 2(a)(9).	moved to section 2(a)(12).
"Person" in 2(a)(11)	moved to section 2(a)(13).
"Personal property" in 2(a)(12).	moved to section 2(a)(14).
"Realized value" in 2(a)(14).	moved to section 2(a)(15).
"Security interest" in 2(a)(15).	moved to section 2(a)(17).
Examples of security interests in 2(a)(15).	moved to comment 2(a)(17)-1.
"State" in 2(a)(16)	moved to section 2(a)(18).
"Total lease obligation" in 2(a)(17).	moved to section 2(a)(19).
"Value at consummation" in 2(a)(18).	moved to section 2(a)(20).

2(a)(2) Advertisement

The definition of "advertisement" is simplified and the examples moved to the commentary as part of proposed comment 2(a)(2)-1. The simplified language is consistent with other consumer regulations. The definition of an advertisement is broad; it covers commercial messages in any medium that directly or indirectly promote a consumer lease transaction. No substantive change in the definition is intended by the proposed revision.

2(a)(3) Agricultural Purpose

For simplicity, the portion of this statutory definition which describes agricultural products is moved to the commentary as proposed comment 2(a)(3)-1.

2(a)(5) Closed-End Lease

The proposal adds a definition of a closed-end lease, modeled after the definition of closed-end credit in Regulation Z (12 CFR § 226.2(a)(10)). The term covers any lease that does not fall within the definition of an open-end lease. In closed-end leases, sometimes referred to as "walk-away" leases, the lessee is not responsible for the residual value of the leased property at the end of the lease term.

2(a)(6) Consumer Lease

The rule of construction, currently in § 213.2(b)(1), has been moved to this paragraph.

2(a)(7) Estimated Lease Charge

The proposal adds a definition of "estimated lease charge" to provide guidance in making the proposed disclosure in § 213.5(q). The estimated lease charge would reflect the total dollar amount of the cost of the lease attributable to interest and other charges (whether paid upfront or during the term of the lease). The Board believes that such a disclosure together with a statement indicating what the figure represents and the formula for calculating the estimated lease charge (as provided in § 213.5(q)) would further assist the consumer in comparing leases. A first monthly or other periodic payment paid at or before consummation is not included in the calculation of the estimated lease charge, as it is reflected in the total periodic payment disclosure. Any refundable charge such as a security deposit would also not be included in the calculation.

2(a)(8) Gross Cost

The proposal adds a definition of "gross cost" to provide guidance in making the proposed disclosure in § 213.5(p) for closed-end lease transactions. The Board proposes to define gross cost as the total dollar amount of all items included in the value of a lease at consummation. This figure would include the base price of the leased property and any other items added to that price—such as a lessor's markup, taxes, service agreements, insurance, and any outstanding balance from a prior lease that is included in a new lease—prior to being offset by any downpayment or trade-in by the consumer. Amounts consisting of fees

and other charges paid out-of-pocket at consummation by the lessee are also included in the gross cost figure. The gross cost is the amount upon which the periodic and other payments and terms of the lease are based. The Board solicits comment on this definition.

2(a)(10) Lessor

The proposal deletes the phrase "in the ordinary course of business," as it may not be very helpful in determining whether a person must comply with the CLA. In its place, a numerical test is set forth. Under this test, a person who leases, offers, or arranges to lease personal property more than five times in the preceding calendar year is subject to the CLA and Regulation M. If a person did not meet this numerical test in the preceding calendar year, the test is applied to the current year. The Board solicits comment on the proposed numerical test.

2(a)(11) Open-End Lease

The proposal adds a definition of "open-end lease." The Board believes the definition will provide useful guidance given that certain disclosures are only relevant to open-end leases, those in § 213.5(m), and (o), and § 213.8(d)(2)(vi).

2(a)(16) Residual Value

The proposal adds a definition of "residual value" to provide guidance in making the proposed disclosure in § 213.5(r) for closed-end lease transactions. The residual value of leased property is the amount determined at consummation to be the value of the leased property at the end of the lease term.

2(b) Rules of Construction

This section is deleted from the regulation. Current paragraph 2(b)(1) is moved to paragraph 2(a)(6) of this section. Paragraphs (b)(2) and (b)(3) of this section are deleted as unnecessary.

Section 213.3—Exempt Transactions

No changes have been proposed to this section.

Section 213.4—General disclosure requirements

4(a) General Requirements

Paragraph (a) contains general rules about the disclosures required under § 213.5, including the form, content, and timing of disclosures. The major revision is the proposed requirement that certain disclosures be segregated from other information. Several existing format rules have been eliminated as unnecessary because of the proposed segregation requirement. Other

provisions would be simplified and clarified to ease compliance.

4(a)(1) Form of Disclosures

The general disclosure requirements are found in section 182 of the CLA. Clear and conspicuous lease disclosures must be given prior to consummation of a lease on a dated written statement that identifies the lessor and lessee. Generally, all the disclosures must be made together on a separate statement or in the lease contract to be signed by the lessee. Under the proposal, the segregated disclosures in § 213.4(a)(2), discussed below, may be provided on a separate document and other CLA disclosures provided in the lease contract, as long as all disclosures are given to a consumer at the same time.

Where the disclosures are included in the lease contract, the regulation currently requires that the disclosures be provided above the lessee's signature. Under the proposal, this specific requirement is deleted as unnecessary. However, lessors must continue to ensure that the disclosures are given to lessees before the lessee becomes obligated on the lease transaction. To provide evidence of compliance, disclosures may still be placed above the lessee's signature where disclosures are included in a lease agreement. Alternatively, lessors may include instructions alerting a lessee to read the disclosures prior to signing the lease or could provide a signature line or an acknowledgement of receipt for the lessee on the disclosure statement.

To satisfy the statutory standard that disclosures be made clearly and conspicuously, the regulation currently requires that disclosures be made on the same page and in a meaningful sequence—the grouping together of related disclosures. The regulation also imposes type-size requirements on numerical disclosures. In light of the proposal to segregate certain disclosures, discussed below, the meaningful sequence and the same page rule, and type-size disclosure requirements are deleted as unnecessary.

Nonsegregated disclosures need not be on the same page but they should be grouped together. Disclosures should also be presented in a way that does not obscure the relationship of the terms to each other.

4(a)(2) Segregation of Certain Disclosures

The CLA does not require the segregation of the required leasing disclosures from other information given to the consumer in a lease transaction. There is some concern that

the absence of a requirement that the consumer leasing disclosures be segregated from general contract or other terms limits the effectiveness of these disclosures in meeting one of the goals of the CLA—to assure clear, conspicuous, and meaningful disclosure of lease terms to consumers.

Lease contracts can be long, detailed, and complex and often contain leasing disclosures interspersed among contract provisions. Consumers generally have little time to review their lease contracts before signing them. The Board believes a requirement that certain of the mandated disclosures be segregated would highlight these disclosures and thereby enhance consumers' ability to understand lease terms and thus make more informed choices.

In its advance notice of proposed rulemaking, the Board specifically requested comment on whether a segregation requirement should be imposed. Thirty of the seventy commenters addressed the issue. Twenty-six commenters favored some form of disclosure segregation. The other four commenters believed that any consumer benefit associated with isolating certain disclosures would not outweigh the costs to lessors of revising forms, or that a segregated disclosure requirement would require a statutory change.

Under section 105(a) of the TILA, which includes the CLA, the Board has the authority to prescribe regulations containing "such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purpose of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." Pursuant to this authority, the Board proposes that certain disclosures be segregated from other disclosures and information. As discussed previously, lessors may include the segregated disclosures in their lease contracts, but would be required to separate them from other information. Alternatively, lessors may provide the segregated disclosures to consumers on a separate document. The content, format, and headings for these disclosures should be substantially similar to those contained in the model forms in appendix A of the regulation. To ensure uniformity, no additional information may be included among the segregated disclosures, except as permitted under any future provision found in the official staff commentary to Regulation M.

The following disclosures (some of which are new) would be segregated from other information:

- Gross cost of the lease (new)—§ 213.5(p).
- Total payment due at lease signing, subdivided into an itemization of the costs to be paid at lease signing, and an itemization of the means of paying these costs (this type of itemization would be new)—§ 213.5(b).
- Total of periodic payments and payment schedule—§ 213.5(c).
- Total of other charges payable to lessor—§ 213.5(e).
- Residual value (new)—§ 213.5(r).
- Statement concerning the consumer's right to purchase the leased property at the end of the lease term—§ 213.5(k)(1).
- Estimated lease charge (new)—§ 213.5(q).
- Statement that a substantial charge may be imposed for terminating a lease early and an example of an early termination charge (new)—§ 213.5(l)(2).
- Statement concerning lessee's possible wear and use liability, including liability for excessive mileage (new in part)—§ 213.5(h)(3).
- Statement that the consumer should refer to lease documents for nonsegregated CLA-required information (new)—§ 213.5(s).
- In an open-end lease, the value of the property at consummation, the total lease obligation, and the difference between them—§ 213.5(o)(1).

The remaining disclosures required by Regulation M and the CLA would continue to be provided in a nonsegregated format (typically, together with the other terms and conditions that comprise the lease agreement). Comment is solicited on whether any items should be excluded from, or others added to, the segregated disclosures.

Regulation M currently contains model forms for open-end leases, for closed-end leases, and for furniture leases. These forms have been revised to reflect how the segregated disclosures would appear. The model forms are in appendix A.

4(a)(5) Language of Disclosures

Current paragraph 4(a)(4) states that lease disclosures must be provided in English, except in the Commonwealth of Puerto Rico. The proposal revises this position. Lessors would be permitted to give disclosures in another language as long as disclosures in English are given to a lessee who requests them. The Board believes that a more permissive rule could promote the delivery of more meaningful disclosures to consumers.

4(b) Additional Information

Current paragraph 4(b) permits additional information to be included with any disclosures required by the regulation. The proposal would permit additional information only with the nonsegregated CLA leasing disclosures, provided the information does not detract from those disclosures.

Current paragraphs 4(b) (1) and (2) have been deleted as unnecessary. Pursuant to section 186(a) of the CLA and Regulation M, proposed § 213.10, if information required by state law is inconsistent with the requirements of the act or regulation, the state law is preempted.

4(c) Multiple Lessors or Lessees

Paragraph (c) provides that when a transaction involves multiple lessors, one lessor may make the disclosures on behalf of all of them. The phrase "and the one that discloses shall be the one chosen by the lessors" is deleted as unnecessary. No substantive change is intended.

4(d) Use of Estimates

Current paragraph 4(d), which implements section 182 of the CLA on the use of estimated disclosures, is proposed (4)(d)(1) and (2).

4(e) Effect of Subsequent Occurrence

Paragraph 4(e) provides that generally when an event occurs after disclosures have been delivered which makes a disclosure inaccurate, the inaccuracy does not constitute a violation of the act. This paragraph clarifies that this rule applies to events occurring after consummation of a lease. The first sentence of footnote 1 of the current regulation, which contains a specific example of a subsequent occurrence, has been incorporated into the staff commentary in comment 4(e)-3. The second sentence of the footnote is deleted as unnecessary guidance under this regulation.

4(f) Minor Variations

Current paragraph 4(f) allows lessors to disregard February 29 in a leap year when making disclosures. Proposed paragraph (f) incorporates into the regulation all rules on minor variations that may be disregarded in making disclosures, thus provisions currently contained in comment 4(a)-2 of the commentary have been moved to this paragraph. No substantive change is intended.

Section 213.5—Content of Disclosures

Section 213.4(g) is proposed § 213.5. Several new disclosures have been added under paragraphs (b), (h)(3),

(l)(2), and (p) through (s). Paragraphs which have not been changed, or which contain no substantive changes, have been redesignated as follows:

Current	Proposed
Paragraph 4(g)(1)	redesignated as 5(a).
Paragraph 4(g)(3)	redesignated as 5(c).
Paragraph 4(g)(4)	redesignated as 5(d).
Paragraph 4(g)(5)	redesignated as 5(e).
Paragraph 4(g)(6)	redesignated as 5(f).
Paragraph 4(g)(7)	redesignated as 5(g).
Paragraph 4(g)(9)	redesignated as 5(i).
Paragraph 4(g)(11) ...	redesignated as 5(k).
Paragraph 4(g)(13) ...	redesignated as 5(m).
Paragraph 4(g)(15) ...	redesignated as 5(o).

5(b) Total Amount Due at Lease Signing

Paragraph 5(b), currently § 213.4(g)(2), requires lessors to disclose to consumers the total amount of any payment due at the consummation of a lease. The payment may include a security deposit, a trade-in allowance or a downpayment (the "capitalized cost reduction"), a first periodic payment in advance, and fees such as delivery charges. Under the current regulation, these charges must be itemized by type but need not be itemized by amount. The Board is proposing several changes to this paragraph. The language has been revised to clarify that a total amount of payments due at lease signing is required. The Board proposes to require that amounts paid at lease signing be itemized by amount as well as by type. The Board believes that these lease costs should be more completely and uniformly disclosed, and requiring itemization by type and amount would ensure this result. Under the proposal, the type and amount of each charge due at consummation is included among the segregated disclosures under the subheading "itemized costs." Also, to enhance consumer understanding of what payments are made and how they are allocated—particularly the amount agreed upon as the trade-in allowance of property being provided by the lessee—the lessor should disclose the net trade-in allowance, any rebate, payments in cash, and any other credits under the subheading "means of paying itemized costs." (See the model forms in appendix A for format.) The Board believes that standardization of the terminology to be used and the full itemization of the initial costs and means of payment will provide consumer benefit without imposing substantial compliance costs on lessors.

5(h) Maintenance Responsibilities

Paragraph 5(h), currently § 213.4(g)(8), requires disclosures about maintaining or servicing leased property. Lessors currently must identify the party

responsible for maintaining or servicing the leased property, along with a description of the responsibility, and as applicable, a statement of reasonable wear and use standards. For example, an automobile lease may state that a consumer will be liable for excessive wear and use if the vehicle is returned with little tread on the tires, with rust, dents or broken parts or accessories, or if the vehicle is driven over a certain number of miles.

Some of the consumer representatives commenting on the Board's advance notice expressed concerns about excess wear and use standards. Generally, they suggested that lessors should have to describe, in detail, the standard applied and the penalties that would be charged. They also called for the development of standardized measurements of excess wear and use. One commenter suggested that the Board prohibit charges for excess wear and use beyond actual repair costs. In addition, the Board's Consumer Advisory Council and others have advised the Board that highlighting information about excessive mileage charges is important.

Although the Board receives very few consumer complaints about leasing, it has over the years received complaints about reasonable wear and use standards. Consumers sometimes do not realize that lessors may impose strict standards for what they consider normal use of lease property, particularly leased automobiles, and that these standards may vary depending on the lessor. While issues concerning excessive wear and use liability are generally a matter of contract between a lessee and lessor, the Board believes that a disclosure notice about the possibility that a charge may be imposed at the end of the lease term for excessive wear and use of leased property, based on the standards imposed by the lessor, may heighten a consumer's awareness about maintenance responsibilities without any substantial compliance costs on lessors. Therefore, the Board proposes to add a disclosure requirement in paragraph 5(h)(3), to be included among the segregated disclosures, that "you may be charged for excessive wear and use based on the lessor's standard for normal use." In a vehicle lease transaction, any applicable charge for excessive mileage must also be included. The Board solicits comment on the proposed new disclosure, including the required language.

5(j) Penalties and Other Charges for Delinquency

The Board proposes to add that any penalty or charge shall be reasonable, to reflect the requirement found in section

183(b) of the CLA. No substantive change is intended.

5(l) Early Termination

Paragraph 5(l), currently § 213.4(g)(12), requires a disclosure about charges for terminating a lease early. The Board proposes additional disclosure requirements, in § 213.5(l)(2), that would be included among the segregated disclosures. Lessors would have to include a statement alerting consumers about charges for terminating a lease early, including an example of an early termination penalty based on an assumed termination of the lease at the end of the first year.

The CLA requires lessors to disclose the conditions under which the lessee or lessor may terminate the lease before the end of the lease term and the amount or method of determining a penalty or other charge for early termination. Lessors typically disclose the method of determining an early termination charge and such a disclosure is often complex.

In its advance notice of proposed rulemaking, the Board solicited comment on whether the disclosure of early termination charges could be revised to more easily inform consumers about these charges. The Board also solicited comment on whether the disclosure of the name of the lessor's early termination method along with a representative example of a lease termination charge should be considered, as well as any other disclosure alternative. The notice mentioned a U.S. Court of Appeals case, *Lundquist v. Security Pacific Automotive Financial Services Corp.*, 993 F.2d 11 (2d Cir.), cert. denied, 62 U.S.L.W. 3320 (U.S. Nov. 1, 1993), that has caused lessors concern. In that case, the court held a lessor liable for violating the "reasonably understandable" standard for disclosure under Regulation M; the lessor had an early termination formula that the court found to be overly complex and beyond the understanding of the average consumer. Many lessors say that, given the complexity of modern automobile lease transactions, it is difficult to describe every part of an early termination formula in terms clearly understandable to consumers. In particular, lessors state that the various methods used to determine the "unamortized capitalized cost" portion of their early termination formulas are inherently complex and cannot be reduced to a disclosure that is easily understandable.

In responding to the Board's request for comment on this issue, many lessor representatives favored allowing a

reference to the name of the method employed to determine the unamortized capitalized cost portion of the early termination formula instead of requiring a detailed description of that method. Some suggested that the Board also define the most common amortization methods currently used (such as the "actuarial" or the "constant yield" methods) to provide for uniformity. They believed that through education and exposure to the names of the most commonly used methods, consumers would eventually become aware of their advantages and disadvantages. Opponents believed that merely providing the name of the method would not be useful and would make it difficult or impossible for consumers to compute the amount of an early termination charge. Some consumer advocates said that in using complex methods and highly complicated descriptions in determining early termination charges, lessors preclude consumers from determining whether the charges themselves are reasonable. (The CLA specifies that charges for early termination must be "reasonable.") Other commenters, including both lessors and consumer representatives, favored a full description of all aspects of a lessor's early termination method, along with an example of how that method would work. In addition, some commenters suggested a general statement warning the consumer of the possibility of a substantial charge for early termination.

Based on the comments received and upon further analysis, the Board proposes to require that, along with an example of an early termination charge, a statement be given by lessors among the segregated disclosures that "you may have to pay a substantial charge if you end this lease early," that "the actual charge will vary depending on when the lease is terminated," and that "other charges such as for excessive wear and use may also be imposed." The Board believes these highlighted disclosures would serve to better inform consumers about the consequences if they were to terminate their leases early.

The Board believes that the CLA mandates full disclosure of a lessor's method of determining an early termination charge, even if it is complex. Therefore, in addition to the above statement and example, a full description of the complete early termination method must be disclosed by lessors outside of the segregated disclosures. However, given the complexity of the methods involved, a lessor is permitted—in giving the full description of its early termination method—to include a reference to the

name of a generally accepted method of computing the unamortized gross or capitalized cost (also known as the "adjusted lease balance") portion of its early termination charge. For example, a lessor may state that the "constant yield" method would be utilized in obtaining the unamortized portion of the gross cost, but the lessor would have to specify how that figure—and any other term or figure—is used in computing the total early termination charge that would be imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, it would have to provide a written explanation of that method if requested by the consumer. While lessors should attempt to provide clear and understandable explanations of their early termination provisions to consumers, explanations that are full, accurate, and not intended to be misleading are in compliance with CLA and Regulation M disclosure requirements. (And, of course, the statute requires that the early termination charges themselves must be "reasonable.") These positions are codified in the proposed revisions to the Official Staff Commentary to Regulation M.

Finally, regarding the selection of an assumed termination period for the early termination example, several approaches were considered by the Board. The proposed example is based on an assumption that the consumer terminates the lease near the beginning of the lease term—at the end of the first year. This approach provides a "worst case" scenario. Early termination charges are typically highest at the beginning of the lease term. The example could have been based on an assumption that the consumer terminates the lease towards the end of the lease—such as the end of the third year for a four-year lease, and at the end of the second year for a three-year lease. The last year of a lease is the period when many early terminations occur. An example could have been based on an assumed early termination occurring for instance, at the 50 percent mark of the lease term. Arguably, this approach could allow an easier comparison of early termination examples among leases, in contrast to the first two approaches where the assumed early termination would not occur at proportionately equivalent points in leases of different lengths.

While there is some merit to each alternative (and there are others), the Board is proposing an early termination example based on the assumption that the lease terminates at the end of the first year, which illustrates to

consumers how substantial the charge could be if the lease is terminated very early during the lease term. The figure used to calculate the example must be calculated in the same manner the residual value is calculated for purposes of § 213.5(r). Therefore, if a lessor uses the fair market value of the leased property to estimate the value of the property at the end of the lease, the early termination example must also be calculated using the fair market value. Comment is solicited on the proposed example including whether using an assumed termination period other than the one proposed would be more appropriate.

5(n) Right of Appraisal

Paragraph 5(n), currently § 213.4(g)(14), requires disclosure of the right to an appraisal of leased property. Generally this provision is applicable to open-end leases, but it also applies to closed-end leases. Language is revised for clarity and accuracy, for example, the term "realized value" replaces "estimated value." No substantive change is intended.

5(p) Gross Cost

The Board proposes to require disclosure of the gross cost among the segregated disclosures. This disclosure is applicable only to closed-end leases; proposed § 213.5(o), currently § 213.4(g)(15), requires the disclosure of the "value at consummation" in open-end leases. Federal law does not currently require disclosure of information on the base price of the leased property in closed-end leases. Because this figure usually is not given, consumers may assume that the lease is based on the manufacturer's suggested retail price, or on the negotiated sales price (if the parties initially contemplated that the consumer would finance or purchase the property). However, the starting price of the leased property may actually be significantly higher than either of these figures.

Sixteen of the seventy commenters on the advance notice favored a "capitalized cost" disclosure. They included representatives of both the leasing industry and consumer groups. Several trade associations representing a large segment of the industry have recently asked their members to voluntarily disclose this item. In addition, a few lessors have been disclosing this figure for some time.

Pursuant to its authority under section 105(a) of the TILA, the Board proposes to require disclosure of the "gross cost" in closed-end lease transactions, using that term, in order to further effectuate the purposes of the

law. The Board believes such a disclosure (together with a brief description such as "the agreed upon acquisition value of the vehicle including but not limited to items such as taxes, fees, service contracts, and insurance") would further the CLA's goal that cost disclosures enable consumers to draw comparisons between leases and, where appropriate, between leases and credit transactions. The gross cost would include the agreed upon price of the leased property and any other items added to that price—such as a lessor's markup, taxes, fees, extended warranties, insurance, and any outstanding balance from a prior lease that is included in a new lease—prior to being offset by any downpayment or trade-in by the consumer. The gross cost is the amount that the periodic and other payments and terms of the lease are based upon, and is intended to be used by consumers to compare a lease with similar lease and non-lease transactions. The gross cost would be readily available to lessors from worksheets they utilize in setting the terms and conditions of the lease. However, as discussed in 5(q) below, the inclusion of a gross cost figure in the segregated disclosures in some cases could invite consumers to make misleading comparisons of leasing and financing options. The Board solicits specific comment on this disclosure and its definition.

5(q) Estimated Lease Charge

Pursuant to its authority under section 105(a) of the TILA, the Board proposes to require disclosure of the estimated lease charge among the segregated disclosures to further effectuate the CLA's goal of enabling consumers to comparison shop. This figure would show the total dollar amount of the "financing" costs that will be charged to the consumer over the lease term, including the amount attributable to interest, or the "time-price differential." Although this figure is similar in concept to the finance charge required to be disclosed in consumer credit transactions subject to the TILA, it is not identical to a finance charge. As proposed, the lease charge would include items such as use taxes, registration and other fees, and insurance—items that are (under certain circumstances, at least) excluded from the finance charge. Therefore, the lease charge would not typically be an appropriate tool to make comparisons between lease and financing transactions.

The Board currently does not propose to exclude any of the fees and charges in the lease transaction from the

estimated lease charge. However, comment is solicited on whether and how this disclosure could be made more comparable to the finance charge under the TILA. For example, the Board requests comment on whether insurance charges—which typically are not included directly in the finance charge—or charges payable in a comparable cash transaction (such as automobile registration fees)—should be excluded from the estimated lease charge.

When consumers are comparing different lease transactions with the same gross costs and durations (for example, three-year auto leases from two different dealers with the same gross cost but different monthly payments and purchase option prices), the estimated lease charge could be used to compare the transactions. However, as discussed below, an estimated lease charge disclosure would not be useful in comparing different leases where the gross costs or durations differ substantially.

Lease rate. Some commenters on the advance notice—including a number of consumer representatives and several small depository institutions—recommended that the Board require lessors to disclose the interest rate implicit in a lease transaction. Some recommended that this lease rate reflect an annual percentage rate concept—that is, a uniformly calculated rate that would include both interest and other charges imposed in connection with the lease transaction. These commenters suggested that the true cost of leasing would not be known to consumers without a lease rate disclosure. They noted that if the gross or capitalized cost and residual value of leased property are to be disclosed to consumers, the lease rate would be the only missing component necessary to determine the full cost of a lease. Commenters opposed to an interest rate disclosure noted that it would not necessarily reflect the "true cost" of leasing, as lessors might simply be able to manipulate the residual value in order to show a lower interest rate.

As noted by some commenters, the lease rate is the only key information about the cost of leasing property that would not be disclosed to consumers under the Board's proposed rule. Showing a lease rate seems important if consumers are to consider adequately the choice between leases involving different gross costs or leases of different durations. For example, if the same automobile could be leased for either three or five years, and the lessor applies the same rate in either case, the two transactions would have

significantly different estimated lease charges (based on one lease incurring interest charges for two years more than the other), yet they would have the same annual lease rate.

A lease rate is clearly defined only in leases that have a fixed dollar purchase option. In that case, a lease rate would be based on a standard formula using the same information as in the estimated lease charge: gross cost, total payment due at lease signing (less a first monthly or other periodic payment and any refundable charges), total of monthly payments, total of other charges payable to the lessor, and the purchase option price. In view of some commenters' concerns that the residual value could be manipulated to show a misleading lease rate, the Board would not contemplate requiring a lease rate in leases that do not have a dollar purchase price option.

Unlike the estimated lease charge, the lease rate disclosure may be of use to consumers in comparing a lease with a credit transaction. However, the lease rate may be of less use in cases when the fees reflected in that rate differ substantially from the fees reflected in the APR under the TILA. For example, leases typically include insurance charges; these are included in the estimated lease charge, and the Board would contemplate them being included in a lease rate disclosure as well. If a lease and a credit transaction had the same annualized rate, but the lease rate included insurance charges that are not included in the credit transaction, the consumer would be misled if he or she simply compared the two rates. In the instance where insurance was not a factor and other fees were similar in amount, however, such a comparison could prove to be of use to consumers in analyzing the costs of these alternative transactions. The Board solicits comment on whether and how a lease rate could be made more comparable to an APR to facilitate such comparisons.

If the disclosure of a lease rate were not required, the inclusion of a gross cost figure (which is prominently displayed in the disclosure statement) could, in some instances, invite misleading comparisons between competing leases or between a lease and a financed purchase. For example, assume a consumer and an auto dealer negotiate a \$17,000 purchase price and a 9 percent APR to finance a car. The dealer then suggests that the consumer consider leasing the car instead. Assuming that potential lessees are likely to attach significance to the gross cost of the leased car, the dealer could agree to base the monthly lease

payments on a gross cost figure of \$17,000. The dealer could then apply a higher interest rate of 14 percent to calculate the monthly payments, and this rate would not be disclosed to the consumer. Even using this 14 percent interest rate, the monthly payments on the lease may be less than the monthly payments if the car were financed. The consumer might prefer the financing alternative if he or she realized that the implicit interest rate on the lease was 14 percent. However, absent a lease rate disclosure, the consumer could conclude that the lease was a better deal. On the other hand, since the dollar amount of the increase attributable to the lessor's use of a higher interest rate would be reflected in the estimated lease charge, this could be sufficient to inform the consumer. In addition, there may be competitive and operational pressures upon lessors that could prevent them from artificially decreasing the gross cost, such as limits on dealer markups in interest rates. Thus any deception that would be associated with disclosure of a low gross cost may be minimal.

While an annualized lease rate may improve comparison shopping between leases, some believe that the disclosure of the estimated lease charge would be sufficient for these purposes (assuming that consumers comparison shop items with similar gross costs and lease durations), and thus the disclosure of a lease rate would be unnecessary. Moreover, disclosure of a uniform lease rate disclosure may significantly increase the cost of complying with the requirements of the CLA and Regulation M, and this burden may outweigh any benefit to consumers of such a disclosure.

In light of the above discussion, the Board has not proposed requiring the disclosure of a lease rate. However, comment is solicited on this matter, including the advantages and disadvantages of such a disclosure to consumers. In the event that the Board were to require disclosure of a lease rate, the Board further solicits comment on whether the rate should be defined in such a way as to make it more comparable to the APR in a credit transaction (such as by excluding insurance charges from the calculation in certain circumstances). The Board also solicits comment on whether the gross cost (and therefore the estimated lease charge) figures should be de-emphasized or removed from the required disclosures to avoid potential manipulation of these figures in order to mislead consumers; or whether in commenters' views, this type of manipulation would not arise. Finally,

the Board solicits comments on how and whether the costs of imposing a lease rate disclosure would outweigh the consumer benefit of having such a rate disclosed.

5(s) Statement Referencing Nonsegregated Disclosures

It is important that the value of the nonsegregated CLA disclosures not be diminished. Therefore, the Board proposes to add a statement among the segregated disclosures to alert consumers to other CLA-required disclosures (not contained among the segregated disclosures) that they should read in the lease documents. The disclosures include information about conditions for and the amount or method of determining early termination charges, charges for delinquency, default or late payments, maintenance responsibilities, any purchase option prior to the end of the lease term, insurance, total taxes and official fees, warranties, liability at the end of the lease term, and any security interest in the leased property.

Section 213.6—Renegotiations, Extensions, and Assumptions

Section 213.6 contains all the redisclosure rules governing leases that are renegotiated, extended, or assumed, including the exceptions, which currently are generally contained in § 213.4(h). The section has been rearranged and revised for clarity. For example, rules on assumptions in the current staff commentary have been moved to this section. Proposed § 213.6(d) retains the substance of the exceptions found in the current regulation, but has been rephrased. Several exceptions located in the current commentary under current comments 3, 7, and 8 to § 213.4(h) have also been moved to proposed § 213.6(d).

Section 213.7—Reserved

Section 213.7 has been reserved. Section 213.7 in the current regulation has been moved to § 213.10.

Section 213.8—Advertising

Section 213.5 in the current regulation is proposed § 213.8. Some of the language of the existing provisions have been revised for simplicity.

Under the CLA, if a lease advertisement states certain cost information (such as the amount of a monthly lease payment) as many as six additional disclosures must be clearly and conspicuously given. The Board proposes to make several clarifications and substantive revisions in this section that it believes will ease the compliance concerns of lessors while providing

uniform and more meaningful information to consumers and furthering the CLA mandate that disclosures in advertisements be clearly and conspicuously displayed.

8(b) Clear and Conspicuous Standard

For clarity and simplicity, the Board proposes to state the clear and conspicuous standard in this section in one place; currently in § 213.5 references to the clear and conspicuous standard are made in several places.

Several representatives of state attorneys general and others have questioned the way advertisements of automobile leases display the required Regulation M disclosures. Lessors sometimes conspicuously advertise low or no downpayments when, in much smaller print, other upfront charges such as an acquisition fee, a security deposit, or the first monthly lease payment may be given. Some leasing representatives have expressed concern about their possible exposure to liability due to the potential for differing state interpretations of what is clear and conspicuous. The Board is therefore proposing that a reference in an advertisement to any component of the total amount of payments due at consummation, such as the downpayment (or that there is no downpayment), may not be more prominently displayed in the advertisement than the required disclosure in § 213.8(d)(2)(ii) of the total amount of payments due at lease signing. The Board believes this rule would address some of the concerns about lease advertisements without adding significant burdens on lessors or interfering with the effective marketing of their products. The proposed rule would not control what terms are to be advertised, but only that components of the total amount due at lease signing could not be emphasized without giving equal prominence to the disclosure of the total amount due itself. It should be noted that lessors can advertise lease transactions without including any CLA disclosures. Disclosures are only required when certain "trigger" terms are included in the advertisement, for example, a payment amount.

8(c) Catalogs and Multi-Page Advertisements

Section 8(c), currently § 213.5(b), has been simplified. No substantive change is intended.

8(d) Advertisement of Terms That Require Additional Disclosure

Section 8(d) incorporates current § 213.5(c). The introductory language of

current § 213.5(c) is simplified. No substantive change is intended.

Currently, some advertisements do not provide a total of payments required at or before consummation, but instead give an itemization of each charge due at that time. In paragraph 8(d)(2)(ii), the Board proposes to clarify that the CLA requires only that the total of payments due by the consumer before or at lease signing be stated in an advertisement in which a trigger term has been used. (The language of the statute is somewhat ambiguous on this point.) Lessors may provide an itemized list of the payments due by lease signing but would not be required to under the proposed rule. Full disclosure of these initial fees by type and amount are among the required disclosures given to consumers who actually enter into lease transactions.

In paragraph 8(d)(2)(iv), the Board proposes to clarify that disclosing the method for determining the purchase price is limited to instances where the lessee has the option to purchase the leased property prior to the end of the lease. Language is added to the second sentence of this paragraph, consistent with the specific disclosure requirements in § 213.5(k), which the Board believes is consistent with congressional intent to provide the price of the leased property if the option to purchase is available at the end of the term.

Current § 213.5(c)(5) contains two requirements. Under the first requirement, lessors must disclose the amount of "any liabilities" that the lessee may be required to pay at the end of the term. To remove any ambiguity as to the applicability of this provision to both open- and closed-end leases, the Board proposes to incorporate this portion of the current paragraph in paragraph 8(d)(2)(v). For example, charges for excessive wear and use (such as an excessive mileage charge) on an automobile lease under both open- and closed-end leases would have to be disclosed in advertisements under this proposed provision.

Under the second requirement in current § 213.5(c)(5), lessors must disclose whether the lessee is liable for any difference between the estimated value of the leased property and its realized value at the end of the lease, applies only to open-end leases. The Board has moved this requirement to § 213.8(d)(2)(vi).

8(e) Alternative Disclosures—Merchandise Tags

Section 213.8(e) broadens current § 213.5(d) by allowing the use of triggering terms on merchandise tags, for items normally used in multiple-

item leases, without providing full advertising disclosures on the tag itself.

8(f) Alternative Disclosures—Telephone or Radio Advertisements

Section § 213.8(f) implements amendments to section 184 of the CLA made by section 336 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160). Section 336 amended the CLA to provide an alternative disclosure scheme for radio lease advertisements in order to reduce the amount of information in such advertisements.

Before the statutory revisions, if any of the trigger terms (such as a payment amount) were used in any type of lease advertisement, as many as six additional disclosures had to be given. These disclosures include statements specifying (1) whether or not the lessee has the option to purchase the leased property, and at what price and time, (2) the amount or method of determining the amount of any liabilities the lease imposes at the end of the term, and (3) that the consumer is liable for the difference between the estimated value of the leased property and its realized value at the end of the term, if such liability exists.

Under the statutory amendments, in radio advertisements, lessors are permitted to substitute a reference to a toll-free telephone number or to a specified print advertisement for the disclosures about the purchase option and the end-of-term liability. If consumers call the toll-free number, they must receive all the required disclosures (not simply the ones omitted from the radio advertisement) orally, or in writing if requested by the consumer. Alternatively, all of the disclosures could be provided in a publication in general circulation in the community served by the radio station.

Although the statutory amendment is limited to radio advertisements, the legislative history takes note of the Board's Regulation M review and states that, after public comment, the Board should consider extending the new radio advertising provisions to television and print advertisements. It stated that television advertisements, for example, "raise complex questions regarding the content prominence, and duration of disclosures necessary to simplify the process and to convey more meaningful information to consumers." The Board believes that television lease advertisements have time constraints similar to those on radio; given these constraints, it is generally agreed that consumers cannot comprehend all the disclosure information provided

currently. It is not clear that similar concerns exist with print advertisements. Therefore, in § 213.8(f), pursuant to its authority under section 105(a) of the TILA, the Board is proposing to apply the new statutory disclosure alternative to lease advertisements in both radio and television broadcasts to effectuate the purpose of the CLA and to facilitate compliance. The Board specifically solicits comment on this matter and on whether similar constraints exist for print advertisements that would warrant their inclusion in any final rule.

When a television or radio advertisement includes any of the trigger terms in § 213.8(d)(1), the alternative disclosure rules allow lessors to comply with § 213.8(d)(2) by combining certain required disclosures with a referral to either a toll-free number or a written advertisement. Required information in § 213.8(d)(2)(i)-(iii) must be stated in the television or radio advertisement along with the alternative disclosures in § 213.8(f)(1). The remaining disclosures in § 213.8(d)(2)(iv)-(vi), are not required to be disclosed. However, all the required disclosures in § 213.8(d)(2) must be given to consumers through the toll-free number or in a written advertisement appearing in a publication of general circulation in the community served by the media station on which the advertisement is broadcast.

The Board solicits comment on its approach in implementing section 336 of the Riegle Community Development and Regulatory Improvement Act.

Section 213.9—Record Retention

Section 213.9, currently § 213.6, has been revised for simplicity. The language "or action is required to be taken" has been added to cover circumstances requiring action by a lessor other than providing disclosures. The language in current § 213.6(b) is eliminated as unnecessary. The caption "Preservation and Inspection of Evidence of Compliance" has been changed to "Record Retention" to conform with usage in other of the Board's regulations.

Section 213.10—Relation to State Laws

Section 213.10 combines and simplifies current §§ 213.7 and 213.8. No substantive changes are intended. Information about procedures and criteria for preemption or exemption determinations is removed.

Appendix A—Model Forms

To simplify the regulation, the written information contained in the current appendix about the procedures and

criteria for an exemption determination has been removed. Such information would be available from the Board upon request.

Model forms, currently in appendix C of the regulation, have been moved to this appendix and revised to illustrate the new segregated disclosure scheme required by § 213.4(a)(2). Instructions to the current model forms have been deleted as repetitive of the regulation and unnecessary. The Board solicits comment on whether any additional model forms or model clauses are warranted (such as for single or "lump sum" payment leases). Specific comment is also solicited on whether the open-end lease model form is needed and to what extent such leases are being offered.

Appendix B—Federal Enforcement Agencies

The list of federal agencies that enforce the CLA for particular classes of businesses is moved from appendix D to this appendix. To simplify the regulation, the written information contained in the current appendix about the procedures and criteria for a preemption determination has been removed. Such information would be available from the Board upon request.

Appendix C—Issuance of Staff Interpretations

Current paragraph § 213.1(d) is moved to this appendix. Model forms have been moved to proposed appendix A.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-0892. 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 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, but must be accompanied by an original document in paper form.

V. Regulatory Flexibility Analysis

The Board's Office of the Secretary has prepared a preliminary regulatory analysis of the proposal. A copy of the analysis may be obtained from Publication Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3245.

Concerning the impact on small firms, the Board believes that most consumer leasing subject to Regulation M is

undertaken by large firms. Therefore, elements of revised Regulation M that might increase burden on lessors should not have much impact, if any, on small firms. There is evidence from other regulations of economies of scale (that is, cost conditions that lead to higher average costs at small firms than large firms) in start-up costs for new regulations or for changes in regulations. Thus, implementation of proposed revisions to Regulation M could be disproportionately costly to small firms, to the extent that they engage in covered consumer leasing.

Provisions of the CLA are similar to those of the credit provisions of the TILA, and available evidence suggests also the existence of economies of scale in on-going costs for Truth in Lending. Since the requirements of the existing regulation and the proposed revised regulation do not differ by size of firm, small firms would possibly continue to face relatively higher costs under the proposed revised rule.

It appears, however, that few, if any, firms that provide consumer leases are small firms. Moreover, evidence on scale economies for other regulations indicates that scale economies are exhausted at relatively low levels of output. Therefore, it is unlikely that the proposed revisions would cause any firms in the industry to incur disproportionately higher costs because of their size.

VI. Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0202), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The third-party disclosure requirements contained in 12 CFR 213.5 will aid consumers in understanding leases they negotiate. The respondents are for-profit institutions, including small businesses. Because the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

Institutions are not required to respond to this collection of information unless it displays a currently valid OMB control number. The OMB control

number is 7100-0202. OMB has deemed that inclusion of the OMB control number in this preamble satisfies this requirement.

The Board estimates that the annual burden for state member banks will increase from 9,272 hours to 10,786 hours. The Board estimates that the average length of time to disclose the costs and terms to a consumer will increase from fifteen minutes to seventeen minutes. The Board also estimates that the average length of time to prepare basic lease information for inclusion in all advertisements will decrease from thirty minutes to twenty-five minutes.

The Board has found that few state member banks engage in consumer leasing and that while the prevalence of leasing has increased in recent years, it has not increased substantially among state member banks. It also has been found that among state member banks that engage in consumer leasing, only a very few advertise consumer leases. For estimates of the annual burden imposed on other institutions that engage in consumer leasing, please contact their regulator.

List of Subjects in 12 CFR Part 213

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

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 213 as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604.

2. The table of contents to part 213 is revised to read as follows:

Sec.

213.1	Authority, scope, purpose, and enforcement.
213.2	Definitions.
213.3	Exempt transactions.
213.4	General disclosure requirements.
213.5	Content of disclosures.
213.6	Renegotiations, extensions, and assumptions.
213.7	[Reserved].
213.8	Advertising.
213.9	Record retention.
213.10	Relation to State laws.
	Appendix A to Part 213—Model Forms
	Appendix B to Part 213—Federal Enforcement Agencies
	Appendix C to Part 213—Issuance of Staff Interpretations
	Supplement I—CL-1 to Part 213—Official Staff Commentary to Regulation M

3. Part 213 would be amended as follows:

a. Sections 213.1 through 213.6 are revised;

b. Section 213.7 is removed and reserved;

c. Section 213.8 is revised;

d. Sections 213.9 and 213.10 are added;

e. Appendices A through C are revised; and

f. Appendix D is removed.

The revisions and additions read as follows:

§ 213.1 Authority, scope, purpose, and enforcement.

(a) *Authority.* The regulation in this part, known as Regulation M, is issued by the Board of Governors of the Federal Reserve System to implement the consumer leasing provisions of the Truth in Lending Act, which is Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

(b) *Scope and purpose.* This part applies to all persons who are lessors of consumer leases as defined in § 213.2(a) (6) and (10). The purpose of this part is:

(1) To ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and with credit transactions, where appropriate;

(2) To limit the amount of balloon payments in consumer lease transactions; and

(3) To provide for the accurate disclosure of lease terms in advertising.

(c) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 130, 131, and 185 of the act contain the liability provisions for failing to comply with the requirements of the act and this part.

§ 213.2 Definitions.

(a) *Definitions.* For the purposes of this part the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *Advertisement* means a commercial message in any medium that directly or indirectly promotes a consumer lease transaction.

(3) *Agricultural purpose* means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products including but not limited to the acquisition of personal property and services used primarily in farming.

(4) *Board* refers to the Board of Governors of the Federal Reserve System.

(5) *Closed-end lease* means a consumer lease other than an open-end lease as defined in this section.

(6) *Consumer lease* means a contract in the form of a bailment or lease for the

use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding \$25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. It does not include a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a). It also does not include a lease for agricultural, business, or commercial purposes or a lease made to an organization. Unless the context indicates otherwise in this part, "lease" shall be construed to mean "consumer lease."

(7) *Estimated lease charge* means the estimated total dollar amount of the cost of the lease attributable to interest and other charges regardless of when such charges are paid, as calculated under § 213.5(q).

(8) *Gross cost* means the total dollar amount of all items included in the value of a lease at consummation, including but not limited to the base price of the leased property and any other items added to that price, such as any markup by the lessor, taxes, insurance, service agreements, and any outstanding balance from a prior lease that is included in the new lease.

(9) *Lessee* means a natural person who leases or who is offered a consumer lease.

(10) *Lessor* means a person who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease. A person who leased, offered, or arranged to lease personal property more than five times in the preceding calendar year is subject to the act and this part; if a person did not meet this numerical test in the preceding calendar year, the numerical test is applied to the current year.

(11) *Open-end lease* means a consumer lease 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.

(12) *Organization* means a corporation, trust, estate, partnership, cooperative, association, or government entity or instrumentality.

(13) *Person* means a natural person or an organization.

(14) *Personal property* means any property that is not real property under the law of the state where the property is located at the time it is offered or made available for lease.

(15) *Realized value* means:

(i) The price received by the lessor for the leased property at disposition;

(ii) The highest offer for disposition; or

(iii) The fair market value at the end of the lease term.

(16) *Residual value* means the amount determined at consummation to be the value of the leased property at the end of the lease term.

(17) *Security interest* and *security* mean any interest in property that secures the payment or performance of an obligation.

(18) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(19) *Total lease obligation* applicable to an open-end lease, means the total of:

(i) The scheduled periodic payments under the lease;

(ii) Any nonrefundable cash payment required of the lessee or agreed upon by the lessor and lessee including any trade-in allowance made at consummation; and

(iii) The estimated value of the leased property at the end of the lease term.

(20) *Value at consummation* means the cost to the lessor of the leased property including, if applicable, any increase or markup by the lessor prior to consummation.

(b) [Reserved]

§ 213.3 Exempt transactions.

This part does not apply to consumer lease transactions of personal property which are incident to the lease of real property and which provide that:

(a) The lessee has no liability for the value of the property at the end of the lease term except for abnormal wear and use; and

(b) The lessee has no option to purchase the leased property.

§ 213.4 General disclosure requirements.

(a) *General requirements.* A lessor shall make the disclosures required by § 213.5, as applicable. The disclosures shall be made clearly and conspicuously in writing, and in accordance with this section.

(1) *Form of disclosures.* Except as provided in paragraph (a)(4) of this section, the disclosures required by § 213.5 shall be given to the lessee together on a dated statement that identifies the lessor and the lessee. All the disclosures may be made either on a separate statement that identifies the consumer lease transaction or on the contract or other document evidencing the lease transaction. As an alternative, the disclosures required under paragraph (a)(2) of this section to be segregated from other information may be provided on a separate statement that identifies the lease transaction and other

required disclosures provided in the lease contract.

(2) *Segregation of certain disclosures.* The following disclosures shall be segregated from other information and shall contain only permissible related or additional information: the disclosures required by § 213.5(b), (c), (e), (h)(3), (k)(1), (l)(2), (o)(1) and (p) through (s). The content, format, and headings for these disclosures shall be provided in a manner substantially similar to the applicable model form in appendix A of this part.

(3) *Timing of disclosures.* A lessor shall provide disclosures to the lessee prior to the consummation of a consumer lease.

(4) *Multiple leased items.* In a lease of multiple items, the description required by § 213.5(a) may be given on a separate statement that is incorporated by reference in the disclosure statement required by paragraph (a)(1) of this section.

(5) *Language of disclosures.* The disclosures required by § 213.5 may be made in a language other than English, provided that the disclosures are made available in English upon the lessee's request.

(b) *Additional information.* Additional information may be provided with the disclosures that are not required by paragraph (a)(2) of this section to be segregated from other information. The additional information shall not be stated, used, or placed so as to mislead or confuse the lessee or contradict, obscure, or detract attention from any disclosures required by this part.

(c) *Multiple lessors or lessees.* When a transaction involves more than one lessor, the disclosures required by this part may be made by one lessor on behalf of all of the lessors. When a lease involves more than one lessee, the disclosures may be provided to any lessee who is primarily liable on the lease.

(d) *Use of estimates—(1) Standard.* At the time disclosures are made, if an amount or other item required to be disclosed, or needed to determine a required disclosure, is unknown or is not available to the lessor and the lessor has made a reasonable effort to ascertain the information, the lessor may use an estimate, provided that the estimate is reasonable, is clearly identified as an estimate, is based on the best information available to the lessor, and is not used to circumvent or evade the disclosure requirements of this part.

(2) *Open-end purchase option lease.* Notwithstanding that an estimate shall be based on the best information available, a lessor is not precluded in an

open-end lease with a purchase-option from understating the estimated value of the leased property at the end of the term in computing the total lease obligation required by § 213.5(o)(1).

(e) *Effect of subsequent occurrence.* If information required to be disclosed becomes inaccurate because of an event occurring after consummation of a lease, the inaccuracy is not a violation of this part.

(f) *Minor variations.* A lessor may disregard the effects of the following in making calculations and disclosures:

(1) That payments must be collected in whole cents;

(2) That dates of scheduled payments may be different because the scheduled date is not a business day;

(3) That months have different numbers of days; and

(4) That February 29 occurs in a leap year.

§ 213.5 Content of disclosures.

For a consumer lease subject to this part, the lessor shall disclose the following information, as applicable:

(a) *Description of property.* A brief description of the leased property sufficient to identify the property to the lessee and lessor.

(b) *Total amount due at lease signing.* The total amount to be paid by the lessee prior to or at consummation of the lease, using the term "total amount due at lease signing." The lessor shall itemize each payment by type and amount, including any refundable security deposit, advance monthly or periodic payment, and any downpayment (capitalized cost reduction), and shall disclose the means of payment, including any trade-in allowance, payments in cash, or rebates, in a format substantially similar to that contained in the model forms in appendix A of this part.

(c) *Payment schedule.* The number, amount, and due dates or periods of payments scheduled under the lease, and the total amount of the periodic payments.

(d) *Fees and taxes.* The total dollar amount for all official and license fees, registration, title, or taxes required to be paid by the lessee in connection with the lease.

(e) *Other charges.* The total amount of other charges payable by the lessee to the lessor, itemized by type and amount, that are not included in the periodic payments. This total includes the amount of any liability the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values referred to in paragraph (m) of this section.

(f) *Insurance.* A brief identification of insurance associated with the consumer lease including:

(1) If provided or paid for by the lessor, the types and amounts of coverage and cost to the lessee; or

(2) If not provided or paid for by the lessor, the types and amounts of coverage required of the lessee.

(g) *Warranties or guarantees.* A statement identifying all express warranties and guarantees available to the lessee made by the manufacturer or lessor with respect to the leased property.

(h) *Maintenance responsibilities.* The following are required:

(1) A statement identifying the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility;

(2) A statement of standards for wear and use, which must be reasonable, if the lessor sets such standards; and

(3) A notice regarding wear and use which shall be substantially similar to the following: "wear and use: you may be charged for excessive wear and use based on the lessor's standard for normal use." In a vehicle lease transaction, the notice shall also specify any charge for excess mileage.

(i) *Security interest.* A description of any security interest, other than a security deposit disclosed under paragraph (b) of this section, held or to be retained by the lessor and a clear identification of the property to which the security interest relates.

(j) *Penalties and other charges for delinquency.* The amount or the method of determining the amount of any penalty or other charge for delinquency, default, or late payments, which must be reasonable.

(k) *Purchase option.* A statement of whether or not the lessee has the option to purchase the leased property and:

(1) If at the end of the lease term, the purchase price; and

(2) If prior to the end of the lease term, the purchase price or the method for determining the price and when the lessee may exercise this option.

(l) *Early termination—(1) Conditions and disclosure of charges.* A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or the description of the method of determining the amount of any penalty or other charge for early termination, which must be reasonable.

(2) *Notice and example.* A notice about any charge for terminating a consumer lease early, and an example of a charge for terminating a lease at the end of the first year, which shall be substantially similar to the following:

"You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor [amount]. The actual charge will vary depending on when the lease is terminated. Other charges such as for excessive wear and use may also be imposed."

(m) *Liability between estimated and realized values.* A statement that the lessee is liable for the difference between the estimated value of the leased property and its realized value at early termination or at the end of the lease term, if such liability exists.

(n) *Right of appraisal.* If the lessee's liability at early termination or at the end of the lease term is based on the realized value of the leased property, a statement that the lessee may obtain at the lessee's expense, a professional appraisal, by an independent third party agreed to by the lessee and the lessor, of the value that could be realized at sale of the leased property. The appraisal shall be final and binding on the parties.

(o) *Liability at end of lease term based on estimated value.* If the lessee's liability at the end of the lease term is based on the estimated value of the leased property:

(1) *Value at consummation and total lease obligation.* The value of the property at consummation, the itemized total lease obligation at the end of the lease term, and the difference between them;

(2) *Excess liability.* A statement about the rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period; and that the lessor cannot collect the excess amount unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees;

(3) *Exception for unreasonable wear.* A statement that the provision regarding the rebuttable presumption and attorney's fees does not apply to the extent the excess of the estimated value over the realized value is due to unreasonable or excessive wear or use; and

(4) *Mutually agreeable final adjustment.* A statement that the requirements of this paragraph (o) do not preclude a willing lessee from making any mutually agreeable final adjustment regarding such excess liability.

(p) *Gross cost.* In a closed-end consumer lease, the gross cost, using

that term, with a brief description such as "the agreed upon acquisition value of the vehicle including but not limited to items such as taxes, fees, service contracts, and insurance."

(q) *Estimated lease charge.* The estimated lease charge.

(1) *Closed-end lease.* In a closed-end lease, the estimated lease charge is calculated by subtracting the gross cost from the sum of the total payment due at lease signing (less a first periodic payment and any refundable charges), the total of periodic payments, the total of other charges payable to the lessor and the price the leased property may be purchased for at the end of the lease term. Where there is no purchase option, the residual value shall be used in the calculation.

(2) *Open-end lease.* In an open-end lease, the estimated lease charge is calculated in the same manner set forth in paragraph (q)(1) of this section, except that the initial value of the leased property, the value at consummation, is substituted for the gross cost, and the estimated value of the leased property substitutes for the residual value, to the extent there is any difference.

(r) *Residual value.* In a closed-end consumer lease, the residual value.

(s) *Statement referencing nonsegregated disclosures.* A statement that the lessee should refer to the lease documents for information on: conditions for and the amount or method of determining early termination charges; charges for delinquency, default, or late payments; maintenance responsibilities; any purchase option prior to the end of the lease term; insurance; total taxes and official fees paid; warranties; liability at the end of the lease term; and any security interest.

§ 213.6 Renegotiations, extensions, and assumptions.

(a) *Renegotiations.* A renegotiation occurs when a consumer lease subject to this regulation is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation is a new lease requiring new disclosures, except as provided in paragraph (d) of this section.

(b) *Extensions.* An extension is the continuation of an existing consumer lease beyond the originally scheduled termination date that is agreed to by the lessor and the lessee, except when the continuation is the result of a renegotiation. An extension that exceeds six months is a new lease requiring new disclosures, except as provided in paragraph (d) of this section.

(c) *Assumptions.* New disclosures are not required when a consumer lease is

assumed by another person, whether or not an assumption fee is charged.

(d) *Exceptions.* New disclosures under this part shall not be required for the following, even if they meet the definition of a renegotiation or an extension:

(1) The addition, deletion, or substitution of leased property in a multiple-item lease, provided the average payment is not changed by more than 25 percent;

(2) A lease that is extended for not more than six months on a month-to-month basis or otherwise;

(3) A reduction in the lease charge;

(4) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;

(5) An agreement involving a court proceeding; or

(6) The deferment of one or more payments, whether or not a fee is charged.

§ 213.7 [Reserved]

§ 213.8 Advertising

(a) *General rule.* No advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease the property at those amounts or terms.

(b) *Clear and conspicuous standard.* Disclosures required by this section shall be made clearly and conspicuously. Any reference to a charge that is a part of the total of payments required prior to or at consummation under § 213.8(d)(2)(ii), such as the amount of any downpayment (or that no downpayment is required), shall not be more prominent than the disclosure of the total amount required to be paid by the lessee prior to or at consummation of the lease.

(c) *Catalogs and multi-page advertisements.* If a catalog or other multi-page advertisement provides a table or schedule of the disclosures required by this section for the leased property being advertised, the catalog or multi-page advertisement shall be considered a single advertisement if, whenever any lease term not accompanied by all the required disclosures is located elsewhere, it refers to the page or pages on which the table or schedule appears.

(d) *Advertisement of terms that require additional disclosure.—(1) Triggering terms.* An advertisement that states any of the following items shall contain the disclosures required by

paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(i) The amount of any payment;

(ii) The number of required payments; or

(iii) A statement of any downpayment or other payment required at consummation, or that no payment is required.

(2) *Additional terms.* An advertisement containing any item under paragraph (d)(1) of this section shall state the following items:

(i) That the transaction advertised is a lease;

(ii) The total amount required to be paid by the lessee prior to or at consummation of the lease, or that no payment is required;

(iii) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease;

(iv) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time. The method of determining the price may be substituted for the price in disclosing that the lessee has the option to purchase the leased property prior to the end of the lease;

(v) A statement of the amount or method of determining the amount of any liabilities the lease imposes on the lessee at the end of the term; and

(vi) A statement that the lessee will be liable for any difference between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

(e) *Alternative disclosures—merchandise tags.* A merchandise tag setting forth information listed under paragraph (d)(1) of this section need not contain the disclosures required by paragraph (d)(2) of this section, provided the tag refers to a sign or display prominently posted in the lessor's showroom. The sign or display shall contain a table or schedule of the information required to be disclosed by paragraph (d)(2) of this section.

(f) *Alternative disclosures—television or radio advertisements.—(1) Toll-free number or print advertisement.* An advertisement made through television or radio containing any information listed in paragraph (d)(1) of this section complies with paragraph (d)(2) of this section if the advertisement states the information required by paragraphs (d)(2)(i)–(iii) of this section; and:

(i) Lists a toll-free telephone number established in accordance with paragraph (f)(2) of this section that may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or

(ii) Refers to a written advertisement appearing in a publication of general circulation in the community served by the media station on which the advertisement is broadcast, including the name and the date of the publication, published beginning three days before and ending ten days after the broadcast. The written advertisement shall include the information required to be disclosed by paragraph (d)(2) of this section.

(2) *Establishment of toll-free number.* If a toll-free telephone number is referred to in a television or radio advertisement for the purposes of complying with this section, the lessor shall:

(i) Establish the toll-free telephone number no later than the date the advertisement is broadcast;

(ii) Maintain the telephone number for no less than ten days, beginning on the date of the broadcast; and

(iii) Provide the information required by paragraph (d)(2) of this section to any person who calls. The information shall be provided orally, or in writing if requested by the consumer.

§ 213.9 Record retention.

A lessor shall retain evidence of compliance with the requirements imposed under this part, other than the advertising requirements under § 213.8, for a period of not less than two years after the date disclosures are required to be made or action is required to be taken.

§ 213.10 Relation to state laws.

(a) *Inconsistent state laws.* A state law that is inconsistent with the requirements of the act and this part is preempted to the extent of the inconsistency. If a lessor cannot comply with a state law without violating a provision of this part the state law is inconsistent with the requirements of the act and this part within the meaning of section 186(a) of the act and is preempted, unless the state law gives greater protection and benefit to the consumer. A state, through an appropriate official having primary enforcement or interpretative responsibilities for its consumer leasing law, may apply to the Board for a preemption determination.

(b) *Exemptions.—(1) Applications.* A state may apply to the Board for an exemption from the requirements of the act and this part for any class of lease transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of leasing transactions is subject to state law requirements substantially similar to the act and this

part or that lessees are afforded greater protection under state law; and
 (ii) There is adequate provision for state enforcement.

(2) *Enforcement and liability.* After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by federal law) will constitute

the requirements of the act and this part. No exemption will extend to the civil liability provisions of sections 130, 131, and 185 of the act.

(c) *Procedures and criteria for preemptions and exemptions.* The procedures and criteria for requesting a preemption or an exemption

determination are available from the Board upon request.

Appendix A to Part 213—Model Forms

- A-1 Model Open-End or Finance Vehicle Lease Disclosures
- A-2 Model Closed-End or Net Vehicle Lease Disclosures
- A-3 Model Furniture Lease Disclosures

**A-1 Model Open-End or Finance Vehicle Lease Disclosures
 Federal Consumer Leasing Act Disclosure Statement**

Date _____

1. LESSOR(S) _____

LESSEE(S) _____

2. Description of leased property

Year	Make	Model	Body style	Vehicle ID#

3. a. Initial Value of Vehicle \$ _____
 b. Total Payment Due at Lease Signing \$ _____
 (Total of the itemized costs should equal the means of paying itemized costs)

Itemized Costs		Means of paying Itemized Costs	
Downpayment	\$ _____	Net Trade-in Allowance	\$ _____
Registration Fee	\$ _____	Rebate	\$ _____
.....	\$ _____	Cash	\$ _____
* First Monthly Payment	\$ _____
* Refundable Security Deposit	\$ _____

c. Total of Monthly Payments \$ _____
 Base Payment \$ _____
 Use/Lease Tax \$ _____
 Insurance \$ _____
 Total Monthly Payment \$ _____

Payment Schedule: The first monthly payment of \$ _____ is due on ____, followed by ____ payments of ____ due on the ____ of each month.

d. Total of Other Charges Payable to Lessor (not included in b or c) \$ _____
 Disposition Fee \$ _____
 \$ _____

e. Estimated [Retail/Wholesale] Value of Vehicle \$ _____
 (Your liability for this sum may be limited, see item 6)

f. Purchase Option: You have __/do not have __ an option to purchase the leased property at the end of the lease term. If you purchase the property at that time, the price will be \$ _____

g. Total Lease Obligation (Downpayment, trade-in + c + e) \$ _____
 h. Estimated Lease Charge \$ _____

(Cost of the lease attributable to interest and other charges obtained by adding b (less less *first monthly payment and *any refundable charges) + c + d + f (but if no purchase option is available then e) - a)

Early Termination. You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor \$ _____. The actual charge will vary depending on when the lease is terminated. Other charges such as for excessive wear and use may also be imposed.

Excessive Wear and Use. You may be charged for excessive wear and use of the vehicle based on the lessor's standards for normal use. [In addition, you will be charged _____ cents per mile for each mile in excess of _____ miles shown on the odometer.]

Other Important Terms. Before signing this lease, please read your lease documents for further information about Conditions for and the Amount or Method of Determining Early Termination Charges, Charges for Delinquency, Default, or Late Payments, Maintenance Responsibilities, Any Purchase Option Prior to the End of the Lease Term, Insurance, Total Taxes and Official Fees Paid, Warranties, Liability at the End of the Lease Term, and Any Security Interest, if applicable.

4. Official Fees and Taxes

The total amount you will pay for official and license fees, registration, title and taxes during the lease term is \$ _____.

5. Insurance

The following types and amounts of insurance will be acquired in connection with this lease: _____

____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of \$ _____.
 ____ You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

6. End of Term Liability

(a) The estimated value of the vehicle stated in item 3(e) is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is *greater* than the estimated value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus]. If the actual value of the vehicle is *less* than the estimated value, you will be liable for any difference up to \$ _____ (3 times the monthly payment). For any difference in excess of that amount, you will be liable only if

1. Excessive use or damage [as described in item 7] [representing more than normal wear and tear] resulted in an unusually low value at the end of the term.

2. You voluntarily agree with us after the end of the lease term to make a higher payment.

3. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment. Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle. Unless we prove that the excess amount owed was the result of excessive use or unreasonable wear and use, we will pay your reasonable attorney's fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

7. Standards for Wear and Use

The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle _____

8. Maintenance

[You are responsible for the following maintenance and servicing of the leased vehicle: _____]

[We are responsible for the following maintenance and servicing of the leased vehicle: _____]

9. Warranties

The leased vehicle is subject to the following express warranties: _____

10. Early Termination and Default

(a) You may terminate this lease before the end of the lease term under the following conditions: _____

The charge for such early termination is _____

(b) We may terminate this lease before the end of the lease term under the following conditions: _____

Upon such termination we shall be entitled to the following charge(s) for _____

(c) To the extent these charges take into account the value of the vehicle at the end of the lease term, you have the same right to a professional appraisal as that stated in item 6(b): _____

11. Security Interest

We require a security interest of the following type in the property listed below to secure performance of your obligations under this lease: _____

12. Late Payments

The charge for late payments is _____

13. Option to Purchase

[You have an option to purchase the leased vehicle prior to the end of the term. The price will be \$_____/or the method of determining the price].

[You have no option to purchase the leased vehicle.]

**A-2 Model Closed-End or Net Vehicle Lease Disclosures
FEDERAL CONSUMER LEASING ACT DISCLOSURE STATEMENT**

Date _____

1. LESSOR(S) _____

LESSEE(S) _____

2. Description of leased property

Year	Make	Model	Body style	Vehicle ID#

3. a. Gross Cost \$ _____

(The agreed upon acquisition value of the vehicle including but not limited to items such as taxes, fees, service contracts, and insurance. The gross cost is commonly referred to by the industry as the "gross capitalized cost.")

b. Total Payment Due at Lease Signing \$ _____

(Total of the itemized costs should equal the means of paying itemized costs)

Itemized Costs

Downpayment	\$ _____	Means of Paying Itemized Costs	
Registration Fee	\$ _____	Net Trade-in Allowance	\$ _____
	\$ _____	Rebate	\$ _____
	\$ _____	Cash	\$ _____

*First Monthly Payment

*Refundable Security Deposit

c. Total of Monthly Payments \$ _____

Base Payment \$ _____

Use/Lease Tax \$ _____

Insurance \$ _____

\$ _____	\$ _____
Total Monthly Payment	\$ _____
Payment Schedule: The first monthly payment of \$ _____ is due on ____, followed by ____ payments of _____ due on the ____ of each month.	
d. Total of Other Charges Payable to Lessor (not included in b or c)	\$ _____
Disposition Fee	\$ _____
.....	\$ _____
e. Residual Value	\$ _____
(The estimated value of the vehicle at the end of the lease term)	
f. Purchase Option: You have __ / do not have __ an option to purchase the leased property at the end of the lease term. If you purchase the property at that time, the price will be	\$ _____
g. Estimated Lease Charge	\$ _____
(Cost of the lease attributable to interest and other charges obtained by adding b (less *first monthly payment and *any refundable charges) + c + d + f (but if no purchase option is available, then e) - a))	

Early Termination. You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor \$ _____. The actual charge will vary depending on when the lease is terminated. Other charges such as for excessive wear and use may also be imposed.

Excessive Wear and Use. You may be charged for excessive wear and use of the vehicle based on the lessor's standards for normal use. [In addition, you will be charged _____ cents per mile for each mile in excess of _____ miles shown on the odometer.]

Other Important Terms. Before signing this lease, please read your lease documents for further information about Conditions for and the Amount or Method of Determining Early Termination Charges, Charges for Delinquency, Default, or Late Payments, Maintenance Responsibilities, Any Purchase Option Prior to the End of the Lease Term, Insurance, Total Taxes and Official Fees Paid, Warranties, Liability at the End of the Lease Term, and Any Security Interest, if applicable.

4. Official Fees and Taxes

The total amount you will pay for official and license fees, registration, title and taxes during the lease term is \$ _____.

5. Insurance

The following types and amounts of insurance will be acquired in connection with this lease: _____

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of \$ _____.

_____ You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

6. Standards for Wear and Use

The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle: _____

7. Maintenance

[You are responsible for the following maintenance and servicing of the leased vehicle: _____]

[We are responsible for the following maintenance and servicing of the leased vehicle: _____]

8. Warranties

The leased vehicle is subject to the following express warranties: _____

9. Early Termination and Default

(a) You may terminate this lease before the end of the lease term under the following conditions: _____

The charge for such early termination is _____

(b) We may terminate this lease before the end of the lease term under the following conditions: _____

Upon such termination we shall be entitled to the following charge(s) for: _____

(c) To the extent that these charges take into account the value of the vehicle at the end of the lease term, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

10. Security interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: _____

11. Late Payments

The charge for late payments is: _____

12. Option to Purchase

[You have an option to purchase the leased vehicle prior to the end of the term. The price will be \$ _____ / the method of determining the price.]

[You have no option to purchase the leased vehicle.]

A-3 Model Furniture Lease Disclosures

FEDERAL CONSUMER LEASING ACT DISCLOSURE STATEMENT

Date _____

1. LESSOR(S) _____

LESSEE(S) _____

2. Description of leased property _____

Item	Color	Stock #	Mfg.	Qty.

3. a. Gross Cost \$ _____
 (The agreed upon acquisition value of the furniture including but not limited to items such as taxes, fees, and insurance.)

b. Total Payment Due at Lease Signing \$ _____
 (Total of the itemized costs should equal the means of paying itemized costs)

Itemized Costs		Means of Paying Itemized Costs	
Downpayment	\$ _____	Net Trade-in Allowance	\$ _____
Delivery Fee	\$ _____	Rebate	\$ _____
.....	\$ _____	Cash	\$ _____
*First Monthly Payment	\$ _____		
*Refundable Security Deposit	\$ _____		

c. Total of Monthly Payments \$ _____

Base Payment \$ _____

Use/Lease Tax \$ _____

..... \$ _____

Total Monthly Payment \$ _____

Payment Schedule: The first monthly payment of \$ _____ is due on _____, followed by _____ payments of \$ _____ due on the _____ of each month.

d. Total of Other Charges Payable to Lessor (not included in b or c) \$ _____

Pick-up Charge \$ _____

..... \$ _____

e. Residual Value \$ _____

(The estimated value of the furniture at the end of the lease term)

f. Purchase Option: You have ___ / do not have ___ an option to purchase the leased property, at the end of the lease term. If you purchase the property at that time, the price will be \$ _____

g. Estimated Lease Charge \$ _____

(Cost of the lease attributable to interest and other charges obtained by adding b (less *first monthly payment and *any refundable charges) + c + d + f (but if no purchase option is available, then e) - a)

Early Termination. You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor \$ _____. The actual charge will vary depending on when the lease is terminated. [Other charges such as for excessive wear and use may also be imposed.]

Excessive Wear and Use. You may be charged for excessive wear and use of the furniture based on the lessor's standards for normal use.

Other Important Terms. Before signing this lease, please read your lease documents for further information about Conditions for and the Amount or Method of Determining Early Termination Charges, Charges for Delinquency, Default, or Late Payments, Maintenance Responsibilities, Any Purchase Option Prior to the End of the Lease Term, Insurance, Total Taxes and Official Fees Paid, Warranties, Liability at the End of the Lease Term, and Any Security Interest, if applicable.

4. Official Fees and Taxes

The total amount you will pay for official and license fees, registration, title and taxes during the lease term is \$ _____.

5. Insurance

The following types and amounts of insurance will be acquired in connection with this lease: _____

____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of \$ _____.

____ You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

6. Maintenance

[You are responsible for the following maintenance of the leased furniture: _____.]

[We are responsible for the following maintenance of the leased furniture: _____.]

7. Warranties

The leased furniture is subject to the following express warranties: _____

8. Standards for Wear and Use

The following standards are applicable for determining unreasonable or excess wear and use of the leased furniture: _____

9. Early Termination and Default

(a) You may terminate this lease before the end of the lease term under the following conditions: _____

The charge for such early termination is _____

(b) We may terminate this lease before the end of the lease term under the following conditions: _____

Upon such termination we shall be entitled to the following charge(s) for: _____

10. Security interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: _____

11. Late Payments

The charge for late payments is: _____

12. Option to Purchase

[You have an option to purchase the leased furniture prior to the end of the term. The price will be \$_____/ the method of determining the price].

[You have no option to purchase the leased vehicle.]

Appendix B to Part 213—Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation M (12 CFR part 213) for particular classes of business. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

1. *National banks and federal branches and federal agencies of foreign banks.*

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

2. *State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.*

Federal Reserve Bank serving the District in which the institution is located.

3. *Nonmember insured banks and insured state branches of foreign banks.*

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

4. *Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).*

Office of Thrift Supervision regional director for the region in which the institution is located.

5. *Federal credit unions.*

Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

6. *Air carriers.*

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590.

7. *Those subject to Packers and Stockyards Act.*

Nearest Packers and Stockyards Administration area supervisor.

8. *Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations.*

Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, DC 20578.

9. *All other lessors (lessors operating on a local or regional basis should use the address of the FTC regional office in which they operate).*

Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

Appendix C to Part 213—Issuance of Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this Regulation M (12 CFR part 213). These interpretations provide the formal protection afforded under section 130(f) of the act. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to Regulation M, which will be amended periodically. No staff interpretations will be issued approving lessor's forms, statements, or calculation tools or methods.

By order of the Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-23048 Filed 9-19-95; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM**12 CFR Part 213**

[Regulation M; Docket No. R-0893]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation M which implements the Consumer Leasing Act. The Consumer Leasing Act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. The Board is issuing this proposal to revise the commentary that applies and interprets the requirements of Regulation M pursuant to the Board's policy of periodically reviewing its regulations and official interpretations. A proposal to revise Regulation M is published elsewhere in today's issue of the *Federal Register*.

DATES: Comments must be received by November 17, 1995.

ADDRESSES: Comments should refer to Docket No. R-0893, and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, 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, NW (between Constitution Avenue and C Street) any time. Comments may be inspected in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR section 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT:

Kyung Cho-Miller, Obrea O. Poindexter, or W. Kurt Schumacher, 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; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:**I. General**

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, governs consumer leasing transactions and is implemented by the Board's Regulation M (12 CFR part 213). Effective May 13, 1982, an official staff commentary (Supplement I-CL-1 to 12 CFR part 213) was published to interpret the regulation. The commentary is designed to provide guidance to lessors in applying the regulation to specific transactions and is intended to be updated periodically to address significant questions that arise. It is anticipated that the proposed revisions to the Regulation M commentary will be adopted in final form in the Spring of 1996 with compliance optional until October 1, 1996, the uniform effective date for mandatory compliance.

II. The Review of Regulation M

The Board's Regulatory Planning and Review Program calls for the periodic review of a regulation and its official interpretations with four goals in mind: to clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. The official staff commentary has never been

substantially revised or reviewed. The Board initially began a review of Regulation M according to the goals of its review program in November 1993, when it published an advance notice of proposed rulemaking on Regulation M (58 FR 61035, November 19, 1993). In its advance notice, the Board solicited comments generally on the provisions of Regulation M and the CLA, including coverage, exempt transactions, and general format and disclosure requirements. In addition, the Board identified specific issues about disclosures of early termination charges, broadcast media advertising of leases, and segregation of leasing disclosures from other information. Most of the seventy comment letters on the advanced notice addressed those issues. The proposed revisions to the regulation are published elsewhere in today's issue of the **Federal Register**.

III. Discussion of Proposed Revisions

The following discussion covers the proposed revisions to the Regulation M commentary section-by-section. Most of the discussion focuses on new comments and significant revisions to existing comments.

Introduction

Comments I-3, I-4, and I-6 are deleted as obsolete or unnecessary.

Section 213.1—Authority, Scope, Purpose, and Enforcement

Current	Proposed
1-2	Deleted as unnecessary.

Section 213.2—Definitions

2(a) Definitions

Current	Proposed
2(a)(2)-1	2(a)(2)-1 and -2.
2(a)(2)-2	2(a)(2)-3.
	2(a)(3)-1 new.
2(a)(4)-1	2(a)(10)-1.
2(a)(4)-2	2(a)(10)-4.
2(a)(4)-3	2(a)(10)-2.
	2(a)(6)-3 new.
2(a)(6)-3 through -6 .	2(a)(6)-4 through 7.
2(a)(7)-1	2(a)(9)-1.
2(a)(8)-1	2(a)(10)-3.
2(a)(9)-1	2(a)(12)-1.
2(a)(12)-1	2(a)(14)-1.
2(a)(14)-1 through -6	2(a)(15)-1 through -6.
	2(a)(17)-1 incorporates list from the regulatory definition of security interest.
2(a)(15)-1 through -3	2(a)(17)-2 through -4.
2(a)(17)-1 through -3	2(a)(19)-1 through -4.
2(a)(17)-4 and -5	2(a)(19)-5 and -6.

Current	Proposed
2(a)(18)-1 through -3	2(a)(20)-1 through -3.
2(b)-1 and -2	Deleted.

2(a)(2) Advertisement

Comment 2(a)(2)-1 would be revised to incorporate examples of advertisements, currently in § 213.2(a)(2).

2(a)(3) Agricultural Purpose

Proposed comment 2(a)(3)-1 incorporates the portion of current § 213.2(a)(3) and the statutory definition in section 103(s) of the Truth in Lending Act which describes agricultural products.

2(a)(6) Consumer Lease

Comment 2(a)(6)-2 would be revised to provide additional guidance on when a lease is deemed to exceed four months and, therefore, covered under the act and regulation. An example has been added to clarify that a month-to-month lease with a penalty for cancelling within the first year is deemed to be a consumer lease subject to the act and regulation.

Proposed comment 2(a)(6)-3 provides guidance on the total contractual obligation for purposes of determining whether a lease is covered under the regulation, and clarifies that the total contractual obligation may be different from the total lease obligation which applies only to open-end leases.

Comment 2(a)(6)-7, currently comment 2(a)(6)-6, would be revised to add another example of a lease deemed incidental to a service. The narrow list of exceptions in the existing commentary of leases incidental to a service is exhaustive, rather than illustrative. Questions have arisen about Regulation M coverage of cellular phones leased in conjunction with obtaining cellular service. Cellular service providers typically offer customers the opportunity to lease or purchase cellular telephones when subscribing for cellular service. The leasing of a cellular telephone is not incidental to obtaining cellular service and is, thus, covered under the regulation.

2(a)(7) Estimated Lease Charge

Proposed comment 2(a)(7)-1 clarifies that a monthly or other periodic payment paid at or before consummation is not included in the calculation of the estimated lease charge, as it is reflected in the total periodic payment disclosure. Any refundable charge such as a security

deposit would also not be included in the calculation.

2(a)(8) Gross Cost

Proposed comment 2(a)(8)-1 provides guidance in making the proposed disclosure in § 213.5(p). Amounts consisting of fees and other charges paid out of pocket at consummation by the lessee are included in the gross cost figure.

2(a)(10) Lessor

Proposed comment 2(a)(10)-1 incorporates the existing regulatory definition of "arrange for leasing of personal property" (in § 213.2(a)(4) and provisions in the current commentary) into the proposed commentary under the definition of lessor.

Section 213.4—General Disclosure Requirements

4(a) General requirements

Current	Proposed
4(a)-1	Revised to adopt "legal obligation" terminology of Regulation Z.
4(a)-2	Moved to proposed § 213.4(f) of the regulation on minor variations that may be disregarded in making disclosures.
4(a)-3	4(a)(1)-1.
4(a)-5	Deleted as no longer applicable.
4(a)(1)-1	4(a)-2 (deleted the word "or format"); 4(a)-3.
4(a)(1)-2	Deleted as no longer applicable.
4(a)(2)-1	Deleted.
4(a)(2)-2	4(a)(1)-2.
4(a)(2)-3	4(a)(1)-3.
4(a)(2)-4	4(a)(1)-4.
4(a)(2)-5	4(a)(1)-5.
	4(a)(2)-1 new.
4(a)(4)-1	Deleted as unnecessary because of revised position in proposed § 213.4(a)(5).
4(a)(4)-2	Deleted as unnecessary because of revised position in proposed § 213.4(a)(5).

4(a)(2) Segregation of Certain Disclosures

Proposed comment 4(a)(2)-1 provides guidance in making the segregated disclosures required by § 213.4(a)(2).

4(b) Additional Information

Comment 4(b)-1 would be revised by deleting the second sentence.

4(d)(2) Open-End Purchase Option Lease

Comment 4(d)(2)-1, currently comment 4(d)-6, would be revised to clarify that this paragraph only applies to open-end leases. No substantive change is intended.

4(e) *Effect of Subsequent Occurrence*

Proposed comment 4(e)-3 incorporates the first sentence of footnote 1 of the regulation.

Section 213.5—Content of Disclosures

All of the comments in § 213.4(g) would be redesignated according to a new proposed § 213.5.

Current	Proposed
4(g)-1	Deleted as unnecessary.
4(g)-2	5-1.
4(g)(1)-1	Deleted as unnecessary.
4(g)(2)-1	Deleted as unnecessary 5(b)-1 new (incorporated from the instructions to the model form in the current appendix C-2).
4(g)(2)-2	5(b)-2 (incorporates current comment 2(b)-2).
4(g)(2)-3	5(b)-3.
4(g)(3)-1 and -2	5(c)-1 and -2.
4(g)(4)-1	5(d)-1.
4(g)(5)-1	5(e)-1 and -2.
4(g)(5)-2	Deleted as unnecessary.
4(g)(5)-3	5(e)-3 and -4.
4(g)(5)-4	5(e)-5.
4(g)(6)-1 and -2	5(f)-1 and -2. 5(f)-3 new.
4(g)(7)-1 through -3	5(g)-1 through -3.
4(g)(8)-1	5(h)-1.
4(g)(9)-1	5(i)-1.
4(g)(10)-1 through -5	5(j)-1 through -5.
4(g)(11)-1 through -3	5(k)-1 through -3.
4(g)(12)-1 through -3	5(l)-1 through -3; the word "capitalized" in comment 2 is deleted. 5(l)-4 new. 5(l)-5 new.
4(g)(14)-1 through -3	5(n)-1 through -3.
4(g)(15)-1	5(o)-1.
4(g)(15)-2	5(o)(1)-1.
4(g)(15)-3	5(o)(1)-2.
4(g)(15)-4	5(o)-2.
4(g)(15)-5	5(o)(2)-1.
4(g)(15)-6	5(o)(2)-2; the word "capitalized" is deleted. 5(o)(2)-3 new. 5(p)-1 new.

5(b) *Total Amount Due at Lease Signing*

Proposed comment 5(b)-1 incorporates a definition of "capitalized cost reduction" from the instructions in current appendix C-1.

Comment 5(b)-2 would incorporate the first sentence of current comment 2(b)-2.

5(d) *Fees and Taxes*

Comment 5(d)-1 is revised to provide guidance on taxes that should be

disclosed pursuant to this paragraph. If the tax is payable by the lessor (such as a gas guzzler tax), but the tax is passed on to the consumer and the existence of the tax is indicated in the consumer's lease documents—for example on the lease agreement—or the sticker or tag affixed to the personal property—then the tax should be disclosed pursuant to this paragraph. However, if the existence of the tax is not indicated, and the tax is absorbed by the lessor as a cost of doing business, then the tax should not be disclosed under this section.

5(f) *Insurance*

Proposed comment 5(f)-3 is added to indicate that this paragraph applies to voluntary and required insurance provided in connection with a lease transaction.

5(l) *Early Termination*

Proposed comment 5(l)-4 provides guidance in disclosing a full description of the method used to determine the amount of an early termination charge. A full description of the complete early termination method must be disclosed by lessors outside of the segregated disclosures. However, given the complexity of the methods involved, a lessor is permitted—in giving the "full description" of its early termination method—to include a reference to the name of a generally accepted method of computing the unamortized gross or capitalized cost portion of its early termination charge. For example, a lessor may state that the "constant yield" method would be utilized in obtaining the unamortized portion of the gross cost, but the lessor would also have to specify how that figure—and any other term or figure—is used in computing the total early termination charge that would be imposed upon the consumer. A lessor referring to a named method in this manner must provide a written explanation of that method if requested by the consumer.

Proposed comment 5(l)-5 provides guidance on what value such as the fair market value or the wholesale value should be used when calculating the required example of an early termination charge based on termination at the end of the first year.

5(o) *Liability at End of Lease Term Based on Estimated Value*

The proposed regulation reformats this section, currently section 213.4(g)(15), for clarity. The commentary has been similarly reformatted.

Proposed comment 5(o)(2)-3 states the intent of section 183(a) of the CLA

that lessors must pay the lessees' attorney's fees in all actions brought by lessors under this subsection, even if those actions are decided in favor of the lessee.

5(s) *Statement Referencing Nonsegregated Disclosures*

Proposed comment 5(s)-1 provides guidance in making the proposed new disclosure referencing and alerting consumers to read CLA required disclosures not included among the segregated disclosures. It is only necessary to refer to the applicable items, thus, the lessor may delete inapplicable items from the disclosure.

Section 213.6—Renegotiations, Extensions, and Assumptions

Current	Proposed
4(h)-1	6-1.
4(h)-2	First sentence moved to regulation; second sentence moved to 6-1.
4(h)-3	Moved to the regulation.
4(h)-4	Moved to the regulation.
4(h)-5	6(b)-1. 6(b)-2 new.
4(h)-6	6-2.
4(h)-7	Moved to the regulation.
4(h)-8	Moved to the regulation.
4(h)-9	Moved to the regulation.

Section 213.6 of the proposed regulations contain the disclosure rules governing leases that are renegotiated, extended or assumed (currently in section 213.4(h) and the commentary). Many of the commentary provisions have been moved to the regulation. For example, the definitions of a renegotiation and an extension would be included in the regulation. (This change parallels the approach under Regulation Z for refinancings and assumptions, section 226.20.) Other commentary provisions have been reformatted to conform to the proposed regulatory changes.

Comment 6(b)-1, currently comment 4(h)-5, would be revised to clarify that where a consumer lease is extended on a month-to-month basis for more than 6 months, new disclosures are required at the beginning of the seventh month, and also at the start of each seventh month thereafter. This revision incorporates into the commentary a longstanding interpretation originally issued under leasing provisions that were a part of Regulation Z (Truth in Lending) prior to 1982.

Proposed comment 6(b)-2 also incorporates a longstanding interpretation originally issued under the pre-1982 leasing provisions in Regulation Z that disclosures for a consumer lease, as defined by the

regulation, extended on a month-to-month basis for more than 6 months should reflect the month-to-month nature of the transaction.

Section 213.8—Advertising

Current	Proposed
5(a)-1	8(a)-1.
5(a)-2	8(a)-2.
5(b)-1	8(c)-1.
5(b)-2	8(c)-2.
5(c)-1	8(b)-1.
	8(b)-2 new.
5(c)-2	8(d)(1)-1.
	8(d)(2)-1 new.
5(d)-1	8(e)-1.
	8(e)-2 new.
	8(f)-1 new.
	8(f)(1)-2 new.

8(b) Clear and Conspicuous Standard

Proposed 8(b)-2 provides that lease disclosures must appear on a television screen for at least five seconds, which parallels the "five second rule" adopted by the Federal Trade Commission.

8(e) Alternative Disclosures—Merchandise Tags

Proposed comment 8(e)-2 clarifies that merchandise tags are generally considered a multiple item lease.

8(f) Alternative Disclosures—Television or Radio Advertisements

8(f)(1) Toll-Free Number or Print Advertisement

Proposed comment 8(f)(1)-1 clarifies that a newspaper circulated nationally qualifies as a publication in general circulation.

Section 213.10 Relations to State Laws

Section 213.10 in the proposed regulation combines and simplifies current §§ 213.7 and 213.8. The comments to these sections have been deleted as unnecessary.

Appendix A Model Forms

Under the proposed rule, the model forms are moved to appendix A. Comment app. A-2 would be deleted. Minor revisions would be made to other comments in this appendix. For example, comment app. A-1 would be revised to indicate that changes to the headings, format, and the content of the segregated disclosures should be minimal. Also the definition of a closed-end lease in comment app. A-3 would be deleted because a definition would be added in the regulation.

IV. Form of Comment Letters

As discussed above, comment letters should refer to Docket No. R-0893. The Board requests that, when possible,

comments be prepared using a standard courier type-face 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 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, but must be accompanied by an original document in paper form.

List of Subjects in 12 CFR Part 213

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

For the reasons set forth in the preamble, 12 CFR part 213, as proposed to be amended by a document published elsewhere in today's issue of the **Federal Register**, is further proposed to be amended as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604

2. Supplement I-CL-1 to Part 213—Official Staff Commentary to Regulation M would be revised to read as follows:

Supplement I-CL-1 to Part 213—Official Staff Commentary to 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 (12 CFR part 213). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 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 appendix C of Regulation M, 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. *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 § 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-3. An appendix may be cited as comments app. A-1.

Section 213.1—Authority, Scope, Purpose, and Enforcement

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 § 213.2(a)(18). 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.

Section 213.2—Definitions

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 term includes the following:

- i. Print media.
- ii. Broadcast media, including radio and television messages.
- iii. Catalogs and fliers.
- iv. Direct mail literature.
- v. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag which is delivered or made available to a lessee or prospective lessee in any manner whatsoever.
- vi. Telephone solicitations.

2. *Exceptions.* The term does not include the following:

- i. 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.
- ii. Informational material distributed only to businesses.
- iii. 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.
- iv. News articles, the use of which is controlled by the news medium.
- v. Market research or educational materials that do not solicit business.

3. *Persons covered.* See the commentary to § 213.8(a).

2(a)(3) Agricultural purpose

1. *Agricultural products.* Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

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 lessor need not provide Regulation M disclosures where there is a subsequent change in primary usage.

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 cancelling 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. See the comments on § 213.6(b) for guidance on extensions of covered leases. To illustrate:

i. A month-to-month lease with a penalty for terminating before one year, such as the forfeiture of a security deposit, is a consumer lease covered by this definition.

ii. A three-month lease extended on a month-to-month basis and terminated after one year is not a consumer lease covered by this definition.

3. *Total contractual obligation.* The term total contractual obligation includes all nonrefundable amounts a lessee is contractually obligated to pay under a lease for the purpose of determining whether the lease is covered by this regulation. The total contractual obligation is not necessarily the same as the total lease obligation defined in § 213.2(a)(19).

4. *Organization.* A consumer lease does not include a lease made to an organization, such as a corporation or a government agency or instrumentality. 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.

5. *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."

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

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and are not consumer leases subject to the requirements of the regulation:

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

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

iii. Propane gas service where the consumer is required to lease a propane tank to receive the service.

2(a)(7) Estimated lease charge

1. *Advance periodic payment and refundable charges.* A first monthly (or other periodic payment) paid at or before consummation which is included in the total periodic payment disclosure and refundable charges are not included in the calculation of the estimated lease charge.

2(a)(8) Gross cost

1. *Fees and other charges paid at lease signing.* This figure includes all nonrefundable fees and charges required to be paid before or at lease signing as well as those fees and charges which are capitalized over the lease term.

2(a)(9) Lessee

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

2(a)(10) Lessor

1. *Arranger of a lease.* To "arrange" for the lease of personal property means to provide or offer to provide a lease which is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service; or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease.

To illustrate:

i. 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.

ii. 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. *Consideration.* The term "other consideration" used in the definition of arranger in comment 2(a)(10)-1 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, which may flow from the relationship between the parties.

3. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances such as those described in

Ford Motor Credit Co. v. Cenance, 452 U.S. 155 (1981). In that case, the U.S. Supreme Court held that an assignee was a creditor for purposes of previous Regulation Z because of its substantial involvement in the credit transaction.

4. *Multiple lessors.* See the commentary to § 213.4(c).

2(a)(12) Organization

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

2(a)(14) 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)(15) 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 § 213.5(e). Disposition charges may be estimated in accordance with § 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 an 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 § 213.5(n); those provisions refer to the lessee's right to an independent professional appraisal.

2(a)(17) Security interest and security

1. *Coverage.* The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialman's, artisan's, and other similar liens, vendor's liens in both real and personal property, any

lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

2. *State or other applicable law.* 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.

3. *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.

4. *Insurance.* The lessor's right to insurance proceeds or unearned insurance premiums is not a security interest for purposes of this regulation.

2(a)(19) Total lease obligation

1. *Disclosure.* The total lease obligation is disclosed under § 213.5(o)(1). It is relevant only to open-end leases.

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 § 213.5(c).

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

- i. Any portion of the periodic payments attributable to depreciation, cost of money, and profit.
- ii. Taxes in some cases. See the commentary to § 213.5(o)(1).
- iii. The cost of mechanical breakdown protection contracts.

4. *Periodic payments; exclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation does not include the following:

- i. Any amount not paid periodically.
- ii. Any portion of periodic payments attributable to official fees, registration, certificate of title, or license fees.
- iii. Taxes in some cases. See the commentary to § 213.5(o)(1).

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

5. *Initial payments.* The following amounts are not included among the payments at consummation when calculating the total lease obligation:

- i. Refundable security deposits.
- ii. Official fees and charges disclosable under § 213.5(d).
- iii. Other charges disclosable under § 213.5(e).

iv. The cost of a mechanical breakdown protection contract purchased at consummation.

6. *Estimated value.* See the commentary to § 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)(20) Value at consummation

1. *Disclosure.* The value at consummation is relevant only to open-end leases and is disclosed and subtracted from the total lease obligation under § 213.5(o)(1).

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 § 213.5(o)(1).

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 § 213.5(f). The lessor may not include in this amount other items (such as maintenance or extended warranty insurance) that are purchased by the lessee.

Section 213.4—General Disclosure Requirements

4(a) General requirements

1. *Basis of disclosures.* The disclosures must reflect the terms of the legal obligation between the parties. For example:

- i. 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 §§ 213.5(l), (m) and (n).

2. *Clear and conspicuous standard.* The clear and conspicuous standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix A contains model forms that meet this standard, although lessors are not required to use the forms. In addition, although no minimum typesize is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. *Multipurpose disclosure forms.* Lessors are not precluded from using a multipurpose disclosure form that enables a lessor to designate the specific disclosures applicable to a given transaction, consistent with the requirement that disclosures be clearly and conspicuously provided.

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

- i. 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.
- ii. 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.

4(a)(1) Form of disclosures

1. *Form of disclosures.* In making disclosures lessors may cross-reference rather than repeat items that are disclosed among the segregated disclosures. In addition, when a required disclosure consists of a total amount only, lessors need not separately itemize each component part of the total charge. Similarly, if a required disclosure must be separately itemized, a total amount is not required.

2. *Identification of parties.* While disclosures must always be made clearly and conspicuously, lessors are not required to use the word "lessor" and "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, § 213.4(c) permits a single lessor to make all the disclosures for a single lessee.

4. *Lease disclosures integrated in lease contract.* 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 and the lessor adheres to the limits of § 213.4(b) governing the inclusion of additional information.

5. *Lessee's signature.* The regulation does not require the lessee to sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract.

Nevertheless, for contract or evidentiary purposes, the lessor may want a lessee to sign the disclosure statement or an acknowledgement of receipt.

4(a)(2) Segregation of certain disclosures

1. *Permissible related or additional information among segregated disclosures.* The disclosures required to be segregated under this paragraph must contain only the information required or permitted to be included among the segregated disclosures (see § 213.5 and its commentary for guidance on information required or permitted in the segregated disclosures.) The segregated disclosures in § 213.4(a)(2) may be provided on a separate document and other CLA disclosures provided in the lease contract, so long as all disclosures are given at the same time.

4(b) Additional information

1. *State law disclosures.* If state law disclosures are not inconsistent with the act and regulation under § 213.10, in accordance with the standard set forth in § 213.4(b) for providing additional information, the lessor may make those disclosures along with the nonsegregated disclosures required under the regulation.

4(c) Multiple lessors or 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 lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

4(d) Use of estimates

4(d)(1) Standard

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:

i. Section 213.5(d) requires the lessor to disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title 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 the 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 § 213.5(o)), 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 determine 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:

i. 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 estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values, if the trade publication is the best information available.

ii. 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 the 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 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 disclosure for which the exact information is unknown is labelled as an estimate.

Nevertheless, 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.

4(d)(2) Open-end purchase option lease

1. *Understating the estimated value.* In non-purchase-option open-end leases, the lessor must 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 § 213.5(o).

4(e) Effect of subsequent occurrence

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

i. An agreement between the lessee and lessor to change from a monthly to a weekly payment schedule.

ii. The addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease.

iii. An increase in official fees or taxes.

iv. An increase in insurance premiums or coverage caused by a change in the law.

v. Late delivery of an automobile caused by a strike.

2. *Rediscovery.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.6.

3. *Lessee's failure to perform.* The act is not violated if a previously given disclosure becomes inaccurate when a lessee fails to perform obligations under the contract and a lessor takes actions that are necessary and proper in such circumstances to protect its interest.

Section 213.5—Content of Disclosures

1. *Other required disclosures.* The disclosure statement must include the date and identify the lessor and the lessee. See the commentary to § 213.4(a)(1). The lessor need only be identified by name; an address may be provided but is not required.

5(b) Total amount due at lease signing

1. *Capitalized cost reduction.* Capitalized cost reduction is a payment in the nature of a downpayment which reduces the amount of the leased property to be amortized over the term of the lease.

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.

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, sometime after consummation. None of these charges is an initial payment under § 213.5(b) because they are paid after consummation of the lease. The registration fees and sales taxes

are disclosed under § 213.5(d), and the delivery charge is disclosed as an "other charge" under § 213.5(e).

5(c) Payment schedule

1. *Itemization not required.* Although the model forms in appendix A itemize the components of the periodic payments, a lessor may but is not required to do so. 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 the 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 § 213.2(a)(19). See the commentary to § 213.2(a)(19).

5(d) Fees and taxes

1. *Taxes.* Taxes that are included in the value at consummation are not disclosed pursuant to this paragraph. See the commentary to § 213.2(a)(20). Taxes payable by the lessor that are separately imposed on the consumer and thus noted in the lease documentation must be disclosed under this paragraph. However, taxes payable by the lessor and absorbed as a cost of doing business are not disclosed under this paragraph.

5(e) Other charges

1. *Coverage.* Section 213.5(e) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement.

2. *Excluded charges.* This section 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:

i. Late payment.

ii. Default.

iii. Early termination.

iv. Deferral of payments.

v. Extension of the lease.

3. *Relationship to other provisions.* The other charges mentioned in § 213.5(e) are charges that are not required to be disclosed under another provision of § 213.5.

4. *Other charges.* Examples of charges not disclosed under this section include:

i. 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 § 213.5(b), not as an "other charge."

ii. 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 § 213.5(c), 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 § 213.5(f), not as an "other charge." See the commentary to § 213.5(f).

5. *Lessee's 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 under this section include, but are not limited to, disposition and "pick-up" charges.

5(f) Insurance

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 this section 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 § 213.5(f) disclosures. The lessor may, however, disclose the § 213.5(f) information in such cases in accordance with the additional information provision in § 213.4(b).

3. *Voluntary Insurance.* Insurance not required but provided by the lessor must be disclosed under this section.

5(g) Warranties or guarantees

1. *Brief identification.* The statement identifying warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires in an automobile. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty.

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

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

5(h) Maintenance responsibilities

1. *Standards for wear and use.* No disclosure is required for lessors that do not set standards for wear and use (such as excess mileage.) See the commentary to § 213.5(o).

5(i) Security interest

1. *Disclosable security interests.* See § 213.2(a)(17) and accompanying commentary to determine what security interests must be disclosed.

5(j) Penalties and other charges for delinquency

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.5(j). 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 § 213.5(l). The § 213.5 (j) and (l) disclosures may be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A.

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 § 213.5(j).

4. *Extension charges.* Extension charges that exceed the lease charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.5(j).

5. *Reasonableness of charges.* Pursuant to section 183(b) of the act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

5(k) Purchase option

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 § 213.5(k) 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 § 213.5(e) as an "other charge."

5(l) Early termination

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 § 213.5(j).

2. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized 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.* See the commentary to § 213.5(j).

4. *Description of the method.* A full description of the method of determining any early termination charge is required by the act and this regulation. Lessors should attempt to provide clear and understandable descriptions to consumers of their early termination charges. Descriptions that are full, accurate, and not intended to be misleading are in compliance with the act and this regulation, even if complex. (And, of course, the statute requires that the early termination charges themselves be

reasonable.) In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost (also known as the "adjusted lease balance") portion of its early termination charges. For example, a lessor may state that the "constant yield" method would be utilized in obtaining the adjusted lease balance, but the lessor would have to specify how that figure, and any other term or figure, is used in computing the total early termination charge imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, the lessor would have to provide a written explanation of that method if requested by the consumer.

5. *Example.* The figure used to calculate the early termination example must be calculated in the same manner the residual value is calculated for purposes of § 213.5(r). Therefore, if a lessor uses the fair market value to estimate the value of the property at the end of the lease, the example must also be calculated using the fair market value.

5(n) Right of appraisal

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:

i. 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 in § 213.5(o) of the regulation, and the lessor still must disclose the lessee's independent right to an appraisal under § 213.5(n).

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."

5(o) Liability at end of lease term based on estimated value

1. *Coverage.* The disclosure under § 213.5(o) limiting the lessee's liability for the value of the leased property does not apply at early termination.

2. *Leases with a minimum term.* If a lease has an alternative minimum term, the § 213.5(o) disclosures governing the liability limitation are not applicable for the minimum term. See the commentary to § 213.4(a).

5(o)(1) Value at consummation and total lease obligation

1. *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 § 213.2(a)(19) with their corresponding amounts. The lessor may cross-reference the individual components disclosed in the segregated disclosures, as done in the model forms in appendix A-1.

2. *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 § 213.2(a)(20).

5(o)(2) Excess liability

1. *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 § 213.2(a)(19).

2. *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:

- i. Disposition charges.
- ii. Excess mileage charges.
- iii. Late payment and default charges.
- iv. Amounts by which the unamortized cost exceeds the estimated residual value that have accrued in simple interest accounting leases because the lessee has made late payments.

3. *Lessor's payment of attorney's fees.* Section 183(a) of the act requires that the lessor pay the lessee's attorney's fees in all actions brought by the lessor under this paragraph, whether successful or not.

5(p) Gross cost

1. *Basis.* The gross cost is the amount that the periodic and other payments and terms of the lease are based upon, and is intended to be used by consumers to compare a lease with similar lease and non-lease transactions.

5(s) Statement referencing nonsegregated disclosures

1. *Content.* A lessor may delete inapplicable items, for example, when the contract documents contain no information regarding a purchase option.

Section 213.6—Renegotiations, Extensions and Assumptions

1. *Coverage.* Section 213.6 applies only to existing leases that are covered by the requirements of the regulation. 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 § 213.2(a)(6). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

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

- i. 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.

ii. If a renegotiation involves no initial charges, no disclosure of initial charges is necessary.

6(b) Extensions

1. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, at the time the extension is agreed to, new disclosures are required. 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, and at the commencement of each seventh month thereafter. 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 6 months beyond the originally scheduled termination date.

2. *Content of disclosures for month-to-month extensions.* The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

Section 213.8—Advertising

8(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 § 213.2(a)(10). 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. Pursuant to section 184(c) of the act, 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 185(b) of the act.

2. *"Usually and customarily."* This paragraph does not prohibit the advertising of a single item or the promotion of new leasing programs, but prohibits 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.

8(b) Clear and conspicuous standard

1. *Standard.* Section 213.8 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. *Television advertisements.* In lease television advertisements, the lease disclosures required under paragraph 8(d) or the alternate disclosures under paragraph 8(f)(1) must be visible for at least five seconds to satisfy the requirements of this paragraph.

8(c) Catalogs and multi-page advertisements

1. *General rule.* The multiple-page advertisements referred to in this paragraph 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 § 213.8(d)(2) (i) through (vi). If one of the triggering terms listed in § 213.8(d)(1) appears on another page of the catalog or other multiple-page advertisement, that page must clearly refer to the specific page where the table, chart, or schedule begins.

8(d)(1) Triggering terms

1. *Triggering terms.* When triggering terms appear in lease advertisements, the additional terms enumerated in § 213.8(d)(2) (i) through (vi) 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.

8(d)(2) Additional terms

1. *Lease transaction.* An advertisement must clearly and conspicuously disclose that the transaction is a lease.

8(e) Alternative disclosures—merchandise tags

1. *Alternative disclosure rule.* This section 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.

2. *Multiple item leases.* Multiple item leases which utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

8(f) Alternative disclosures—television or radio advertisements

8(f)(1) Toll-free number or print advertisement

1. *Publication in general circulation.* A referral to a written advertisement appearing in a newspaper circulated nationally, for example, The Wall Street Journal, meets the general circulation requirement in § 213.8(f)(1)(ii).

2. *Toll-free number, local or collect calls.* In complying with the disclosure requirement of this paragraph, generally a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to call for information and reverse the phone charges.

Section 213.9—Record Retention

1. *Manner of retaining evidence.* A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained on microfilm, microfiche, computer, or by any

other method designed to reproduce records accurately, as well as paper form. The lessor need retain only enough information to reconstruct the required disclosures or other records.

Appendix A—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. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms, therefore, any changes in the segregated disclosures should be minimal. Generally, 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 and the clarity of the forms.

2. *Examples of acceptable changes.*

- i. Using the first person, instead of the second person, in referring to the lessee.
 - ii. Using "lessee," "lessor," or names instead of pronouns.
 - iii. Rearranging the sequence of the nonsegregated disclosures.
 - iv. Incorporating certain state "plain English" requirements.
 - v. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms.)
 - vi. Adding language or symbols to indicate estimates.
3. *Model closed-end or net vehicle lease disclosure.* Model A-2 is designed for a closed-end or net lease of a vehicle. Item 9(c) is included for those closed-end leases in

which the lessee's liability at early termination is based on the vehicle's estimated value. (See section 213.5(n))

4. *Model furniture lease disclosures.* Model A-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 § 213.5(n) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. Of course, the disclosure should be added, if it is applicable.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

William W. Wiles,

Secretary of the Board.

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