

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R-0961]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment a second proposal revising the official staff commentary to Regulation M which implements the Consumer Leasing Act. The act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. Regulation M was revised in September 1996 under the Board's Regulatory Planning and Review program which calls for the periodic review of Board regulations. The commentary applies and interprets the requirements of Regulation M. A proposal to revise the commentary was published in September 1995. This proposal includes material that was published for comment in September 1995, incorporates guidance on the final rule issued in September 1996, and addresses certain questions raised following public review of the final rule.

DATES: Comments must be received by March 13, 1997.

ADDRESSES: Comments should refer to Docket No. R-0961, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. They may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street, N.W. (between Constitution Avenue and C Street). Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8 of the Board's rules regarding the availability of information.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA is implemented by the Board's Regulation M (12 CFR part 213). An official staff commentary (Supplement I-CL-1 to 12 CFR part 213) provides guidance to lessors in applying the regulation to specific transactions. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed \$25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act.

In September 1996, the Board approved a final rule revising Regulation M, after a review of the regulation and consumer leasing generally. The review was conducted under the Board's Regulatory Planning and Review Program which calls for the periodic review of Board regulations 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 Board began the review of Regulation M in November 1993, with the publication of an advance notice of proposed rulemaking (58 FR 61035, November 19, 1993). In September 1995, the Board published a proposal revising the regulation and the staff commentary (60 FR 48752, September 20, 1995; comment period extended, 60 FR 62349 December 6, 1995). The proposal contained substantive revisions to the regulation, including new disclosure requirements.

The September 1996 final rule includes new disclosures to supplement the act's requirements (61 FR 52246, October 7, 1996). The major changes primarily affect motor-vehicle leasing. They include a mathematical progression on how scheduled payments are derived (using figures such as the gross capitalized cost of a lease, the vehicle's residual value, the amount of depreciation, and the rent charge) and a warning statement about charges for terminating a lease early. General changes in the format of the disclosures require that certain lease disclosures be segregated from other information. A lessor is not required to disclose the cost of a lease expressed as a percentage rate; however, if a rate is disclosed or advertised, a special notice must accompany the rate stating that it may not measure the overall cost of financing the lease. Further, a rate in an advertisement cannot be more prominent than any other Regulation M disclosure.

The final rule also implements amendments to the CLA contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160), allowing a toll-free number or a print advertisement to substitute for certain lease disclosures in radio commercials (which was expanded in the final rule to television commercials) and makes other changes to the advertising rules. The CLA's advertising rules were amended and streamlined on September 30, 1996 when the Congress enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110

Stat. 3009). The Board issued a proposal to implement those changes. (62 FR 62, January 2, 1997).

The Board is now publishing an updated proposal to the commentary. This proposal includes material that was published for comment in September 1995, incorporates guidance on the September 1996 final rule, and addresses certain questions raised following public review of the final rule. It is contemplated that the proposed revisions to the Regulation M commentary will be adopted in final form in April 1997.

II. 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

Current comments I-3, I-4, and I-6 would be deleted as obsolete or unnecessary. Comments I-1, I-2, and I-5 would be redesignated accordingly.

SECTION 213.1--Authority, Scope, Purpose, and Enforcement

<u>Current</u>	<u>Proposed</u>
1-1	1-1
1-2	deleted as unnecessary (see Appendix C)

SECTION 213.2--Definitions

2(a) Definitions

<u>Current</u>	<u>Proposed</u>
2(a)(2)-1	2(b)-1 and -2; including text from former § 213.2(a)(2)
2(a)(2)-2	2(b)-3 2(d)-1 new
2(a)(4)-1	2(h)-1; includes text from former § 213.2(a)(4)
2(a)(4)-2	2(h)-4
2(a)(4)-3	2(h)-2
2(a)(6)-1	2(e)-1
2(a)(6)-2	2(e)-2 2(e)-3 new
2(a)(6)-3	2(e)-6
2(a)(6)-4	2(e)-4 2(e)-5 new; includes text from former § 213.2(a)(3)
2(a)(6)-5	2(e)-8
2(a)(6)-6	2(e)-7

	2(f)-1 new
2(a)(7)-1	2(g)-1
2(a)(8)-1	2(h)-3
2(a)(9)-1	2(j)-1
2(a)(12)-1	2(l)-1
2(a)(14)-1 and -2	2(m)-1 and -2
2(a)(14)-3 and -4	2(m)-3
2(a)(14)-5	2(m)-4
2(a)(14)-6	4(l)-2
2(a)(15)-1	2(o)-2
2(a)(15)-2	2(o)-1; includes text from former § 213.2(a)(15)
2(a)(15)-3	2(o)-3
2(a)(17)-1 through -5	deleted as unnecessary
2(a)(18)-1 through -3	deleted as unnecessary
2(b)-1	deleted as unnecessary
2(b)-2	4(b)-1

2(b) Advertisement

Comment 2(b)-1, current comment 2(a)(2)-1, would be revised to include examples of advertisements formerly in § 213.2(a)(2) and to indicate that the term "advertisement" includes electronic messages.

2(d) Closed-end lease

Proposed comment 2(d)-1 provides general guidance on the definition of a closed-end lease.

2(e) Consumer lease

Comment 2(e)-2, current comment 2(a)(6)-2, would be revised to clarify that leases with penalties for not continuing beyond an initial four months are covered under the regulation.

Proposed comment 2(e)-3 provides guidance on the total contractual obligation for purposes of determining whether a lease is covered under the regulation, and indicates that the total contractual obligation may be different from the total of payments disclosed under § 213.4(e).

Proposed comment 2(e)-5 incorporates former § 213.2(a)(3), the statutory definition of agricultural purpose in section 103(s) of the TILA.

Comment 2(e)-7, current 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 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(f) Gross capitalized cost

Proposed comment 2(f)-1 provides guidance on what type of fees are included or excluded from the gross capitalized cost disclosure in § 213.4(f)(1).

2(h) Lessor

Comment 2(h)-1, current comment 2(a)(4)-1, would be revised to include the definition of the phrase "arrange for leasing of personal property" in former § 213.2(a)(4).

2(m) Realized value

Comment 2(m)-3 provides guidance on what is included or what may be excluded from the realized value, combining current comments 2(a)(14)-3 and -4. The second and third sentences of current comment 2(a)(14)-4 are deleted as unnecessary.

2(o) Security interest and security

Comment 2(o)-1, current comment 2(a)(15)-2, would be revised to include examples of a security interest formerly in § 213.2(a)(15).

Questions have arisen about whether interest on a security deposit meets the definition of a security interest for purposes of this regulation and thus required to be disclosed. Such interest is required to be disclosed if it is considered a security interest under state or other applicable law.

SECTION 213.3--General Disclosure Requirements

3(a) General requirements

<u>Current</u>	<u>Proposed</u>
4(a)-1	3(a)-1
4(a)-2	moved to § 213.3(f)
4(a)-3	3(a)(1)-1
4(a)-4	3(a)-4
4(a)-5	deleted as unnecessary
4(a)(1)-1	3(a)-2 and -3
4(a)(1)-2	deleted as unnecessary
4(a)(2)-1	4(b)-1
4(a)(2)-2	3(a)(1)-2
	3(a)(1)-3 new
4(a)(2)-3	3(a)(1)-4
4(a)(2)-4	deleted as unnecessary
4(a)(2)-5	3(a)(1)-5
	3(a)(2)-1 through -3 new
4(a)(4)-1	deleted as unnecessary, see revised § 213.3(a)(4)
4(a)(4)-2	deleted as unnecessary, see revised § 213.3(a)(4)
4(b)-1	3(b)-1
4(c)-1	3(c)-1

4(d)-1 through -5	3(d)(1)-1 through -5
4(d)-6	deleted as unnecessary
4(e)-1 and -2	3(e)-1 and -2
	3(e)-3 new; text from footnote 1 of former regulation

3(a) General requirements

Comment 3(a)-1, current comment 4(a)-1, would be revised to clarify that leasing disclosures must reflect the terms of the legal obligation.

Comment 3(a)-4, current comment 4(a)-4, would be revised to provide guidance on disclosing a prior lease or loan balance added to a lease transaction.

3(a)(1) Form of disclosures

Proposed comment 3(a)(1)-3 provides guidance on disclosing the lessor's address.

Comment 3(a)(1)-5, current comment 4(a)(2)-5, would be revised to provide additional guidance on ways in which lessors may demonstrate compliance with the requirement that lessees receive disclosures prior to being obligated on the lease transaction.

3(a)(2) Segregation of certain disclosures

Proposed comment 3(a)(2)-1 provides general guidance on the location of the segregated disclosures referenced in § 213.3(a)(2).

Proposed comment 3(a)(2)-2 restates the general rule on including additional information among the segregated disclosures referenced in § 213.3(a)(2).

Proposed comment 3(a)(2)-3 provides a cross-reference to the commentary to appendix A which provides guidance on designing lease forms that are substantially similar to the regulation's model forms.

3(b) Additional information; nonsegregated disclosures

Comment 3(b)-1, current comment 4(b)-1, on state law disclosures would be revised by adding clarifying language and by deleting the second sentence.

3(d) Use of estimates

Comment 3(d)(1)-4, current comment 4(d)-4, would be revised to provide that in disclosing the estimate of the value of leased property at termination a lessor should indicate whether the retail or wholesale value is used. This provision was previously contained in Regulation M in the instructions to the model forms.

3(e) Effect of subsequent occurrence

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

SECTION 213.4--Content of Disclosures

<u>Current</u>	<u>Proposed</u>
	4(a)-1 new
4(g)-1	deleted as unnecessary

4(g)-2	3(a)(1)-3; date requirement moved to § 213.3(a)(1)
4(g)(1)-1	deleted as unnecessary
4(g)(2)-1	deleted as unnecessary
4(g)(2)-2	4(b)-1 (incorporates current comment 2(b)-2))
4(g)(2)-3	4(b)-2
	4(b)-3 new (incorporated from the instructions to the model form in former appendix C-2)
	4(b)-4 through -6 new
4(g)(3)-1	deleted as unnecessary
4(g)(3)-2	4(c)-1; reference to open-end lease deleted
4(g)(4)-1	4(n)-1
4(g)(5)-1	4(d)-1 and -2
4(g)(5)-2	deleted as unnecessary; see § 213.3(a)(2)
	4(d)-3 new
4(g)(5)-3	4(d)-4
4(g)(5)-4	4(d)-5
	4(d)-6 new
	4(e)-1 new
	4(f)-1 new
	4(f)(1)-1 and -2 new
	4(f)(2)-1 new
	4(f)(8)-1 new
	4(o)-1 new
4(g)(6)-1	4(o)-2
4(g)(6)-2	4(o)-3
4(g)(7)-1 through -3	4(p)-1 through -3
4(g)(8)-1	4(h)-1
	4(h)-2 new
4(g)(9)-1	4(r)-1
4(g)(10)-1 through -5	4(q)-1 through -5
4(g)(11)-1 through -3	4(i)-1 through -3
	4(i)-4 and -5 new
4(g)(12)-1	4(g)(1)-3; the word "capitalized" is deleted
4(g)(12)-2	4(g)(1)-4
4(g)(12)-3	4(g)(1)-1
	4(g)(1)-2 new
	4(j)-1 new
4(g)(14)-1 through -3	4(l)-1 through -3
	4(m)-1 new
4(g)(15)-1	4(m)(2)-1
4(g)(15)-2	deleted
	4(m)(1)-1 new
4(g)(15)-3	deleted
4(g)(15)-4	4(m)(2)-2

4(g)(15)-5	deleted
4(g)(15)-6	4(m)(2)-3
	4(s)-1 new

4(a) Description of property

Proposed comment 4(a)-1 clarifies that the description of leased property cannot be among the segregated disclosures.

4(b) Total amount due at lease signing

Comment 4(b)-1 would incorporate the first sentence of current comment 2(b)-2 on consummation.

Proposed comment 4(b)-3 incorporates a definition of "capitalized cost reduction" from the instructions in former appendix C-1 of the regulation.

Proposed comment 4(b)-4 provides guidance on negative net trade-in allowances where the amount owed on a prior loan or lease exceeds an agreed-upon trade-in value.

Proposed comment 4(b)-5 clarifies that a rebate would be included in the itemization under this section only when used to reduce an amount due at lease signing.

Proposed comment 4(b)-6 clarifies that where the balance sheet method is required, in motor-vehicle leases, the totals in each column must equal one another.

4(d) Other charges

Comment 4(d)-1, current comment 4(g)(5)-1, would be revised to provide flexibility in making the "other charges" disclosure.

Proposed comment 4(d)-3 clarifies that third-party charges are not disclosed under § 213.4(d).

Proposed comment 4(d)-6 provides guidance on the disclosure of optional "disposition" fees.

4(e) Total of payments

Proposed comment 4(e)-1 explains the additional statement in the total of payments disclosure for open-end leases.

4(f) Payment calculation

Proposed comment 4(f)-1 clarifies that lessors should defer to state or other applicable law in determining whether the leased property is a motor vehicle.

4(f)(1) Gross capitalized cost

Proposed comment 4(f)(1)-1 provides guidance on disclosing the agreed upon value of a leased motor vehicle.

Proposed comment 4(f)(1)-2 provides guidance on providing the itemization of the gross capitalized cost.

4(f)(2) Capitalized cost reduction

Proposed comment 4(f)(2)-1 provides guidance on the amounts not included in the capitalized cost reduction disclosure.

4(f)(8) Lease term

Proposed comment 4(f)(8)-1 clarifies the meaning of the phrase "lease term" referenced under § 213.4(f)(8).

4(g) Early termination

Proposed comment 4(g)-2 provides guidance on disclosing the method used to determine the amount of an early termination charge.

4(h) Maintenance responsibilities

Proposed comment 4(h)-2 clarifies that lessors may not disclose a description of the method used for calculating excess mileage charges if a specific amount for excess mileage is available.

4(i) Purchase option

Proposed comment 4(i)-5 provides guidance on disclosing a "fair market value" purchase-option price.

Several commenters on the September 1995 proposal requested clarification on whether lessors are allowed to disclose a purchase-option fee and other fees and taxes applicable to the purchase option separately from the purchase-option price. Comments 4(i)-3 and -4, current comment 4(g)(11)-3, would be revised to allow lessors flexibility in disclosing fees associated with a purchase-option price. Further, with the September 1996 revisions to the disclosure format and since a lessee is not obligated to purchase the leased property, the purchase-option fee and any other fee associated with exercising the purchase option must be disclosed under § 213.4(i) and not § 213.4(d).

4(j) Statement referencing nonsegregated disclosures

Proposed comment 4(j)-1 clarifies that inapplicable information may be deleted from the § 213.4(j) disclosure, which references and alerts consumers to read CLA required disclosures not included among the segregated disclosures.

4(l) Right of appraisal

Comment 4(l)-2, current comment 4(g)(14)-2, would be revised to provide that a lessor must indicate when an appraisal should be based on the wholesale or retail value. This provision was contained in the former regulation in the instructions to the model forms.

4(m) Liability at end of lease term based on estimated value

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

Proposed comment 4(m)-1 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 § 213.4(m), even if those actions are decided in favor of the lessor.

4(n) Fees and taxes

Proposed comment 4(n)-1 provides guidance on what taxes are disclosed under § 213.4(n).

4(o) Insurance

Proposed comment 4(o)-1 provides that § 213.4(o) applies to voluntary and required insurance provided in connection with a lease transaction.

Comment 4(o)-3, current comment 4(g)(6)-2, is revised to provide additional guidance on the disclosure of mechanical breakdown insurance.

4(p) Warranties or guarantees

Comment 4(p)-1, current comment 4(g)(7)-1, would be revised to provide further guidance on identifying warranties under § 213.4(p), when lessors provide a comprehensive list of warranties to lessees.

4(s) Limitation on rate information

Proposed comment 4(s)-1 clarifies that a lease rate may not be included among the segregated disclosures referenced in § 213.3(a)(2).

SECTION 213.5 -- Renegotiations, Extensions, and Assumptions

Section 213.5, formerly § 213.4(h), contains the disclosure rules governing leases that are renegotiated, extended, or assumed. Many of the commentary provisions have been moved to the regulation. For example, the definitions of a renegotiation and an extension have been included in the regulation. This change parallels the approach under Regulation Z for refinancings and assumptions, 12 CFR 226.20.

<u>Current</u>	<u>Proposed</u>
4(h)-1	5-1
4(h)-2	First sentence moved to § 213.5(a); second sentence deleted; third sentence moved to 5-1
4(h)-3	moved to § 213.5(d)
4(h)-4	moved to § 213.5(b)
4(h)-5	5(b)-1 5(b)-2 new
4(h)-6	deleted as unnecessary
4(h)-7	moved to § 213.5(d)(6)
4(h)-8	moved to § 213.5(d)(2)
4(h)-9	moved to § 213.5(c)

5(b) Extension

Comment 5(b)-1, current comment 4(h)-5, would be revised to clarify that if a consumer lease is extended on a month-to-month basis for more than six 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 5(b)-2 also incorporates a longstanding interpretation originally issued under the pre-1982 leasing provisions in Regulation Z that disclosures for a consumer lease, originally covered by the regulation and extended on a month-to-month basis for more than six months, should reflect the month-to-month nature of the transaction.

SECTION 213.7 Advertising

<u>Current</u>	<u>Proposed</u>
5(a)-1	7(a)-1
5(a)-2	7(a)-2
5(b)-1 and 2	7(c)-1 and 2
5(c)-1	7(b)-1
5(c)-2	7(d)(1)-1
	7(d)(2)-1 new
5(d)-1	deleted
	7(e)-1 new
	7(f)(1)-1 through -4 new

The CLA advertising provisions were amended on September 30, 1996 by the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The final rule revising the commentary will reference the revised provisions in the regulation that implement the statutory changes.

7(b) Clear and conspicuous standard

Proposed comment 7(b)-1 provides guidance on the clear and conspicuous standard. A comment in the September 1995 proposal which provided that lease disclosures must appear on a television screen for at least five seconds has been deleted. The comment was intended as guidance on the clear and conspicuous standard. It did not provide a safe harbor, as the "five second" rule may be inadequate as a test for determining full compliance with the clear and conspicuous standard.

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

Proposed comment 7(b)(1)-1 clarifies that an itemization of the amount due at lease signing or delivery is not required under § 213.7(b)(1).

Proposed comment 7(b)(1)-2 provides general guidance on the prominence rule in § 213.7(b)(1).

7(b)(2) Advertisement of a lease rate

Proposed comment 7(b)(2)-1 provides guidance on the location of the statement that must accompany any percentage rate stated in an advertisement.

7(d) Advertisement of terms that require additional disclosure

7(d)(2) Additional terms

Commenters requested clarification on how third-party fees that vary by jurisdiction such as taxes, licenses and registration fees should be reflected in the total amount due at lease signing disclosure under § 213.7(d)(2)(ii). Comment 7(d)(2)-2 provides lessors flexibility in disclosing such fees.

7(e) Alternative disclosures--merchandise tags

Proposed comment 7(e)-1 provides general guidance on disclosing multiple item leases with merchandise tags.

7(f) Alternative disclosures--television or radio advertisements

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

Proposed comment 7(f)(1)-1 clarifies that a newspaper circulated nationally may qualify as a publication in general circulation in the community served by the media station.

Proposed comment 7(f)(1)-2 provides guidance on establishing a number for consumers to call for disclosure information.

Proposed comment 7(f)(1)-3 provides guidance on the use of a multi-function toll-free number to provide disclosures.

Proposed comment 7(f)(1)-4 provides general guidance on the statement that must accompany a toll-free number instructing consumers to call the number for details about costs and terms.

SECTION 213.8 Record Retention

<u>Current</u>	<u>Proposed</u>
6-1	8-1

Section 213.8 of the regulation was formerly § 213.6.

SECTION 213.9 Relations to state laws.

Section 213.9 of the regulation combines and simplifies former §§ 213.7 and 213.8. The comments to these sections, as well as references in former appendices A and B, have been deleted as unnecessary.

Appendix A Model Forms

Under the final rule, the model forms are moved from appendix C to appendix A. Comment app. A-2 would be deleted as unnecessary. 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 has been added in the regulation.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-0961 and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 1/2 inch or 5 1/4 inch computer diskettes in any IBM-compatible DOS-based format.

The comment period ends on March 13, 1997. Normally, the Board provides a 60-day comment period, in keeping with the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). The proposed commentary revisions primarily include interpretations published for comment in September 1995 and guidance included in the supplemental information to the September 1996 final rule. The Board believes that it is desirable to ensure that a commentary takes effect along with the final rule as promptly as possible. Accordingly, the Board is providing an abbreviated comment period.

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 is 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 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. 1640f). 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(f) are further divided by subparagraph, such as comment 4(f)(1)-1 and comment 4(f)(2)-1. 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 comment 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(p). The regulation does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

SECTION 213.2--Definitions

2(b) Advertisement

1. Coverage. The term advertisement includes messages inviting, offering, or otherwise generally announcing to prospective customers the availability of consumer leases, whether in visual, oral, print or electronic media. Examples include:

- i. Messages in newspapers, magazines, leaflets, catalogs, and fliers
- ii. Messages on radio, television, and public address systems
- iii. Direct mail literature
- iv. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag that is delivered or made available to a lessee or prospective lessee in any manner whatsoever
- v. Telephone solicitations
- vi. Messages on the Internet

2. Exclusions. The term does not apply to the following:

- i. Direct personal contacts, including 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 mandated information is included in the notice
- iv. News articles controlled by the news medium
- v. Market research or educational materials that do not solicit business

3. Persons covered. See the commentary to § 213.7(a).

2(d) Closed-end lease

1. General. 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(e) 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 a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction was exempt. The primary purpose of a lease is 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. However, a lease that imposes a penalty for not continuing a lease beyond four months is considered to have a term of more than four months. To illustrate:

- i. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.
- ii. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

3. Total contractual obligation. The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor. The term excludes:

- i. Residual value amounts or purchase-option prices;
- ii. Amounts collected by the lessor but paid to a third party, such as taxes, license and registration fees.

4. Credit sale. The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as "a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

- i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and
- ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement."

5. Agricultural purpose. Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used

primarily in farming. 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.

6. Organization. A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

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

- i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming
- ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home
- iii. Propane gas service where the consumer must lease a propane tank to receive the service

8. Safe deposit boxes. The lease of a safe deposit box is not a consumer lease under § 213.2(e).

2(f) Gross capitalized cost

1. Charges paid at lease signing. The gross capitalized cost figure includes only those fees, charges, and other items, such as a prior unpaid lease balance, that are capitalized or amortized over the lease term. Charges paid at lease signing, such as taxes, are not included in the gross capitalized cost.

2(g) Lessee

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

2(h) Lessor

1. Arranger of a lease. To "arrange" for the lease of personal property means to provide or offer to provide a lease that 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" as used in comment 2(h)-1 refers to an actual payment corresponding to a fee or similar compensation and not 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. Cenace, 452 U.S. 155 (1981). In that case, the U.S. Supreme Court held that an assignee was a creditor for purposes of the pre-1980 Truth in Lending Act and Regulation Z because of its substantial involvement in the credit transaction.

4. Multiple lessors. See the commentary to § 213.3(c).

2(j) Organization

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

2(l) Personal property

1. Coverage. Whether property is 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(m) Realized value

1. General. Realized value refers to the value of the leased property at early termination or at the end of the lease term. It is not a required disclosure. 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 residual value of the leased property and its realized value.

2. Options. Subject to the contract and to state or other applicable law, the lessor may calculate the realized value in determining the lessee's liability at the end of the lease term or at early termination in one of the three ways stated in § 213.2(m). 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. Determination of realized value. Disposition charges are included in determining the realized value but amounts attributable to taxes may be excluded.

4. Offers. In determining the highest offer for disposition, the lessor may disregard offers that an offeror has withdrawn or is unable or unwilling to perform.

5. Lessor's appraisal. See commentary to § 213.4(l).

2(o) Security interest and security

1. Disclosable interests. For purposes of disclosure, 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.

2. General coverage. An interest the lessor may have in leased property must be disclosed only if it is considered a security interest under state or other applicable law. The term includes, but is 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; liens on property arising by operation of law; and any interest in a lease when used to secure payment or performance of an obligation.

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

SECTION 213.3--General Disclosure Requirements

3(a) General requirements

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

- i. In a three-year lease with no penalty for termination after a one-year minimum term, 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 §§ 213.4(g)(1), (k) and (l).

2. Clear and conspicuous standard. The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, 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. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. Multipurpose disclosure forms. A lessor may use a multipurpose disclosure form that enables the 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.
 - iii. When a lessor includes an outstanding lease or loan balance in a lease transaction, the lessor may disclose the prior loan or lease balance as part of a single lease transaction or may disclose it as a separate credit transaction.

3(a)(1) Form of disclosures

1. Cross-references. In making disclosures, lessors may include in the nonsegregated disclosures a cross-reference to items contained among the segregated disclosures rather than repeat the items.
2. Identification of parties. While disclosures must be made clearly and conspicuously, lessors are not required to use the word "lessor" and "lessee" to identify the parties to the lease transaction.
3. Lessor's address. The lessor need only be identified by name; an address may be provided but is not required.
4. Multiple lessors and lessees. In transactions involving multiple lessors and multiple lessees, a single lessor may make all the disclosures to a single lessee as long as the disclosure statement identifies all the lessors and lessees.
5. Lessee's signature. The regulation does not require that the lessee sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract. Nevertheless, to ensure that disclosures are given before a lessee becomes obligated on the lease transaction, the lessor may ask the lessee to sign the disclosure statement or an acknowledgement of receipt, may place disclosures that are included in the lease documents above the lessee's signature, or may include instructions alerting a lessee to read the disclosures prior to signing the lease.

3(a)(2) Segregation of certain disclosures

1. Location. The segregated disclosures referred to in § 213.3(a)(2) may be provided on a separate document and the other required disclosures may be provided in the lease contract, so long as all disclosures are given at the same time.
2. Additional information among segregated disclosures. The disclosures required to be segregated may contain only the information required or permitted to be included among the segregated disclosures (see comments to § 213.4 for guidance on additional information in the segregated disclosures).

3. Substantially similar. See commentary to appendix A of this part.

3(b) Additional information; nonsegregated disclosures

1. State law disclosures. A lessor may include among the nonsegregated disclosures any state law disclosures that are not inconsistent with the act and regulation under § 213.9, as long as they are not used or placed to mislead or confuse or detract from any disclosure required by the regulation in accordance with the standard set forth in § 213.3(b) for additional information.

3(c) Multiple lessors or lessees

1. Multiple lessors. If a single lessor provides disclosures to a lessee on behalf of several lessors, 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.

3(d) Use of estimates

3(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 213.4(n) 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 increases or decreases over the course of the lease, the lessor may estimate the 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 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. Residual value of leased property at termination. When the lessee's liability at the end of the lease term is based on the residual value of the leased property as determined at consummation, the estimate of the residual value must be reasonable and based on the best information reasonably available to the lessor (see § 213.4(m)). A lessor may use a generally accepted trade publication listing estimated current or future market prices for the leased property or may rely on other information, its experience, or reasonable belief if those sources provide the better information. For example:

- i. An automobile lessor offering a three-year open-end lease assigns 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 residual 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 the 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. The lessor should indicate whether the value disclosed is a retail or wholesale value.

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 every affected disclosure or only the disclosure primarily affected.

3(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. An increase in official fees or taxes
- iii. An increase in insurance premiums or coverage caused by a change in the law
- iv. Late delivery of an automobile caused by a strike

2. Redisclosure. When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.5.

3. Lessee's failure to perform. The lessor does not violate the regulation 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. For example, the addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease is not a violation of the regulation.

SECTION 213.4--Content of Disclosures

4(a) Description of property

1. Placement of description. Although the description of leased property may not be included among the segregated disclosures, a lessor may choose to place the description directly above the segregated disclosures.

4(b) Amount due at lease signing

1. 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.
2. Fees payable upon delivery. This paragraph does not apply to fees paid at delivery, when delivery occurs after consummation. For example, if the lessee agrees to pay registration fees, sales taxes, and a delivery charge on the date the automobile is delivered sometime after consummation, none of these charges is an initial payment under § 213.4(b). The registration fees and sales taxes are disclosed under § 213.4(n), and the delivery charge is disclosed as an "other charge" under § 213.4(d).
3. Capitalized cost reduction. A capitalized cost reduction is a payment in the nature of a downpayment that reduces the amount of the leased property to be capitalized over the term of the lease. This amount does not include any amounts included in a periodic payment paid at lease signing.
4. "Negative" equity trade-in allowance. If an amount owed on a prior lease or loan exceeds an agreed upon trade-in value, the difference is not reflected as a negative trade-in allowance under § 213.4(b). The lessor may disclose the trade-in allowance as zero, not applicable, or leave a blank line.
5. Rebates. Only rebates applied toward an amount due at lease signing are required to be disclosed under § 213.4(b).
6. Balance sheet approach. In motor vehicle leases, the total for the column labeled "total amount due at lease signing" must equal the total for the column labeled "how the amount due at lease signing will be paid."

4(c) Payment schedule and total amount of periodic payments

1. Periodic payments. The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments made periodically, including taxes, maintenance and insurance charges. In addition, the lessor must disclose the total of the periodic payments.

4(d) Other charges

1. Coverage. Section 213.4(d) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement. If a lessor is unsure whether a particular fee is an "other charge," the lessor may disclose the fee as such without violating § 213.4(d) or the segregation rule under § 213.3(a)(2).
2. Excluded charges. This section does not require disclosure of charges that are imposed when the lessee terminates early, fails to abide by, or modifies the terms of the existing lease agreement, such as charges for:
 - i. Late payment
 - ii. Default

- iii. Early termination
- iv. Deferral of payments
- v. Extension of the lease

3. Third-party fees and charges. Third-party fees or charges collected by the lessor on behalf of third parties, such as taxes, are not disclosed under § 213.4(d).

4. Relationship to other provisions. The other charges mentioned in this paragraph are charges that are not required to be disclosed under another provision of § 213.4. To illustrate:

- 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 amount due at lease signing under § 213.4(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 § 213.4(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 § 213.4(o), not as an "other charge."

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 disposition and "pick-up" charges.

6. Optional "disposition" charges. Disposition charges (and similar charges) that are anticipated by the parties as an incident to the normal operation of the lease agreement must be disclosed under § 213.4(d). If under a lease agreement, a lessee may return leased property to various locations, and the lessor charges a disposition fee depending upon the location chosen, under § 213.4(d), the lessor must disclose the highest amount charged. In such circumstances, the lessor may also include a brief explanation of the fee structure in the segregated disclosure. For example, if no fee or a lower fee is imposed for returning a leased vehicle to the originating dealer as opposed to another location, that fact may be disclosed. By contrast, if the terms of the lease treat the leased property returned outside the lessor's service area as a default, that fee is not disclosed as an "other charge," although it may be required to be disclosed under § 213.4(q).

4(e) Total of payments

1. Open-end lease. An additional statement is required under § 213.4(e) for open-end leases because, with some limitations, a lessee is liable for the difference between the residual and realized values of the leased property.

4(f) Payment calculation

1. Motor-vehicle lease. Whether leased property is a motor vehicle is determined by state or other applicable law.

4(f)(1) Gross capitalized cost

1. Agreed upon value of the vehicle. The agreed upon value of a motor vehicle is the amount for the vehicle agreed upon by the lessor and lessee for purposes of the lease. This includes the amount of capitalized items such as charges for vehicle accessories and options, and delivery or destination charges. The lessor may also include taxes and fees for title, license, and registration. Charges for service or maintenance contracts, insurance products, guaranteed automobile protection, or an outstanding balance on a prior lease or loan are not included in the agreed upon value.

2. Itemization of the gross capitalized cost. The lessor may choose to provide the itemization of the gross capitalized cost as a matter of course or only on request. In either case, the itemization must be provided at the same time as the other disclosures required by § 213.4. The itemization may not be included among the segregated disclosures.

4(f)(2) Capitalized cost reduction

1. Amounts not included. The capitalized cost reduction does not include periodic payments paid at lease signing.

4(f)(8) Lease term

1. Definition. Under § 213.4(f)(8) the "lease term" refers to the number of periodic payments.

4(g) Early termination

4(g)(1) Conditions and disclosure of charges

1. Reasonableness of charges. See the commentary to § 213.4(q).

2. Description of the method. A full description of the method of determining an early termination charge is required by the regulation. Lessors should attempt to provide consumers with clear and understandable descriptions of their early termination charges. Descriptions that are full, accurate, and not intended to be misleading will comply with the regulation, even if complex. 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 portion (also known as the "adjusted lease balance") of its early termination charges. For example, a lessor may state that the "constant yield" method will be utilized in obtaining the adjusted lease balance, but must 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 must provide a written explanation of that method if requested by the consumer. The lessor has the option of

providing the explanation as a matter of course in the lease documents or on a separate document.

3. Default. When default is also a condition for early termination of a lease, default charges must be disclosed under § 213.4(g)(1). See the commentary to § 213.4(q).
4. 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 § 213.4(g)(1).

4(h) Maintenance responsibilities

1. Standards for wear and use. No disclosure is required if a lessor does not impose standards for wear and use (such as excess mileage).
2. Amount or method of determining excess mileage charges. In a motor vehicle lease, a description of the method for calculating excess mileage charges may not be disclosed if a specific amount for excess mileage has been established.

4(i) Purchase option

1. Mandatory disclosure of no purchase option. Generally the lessor need only make the specific required disclosures that apply to a transaction. In the case of the purchase option disclosure, however, a lessor 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 § 213.4(i) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.
3. Purchase-option fee. A purchase-option fee must be disclosed under § 213.4(i), not § 213.4(d). The fee may be separately itemized or disclosed as part of the purchase-option price.
4. Official fees and taxes. The existence of official fees such as those for taxes, licenses, and registration charged in connection with the exercise of a purchase option may be disclosed under § 213.4(i) in several ways. The fees may be disclosed as part of the purchase-option price (with or without a reference to their inclusion in that price) or may be separately disclosed and itemized by category. Alternatively, a lessor may provide a statement such as fees for tags, taxes, and registration are not included in the purchase price.
5. Purchase-option price. Lessors must disclose the purchase-option price as a sum certain or a sum certain to be determined at a future date by reference to an independent source. The reference should provide sufficient information so that the lessee will be able to determine the

actual price when the option becomes available. Statements of a purchase price as the "negotiated price" or the "fair market value" do not comply with the requirements of § 213.4(i).

4(j) Statement referencing nonsegregated disclosures

1. Content. A lessor may delete inapplicable items from the disclosure. For example, if a lease contract does not include a security interest, that reference may be deleted.

4(l) 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 residual 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 the lessor still must disclose the lessee's independent right to an appraisal under § 213.4(l). In addition, a lessor must indicate whether the wholesale or retail appraisal value will be used.

3. Time restriction on appraisal. The regulation does not specify a 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.

4(m) Liability at end of lease term based on residual value

1. Open-end leases. Section 213.4(m) applies only to open-end leases.

2. 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 § 213.4(m), whether successful or not.

4(m)(1) Rent and other charges

1. General. This disclosure is intended to represent the cost of financing an open-end lease based on charges and fees that the lessor requires the lessee to pay. Examples of disclosable charges, in addition to the rent charge, include acquisition, disposition, or assignment fees. Charges imposed by a third party whose services are not required by the lessor are not included in the § 213.4(m)(1) disclosure such as official fees and voluntary insurance.

4(m)(2) Excess liability

1. Coverage. The disclosure 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 disclosures governing the liability limitation are not applicable for the minimum term. See the commentary to § 213.3(a).
3. Charges not subject to rebuttable presumption. The limitation on liability applies only to liability that is based on the residual value of the property at the end of the lease term. The regulation does not preclude a lessor from recovering other charges from the lessee at the end of the lease term. Examples of such charges include:
 - i. Disposition charges
 - ii. Excess mileage charges
 - iii. Late payment and default charges
 - iv. Amounts by which the unamortized cost exceeds the residual value that have accrued in simple interest accounting leases because the lessee has not made timely payments.

4(n) Fees and taxes

1. Taxes. If a tax payable by the lessor is passed on to the consumer and is reflected in the lease documentation or a sticker or tag affixed to the leased property, the tax must be disclosed under § 213.4(n). However, a tax payable by the lessor and absorbed as a cost of doing business need not be disclosed.

4(o) Insurance

1. Coverage. A lessor must disclose information on the type and amount of insurance coverage, whether voluntary or required, as well as the cost if the insurance is obtained through the lessor.
2. Lessor's insurance. Insurance purchased by the lessor primarily for its own benefit, and absorbed as a business expense and not separately charged to the lessee, need not be disclosed under § 213.4(o) even if it provides an incidental benefit to the lessee.
3. 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 § 213.4(o) disclosures. In such cases the lessor may, however, disclose the § 213.4(o) information in accordance with the additional information provision in § 213.3(b). For MBP insurance contracts not capped by a dollar amount, lessors may describe coverage by referring to a limitation by mileage or time period, for example, the mechanical breakdown contract insures parts of the automobile for up to 100,000 miles.

4(p) 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. If a lessor provides a comprehensive list of warranties to the lessee, the lessor must indicate which § 213.4(p) warranties apply or, alternatively, which warranties do not apply.
2. Warranty disclaimers. Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with § 213.3(b).
3. State law. Whether an express warranty or guaranty exists is determined by state or other law.

4(q) Penalties and other charges for delinquency

1. Collection costs. The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.4(q). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditures 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 § 213.4(g)(1). The § 213.4(q) and (g)(1) 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 rent 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 rent 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 rent charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.4(q).
4. Extension charges. Extension charges that exceed the rent charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.4(q).
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.

4(r) Security interest

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

4(s) Limitations on rate information

1. Segregated disclosures. A lease rate may not be included among the segregated disclosures referenced in § 213.3(a)(2).

SECTION 213.5--Renegotiations, Extensions and Assumptions

1. Coverage. Section 213.5 applies only to existing leases that are covered by 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(e). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

5(b) Extensions

1. Time of extension disclosures. If a consumer lease is extended for a specified term greater than six months, new disclosures are required at the time the extension is agreed upon. 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 six 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 213.7--Advertising

7(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 a lessor in § 213.2(h). 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(b) of the act, however, owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations under section 185(b) of the act.

2. "Usually and customarily." Section 213.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, 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.

7(b) Clear and conspicuous standard

1. Standard. The disclosures in an advertisement must be reasonably understandable. For example, very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear and conspicuous standard if consumers cannot see and read or comprehend the information required to be disclosed.

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

1. Itemization not required. The regulation requires only a total of amounts due at lease signing or delivery, not an itemization of its component parts. Such an itemization is provided in any transaction-specific disclosures provided under § 213.4.

2. Prominence rule. Except for a periodic-payment, oral or written references to components of the total due at lease signing or delivery (for example, a reference to a capitalized cost reduction, where permitted) may not be more prominent than the disclosure of the total amount due at lease signing or delivery.

7(b)(2) Advertisement of a lease rate

1. Location of statement. The notice required to accompany a percentage rate stated in an advertisement must be located in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not state a rate with an asterisk and make the disclosure in a different location in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any § 213.4 disclosure stated in the advertisement.

7(c) Catalogs and multi-page advertisements

1. General rule. The multiple-page advertisements referred to in § 213.7(c) are advertisements consisting of a series of numbered pages--for example, a supplement to a newspaper. A mailing comprising 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 § 213.7(d)(2)(i) through (vi). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog or other multiple-page advertisement, the page on which the triggering term is used must clearly refer to the specific page where the table, chart, or schedule begins.

7(d)(1) Triggering terms

1. Triggering terms. When any triggering term appears in a lease advertisement, the additional terms enumerated in § 213.7(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.

7(d)(2) Additional terms

1. Third-party fees that vary by state. In disclosing the total amount due at lease signing a lessor may:
 - i. Exclude third-party fees, such as taxes, license, and registration fees and disclose that fact or
 - ii. Provide a total that includes third-party fees based on a particular state as long as that fact and that fees may vary by state are disclosed

7(e) Alternative disclosures--merchandise tags

1. Multiple item leases. Multiple item leases that utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

7(f) Alternative disclosures--television or radio advertisements

7(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, USA Today or the Wall Street Journal, may satisfy the general circulation requirement in § 213.7(f)(1)(ii).
2. Toll-free number, local or collect calls. In complying with the disclosure requirements of § 213.7(f)(1)(i), 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.
3. Multi-purpose number. When calling an advertised toll-free number, if a consumer obtains a recording that provides several dialing options--such as providing directions to the lessor's place of business--the option allowing the consumer to request lease disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.
4. Statement accompanying toll free number. Language must accompany a telephone number indicating that disclosures are available by calling the toll-free number, such as "call 1-800-000-000 for details about costs and terms."

SECTION 213. 8--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, or 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. 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. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or other periodic payments. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

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 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
- vii. Adding numeric or alphabetic designations
- viii. Rearranging the disclosures into vertical columns, except for § 213.4(b) through (e) disclosures

3. Model closed-end or net vehicle lease disclosure. Model A-2 is designed for a closed-end or net vehicle lease. Under the "Early Termination and Default" provision a reference to the lessee's right to an independent appraisal of the leased vehicle under § 213.4(l) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's estimated value.

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 required under § 213.4(l) 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, February 12, 1997.

(signed) William W. Wiles
William W. Wiles
Secretary of the Board
BILLING CODE 6210-01-P