dling of milk in the Nebraska-Western Iowa marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. In § 1065.7, the word "July" where it appears in paragraph (d)(3) is changed to "August", and paragraph (b) is revised to read as follows:

§ 1065.7 Pool plant.

* * * * *

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section (excluding fluid milk products trasferred from any such distributing plant to the supply plant or to any other plant operated by the operator of the supply plant) is not less than 40 percent of the Grade A milk received at such plant from dairy farmers (including receipts of producer milk diverted from the plant pursuant to § 1065.13) and handlers described in § 1065.9(c) during such month. A supply plant that qualifies as a pool plant in each of the immediately preceding months of September through December shall be a pool plant for the months of January through August unless the plant operator requests of the market administrator, in writing, that such plant not be a pool plant, such nonpool plant status to be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments.

* * * * *

2. In § 1065.13, paragraphs (a) and (b) are revised to read as follows:

§ 1065.13 Producer milk.

* * * * *

(a) Received at a pool plant directly from a producer or a handler described in § 1065.9(c);

(b) Received by a handler described in § 1065.9(c) from producers in excess of the quantity delivered to pool plants; or

* * * * *

3. In § 1065.41, paragraph (b)(1) is revised to read as follows:

§ 1065.41 Shrinkage.

* * * * *

(b) * * *

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1065.9(c));

* * * * *

4. In § 1065.42, the semicolon at the end of paragraph (a)(1) is changed to a period; the word "and" immediately following is deleted; all of paragraph (a)(2) is revoked; and the introductory text of paragraph (a) is revised to read as follows:

§ 1065.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as follows:

* * * * *

5. In § 1065.44, paragraphs (a)(3)(ii) (b) and (13) are revised to read as follows:

§ 1065.44 Classification of producer milk.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

* * * * *

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1065.42(a); and

* * * * *

6. In § 1065.45, paragraph (d) is revised to read as follows:

§ 1065.45 Market administrator's reports and announcements concerning classification.

* * * * *

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be so delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

7. In § 1065.73, paragraph (d)(2) is revised to read as follows:

§ 1065.73 Payments to producers and to cooperative associations.

* * * * *

(d) * * *

(2) On or before the 14th day after the end of each month not less than the value of such milk at the uniform price as adjusted by the butterfat differential specified in § 1065.74 applicable at the location of the receiving handler's plant, less payment made pursuant to paragraph (d)(1) of this section;

* * * * *

8. In § 1065.85, paragraph (a) is revised to read as follows:

§ 1065.85 Assessment for order administration.

* * * * *

(a) Producer milk (including such handler's own production);

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

Effective date: August 1, 1977.

Signed at Washington, D.C. on July 21, 1977.

ROBERT H. MEYER,
Assistant Secretary for Marketing Services.

[FR Doc.77-21555 Filed 7-26-77;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

[Reg. Z; Docket No. R-0072]

PART 226—TRUTH IN LENDING

Discounts for Payment by Cash, Check, or Similar Means; Exemption From Disclosure as Finance Charges

AGENCY: Federal Reserve System.

ACTION: Final amendments.

SUMMARY: These amendments clarify the conditions under which merchants who offer discounts for payment by cash, check, or similar means, rather than by credit card, are exempt from disclosing such discounts as finance charges. The amendments implement Pub. L. 94-222 which distinguishes between discounts and surcharges, declares that surcharges are illegal until February 27, 1979, and provides that discounts qualifying for non-disclosure shall not be considered a charge for credit under State usury, disclosure, and other credit laws.

EFFECTIVE DATE: July 20, 1977.

FOR FURTHER INFORMATION CONTACT:

D. Edwin Schmelzer, Chief, Fair Credit Practices Section, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 202-452-2412.

SUPPLEMENTARY INFORMATION: On December 28, 1976 the Board proposed to amend Part 226 (Regulation Z) to implement changes and clarifications made by Pub. L. 94-222. One of the purposes of that law was to clarify the fact that section 167 of the Truth in Lending Act (15 U.S.C. 1666(f)) was intended by Congress to exempt from disclosure certain discounts given to customers paying by cash, check, or similar means, but was not intended to provide a similar exemption for surcharges imposed upon users of credit cards. Pub. L. 94-222 not only stated that surcharges do not qualify for the section 167 exemption from disclosure, but also prohibited the imposition of surcharges on the users of credit cards for three years. The clarifying

statutory amendments also provided that any discount qualifying for non-disclosure under section 167 shall not be considered a charge for credit under State usury, disclosure, and other credit laws.

DISCUSSION OF MAJOR COMMENTS

Most substantive comments focused upon three areas of concern. First, it was suggested that "regular price" be redefined so as to impose a more subjective standard than proposed. Commenters proposed definitions related to the price that a merchant expects to receive without taking into account the method of payment which a customer uses. The Board has carefully considered the alternative ways of defining "regular price," since any meaningful and practical distinction between a discount and a surcharge ultimately depends upon establishing the standard, intermediate price. It is of paramount importance that however "regular price" is defined, it provide sufficient certainty for those who wish to offer or take advantage of discounts. The Board believes that an objective definition of that term will better encourage merchants to offer discounts to their customers, and will facilitate enforcement of the Congressional prohibition of surcharges. Consequently, the Board has decided to leave the proposed definition of "regular price" essentially unchanged.

A second area of concern involves potential conflicts with State law. A number of States require disclosure of the "cash price" or "cash sale price" when goods or services are purchased on credit. Commenters indicated that such laws may mean that periodic billing statements would have to disclose two prices for each transaction, one of which (cash price) may not be readily available to the card issuer. To the extent that this presents a problem, the Board does not believe the problem arises from requirements imposed by either Regulation Z or the Truth in Lending Act. Any needed remedy would be more appropriately fashioned by the governmental body imposing the requirement.

One commenter suggested that another area of potential conflict with State laws may exist to the extent that such laws prohibit or restrict the posting, advertising, or disclosure of gasoline prices on service station premises. Regulation 2 requires that the availability of a discount be "clearly and conspicuously disclosed by a sign or display posted at or near each public entrance to the seller's place of business * * *" (§ 226.4(i)(1)(ii)). Because the suggested conflict does not affect retailers generally, the Board believes that it would be inappropriate to deal with such an issue within the language of Regulation Z itself. The concerns which have been voiced by oil companies can be better resolved by official staff interpretation of § 226.4(i)(1)(ii) as it applies to gasoline service stations.

The third major concern of commenters was that the amendments appear to distinguish between whether or not credit is being extended to finance a transaction, rather than whether or not a credit card is being used by a customer. To some degree the very use of a credit card is definitionally tied, by the Truth in Lending Act, to the extension of credit. In the amendments, as finalized, the Board has distinguished between payment by use of an open end credit card account, and payment by use of cash, check, or similar means. As indicated by the express language of the amendment, use of an open end credit card account is meant to include verbal orders or purchases by mail, even though the credit card is not physically used. It is not meant to include transactions that involve an extension of credit on an open end account through use of a personal check (overdraft), cash advance check, or similar instrument. The Board believes that its amendment, in all salient provisions, reflects the language and import of the Truth in Lending Act.

EXPANATION OF AMENDMENT

The amendment makes a variety of changes in and additions to Regulation Z. Definitions of three new terms, "discount," "surcharge," and "regular price," are added to § 226.2.

An explanatory footnote is added to § 226.4(i)(1), minor, clarifying changes are made in §§ 226.4(i)(1)(i), 4(i)(1)(iii), 4(i)(2), and 226.13(i)(1)(i), and a technical modification is made in § 226.5(a)(3)(ii). A new sentence in § 226.4(i)(1)(iii), a substitute paragraph § 226.4(i)(4), and a new paragraph (5) are added to § 226.4(i).

1. New definitions.—Three newly-defined terms—"regular price," "discount," and "surcharge"—are added to § 226.2. When read in conjunction with those definitions, § 226.4(i) provides that only discounts and not surcharges qualify for the exemption from finance charge disclosure contained in § 167 of the Truth in Lending Act. The definition of "discount" read together with that of "regular price" is intended to clarify that the price differential resulting from a pricing system in which the merchant tags or posts both a credit card price and a cash price is a discount which qualifies for non-disclosure under § 167.

The final definition of "regular price" has been modified in two respects. First, some restructuring has been done for the sake of clarity with no substantive change intended. Second, the phrase "by use of an open and credit card account," along with a limitation on the scope of that phrase, have been substituted for the term "credit card purchases." Frequently people are given an opportunity to purchase some item by mail or telephone order, and have the option of paying by use of their credit card account. Due to the lack of personal contact in the transaction, however, a person's credit card is not physically used to effect payment. Most commonly the person will supply only the number identifying the underlying credit card account. It is the Board's intent to permit non-disclosure of discounts offered for payment by cash, check, or similar means in such situations. The phrase "by use of an open end credit card account," however, would ostensibly include situations where the existence of a credit card is unrelated to the method of payment selected by a customer. For example, under an overdraft checking plan where the amount of an overdraft is debited to an open end credit account, a person paying by check may well also be paying by use of that account. The Board believes that these types of transactions are not equivalent to credit card transactions and, consequently, makes such a distinction within the definition of "regular price."

The definition of "discount," except for an additional cross-reference to the use of that term in § 226.13(i), remains unchanged from the proposed version.

The definition of "surcharge" has been altered in two respects. First, the phrase "use of an open end credit card account" and the limitation on that phrase have been substituted for "credit card purchases" for the same reasons previously discussed. Second, the definition has been rephrased to clarify that a surcharge is an additional amount imposed at the point of sale as a consequence or condition of payment by use of an open end credit card account. This is to insure that a literal reading of the definition would not include such things as sales tax.

Under the definitions of "regular price," "discount," and "surcharge," the following examples of pricing situations would involve "discounts" that would not have to be disclosed if offered in accordance with the requirements of § 226.4(i):

1. Merchant posts or tags goods with a single price which is charged for credit card purchases and offers a five percent discount off this price if payment is made by cash, check, or similar means.

2. Merchant posts or tags goods with both a credit card price and a price for payment by cash, check, or similar means which is no more than five per cent lower than the credit card price.

3. Merchant does not tag or post prices, but offers purchasers paying by cash, check, or similar means a price which is no more than five per cent lower than that offered to credit card purchasers.

Any pricing system in which the only price tagged or posted is a cash price which is not available to someone purchasing with a credit card would involve a "surcharge" and would, therefore, be illegal until February 27, 1979.

2. Minor clarifying changes.—The amendments add a footnote to § 226.4(i)(1) which limits the meaning of the phrase "use of an open end credit card account" in the same manner as discussed in the definition of "regular price" above. The term "regular price" has been substituted for the phrase "tag, posted, or advertised price" in § 226.4(i)(1)(i) to insure uniform application of defined terms. The Board believes that if the regular price already includes sales and other related taxes (e.g., in pricing of gasoline at service stations), then the discount may be calculated on the basis of such "gross" selling price.

The changes in §§ 226.4(i)(2) and 226.13(i)(1)(i) are intended to eliminate the descriptions of a discount as being for cash payment since the statute refers to discounts for payment by check and other means as well. A similar change was made in § 226.4(i)(1)(iii).

3. *Addition to § 226.4(i)(1)(iii).*—The sentence which is being added to § 226.4(i)(1)(iii) has been modified in two respects. First, the phrase "a discount for cash" now reads "such a discount." This change was made for the same reason discussed in the previous section. Second, the requirement that the regular price be disclosed if an advertisement specifies the discounted price has been dropped. In its place is a requirement that if a merchant advertises only a discounted price, that price must be clearly identified as being unavailable to credit card purchasers. This change prevents consumers from being misled by a low advertised price, and yet permits merchants to be more flexible in their advertising.

4. *Section 226.4(i)(4).*—This language completely replaces former paragraph (4). The original proposal has been shortened because the definition of "surcharge" is sufficiently self-contained. The paragraph repeats the Congressional prohibition on surcharges, together with the date on which that prohibition ends.

5. *New § 226.4(i)(5).*—This new paragraph essentially mirrors the statutory language which states that a discount which qualifies for non-disclosure under § 167 of the Truth in Lending Act shall, in addition, not be considered a charge for credit for purposes of State laws on usury, credit cost disclosure, and permissible credit charges. The only change made from the proposed version of paragraph (5) is the elimination of the words "for cash" since the discount would also be applicable to payment by check or similar means.

6. *Technical modification.*—Due to the fact that a footnote was added to § 226.4(i)(1) and numbered sequentially as "5a," the existing footnote designation in § 226.5(a)(3)(ii) has been changed from "5a" to "5b."

C. Text of Amendment

Pursuant to the authority granted in 15 U.S.C. 1604, and to implement Pub. L. 94-222, the Board amends 12 CFR Part 226 as follows:

1. Section 226.2 is amended by adding new paragraphs (tt), (uu), and (vv) as set forth below:

§ 226.2 Definitions and rules of construction.

* * * * *

(tt) "Regular price" means (1) The tag or posted price charged for the property or service if a single price is tagged or posted; or (2) The price charged for the property or service when payment is made by use of an open end credit card account if either (i) No price is tagged or posted, or (ii) two prices are tagged or posted, one of which is charged when payment is made by use of an open end credit card account and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of a cardholder's open end account shall not be considered payment made by use of that account.

(uu) "Discount," as used in §§ 226.4(i) and 226.13(i), means a reduction made from the "regular price," as defined in paragraph (tt) of this section.

(vv) "Surcharge," as used in § 226.4(i), means any amount added at the point of sale to the "regular price," as defined in paragraph (tt) of this section, as a condition or consequence of payment being made by use of an open end credit card account. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of a cardholder's open end account shall not be considered payment made by use of that account.

§ 226.4 [Amended]

2. Section 226.4 is amended as follows:

a. Paragraph (i)(1) is amended by adding footnote "5a" after the word "used" (i.e., "* * * whether or not a credit card is physically used,[5a] * * *"), the text of which footnote shall be as follows:

[5a] For purposes of this section, payment by check, draft, or other negotiable instrument which may result in the debiting of a cardholder's open end account shall not be considered payment made by use of that account.

b. Paragraph (i)(1)(i) is amended by deleting the words "tag, posted, or advertised" and substituting therefor the word "regular."

c. Paragraph (i)(1)(iii) is amended by:

1. Changing the phrase, "the availability of a discount for payments in cash must be clearly and conspicuously disclosed" to read as follows: "the availability of such a discount must be clearly and conspicuously disclosed;" and

2. By adding at the end of paragraph (i)(1)(iii) a new sentence as follows:

* * * If a price other than the regular price, as defined in § 226.2(tt), is disclosed in an advertisement, telephone contact, or other correspondence promoting goods or services for which such a discount is offered, than the advertisement, telephone contact, or other correspondence shall also indicate that such price is not available to credit card purchasers.

d. Paragraph (i)(2) is amended by deleting the words "for cash."

e. Paragraph (i)(4) is deleted and new paragraph (i)(4) as follows is added in lieu thereof:

* * * * *

(i) * * *

(4) No creditor in any sales transaction may impose a surcharge. This paragraph shall cease to be effective on February 27, 1979.

f. New paragraph (i)(5) is added as follows:

* * * * *

(5) Notwithstanding any other provisions of this Part, any discount which, pursuant to paragraph (i)(1), of this section is not a finance charge for purposes of this Part shall not be considered a finance charge or other charge for credit under the laws of any State relating to:

(A) Usury; or

(B) Disclosure of information in connection with credit extensions; or

(C) The types, amounts, or rates of charges, or the element or elements of charges permissible in connection with the extension or use of credit.

§ 226.5 [Amended]

3. Section 226.5(a)(3)(ii) is amended by deleting the footnote designation "5a" and inserting, in lieu thereof, the designation "5b".

§ 226.13 [Amended]

4. Section 226.13(i)(1)(i) is amended by deleting the word "cash" which appears immediately before the word "discounts."

By order of the Board of Governors, July 20, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-21575 Filed 7-26-77;8:45 am]

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0094—FC-0099]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official Staff Interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

EFFECTIVE DATE: July 25, 1977.

FOR FURTHER INFORMATION CONTACT:

D. Edwin Schmelzer, Chief, Fair Credit Practices Section, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2412.

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR Part 261.6.

(2) Official staff interpretations may be reconsidered upon request of interested parties and in accordance with 12 CFR Part 226.1(d)(2). Every request for reconsideration should clearly identify the number of the official staff interpre-

tation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(3) 15 U.S.C. 1640(f).

§ 226.15(a). Two sides of a single page may be used when making consumer leasing disclosures in a combined contract-disclosure statement.

JUNE 20, 1977.

This is in response to your letter of * * *, which requested an official staff interpretation of Regulation Z. You inquire whether § 226.15(a)(1) permits, where the lessor has combined the consumer leasing disclosures and the lease contract, the use of two sides of a single page, if the required disclosures are made together and above the place for the lessee's signature.

It is the staff's opinion that § 226.15(a)(1) permits the use of two sides of a single page when making the consumer leasing disclosures required by § 226.15(b) in a combined contract-disclosure statement. As you point out in your letter, § 226.15(a)(1) should be contrasted with § 226.8(a)(1). That subparagraph states that all Truth in Lending disclosures for a consumer credit transaction must be made *"on the same side of the page* and above the place for the customer's signature." (Emphasis added.) Section 226.15(a)(1), on the other hand, states that "All of the disclosures shall be made together on * * * [t]he contract or other instrument evidencing the lease *on the same page* and above the place for the lessee's signature * * *." (Emphasis added.)

You state in your letter that the signature must be at the end of the second side to fulfill the requirements of § 226.15(a)(1). While that may be true if both sides of the single page contain required disclosures, it is the staff's opinion that compliance with § 226.15(a)(1) may also be achieved by placing the lessee's signature at the bottom of the first side, so long as *all* the required consumer leasing disclosures are made together on the first side of the two-sided document. This would permit the placement of the signature on the first side of the page and the incorporation of other non-disclosure contract provisions from the second side into the body of the contract in those instances where operational limitations (e.g., the use of carbons to make multiple copies) would dictate the use of a signature on the bottom of the first side. It should be pointed out, however, that there is no signature requirement in the regulation and that the requirement that all the disclosures be above the place for the lessee's signature applies only where, for contract or evidentiary purposes, the lessor wishes to have the lessee sign the combined contract and disclosure document.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation and limited to the facts as outlined herein. I trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

§ 226.15(b). Proper methods of disclosure of security interests under § 15(b)(9) in consumer leasing transactions.

JUNE 29, 1977.

This is in reply to your request for an official staff interpretation clarifying the meaning of the security interest disclosure requirement in Regulation Z, § 226.15(b)(9), pertaining to consumer leases.

You indicate that your bank makes loans to leasing companies and takes assignments of consumer leases generated by those companies as security for your loans. You are concerned whether the assigned leases properly make the disclosures required under the cited section of the regulation. Your letter describes four different kinds of disclosures that either are being made or might be made in attempts to comply with the regulatory requirement:

1. You suggest that § 226.15(b)(9) might be interpreted to require disclosure only when the lessor takes a security interest in property other than the leased goods. You question whether this is normal business practice as well as whether it is the intended meaning of the regulation.

As in the case of credit transactions, the purpose of this requirement in the Consumer Leasing Act and in the regulation is to assure that consumers are aware of when their defaults might affect their continued right to possession and use of property. The staff can find no indication in the legislative history or elsewhere that this disclosure is applicable only when the lessor takes a security interest in property other than the leased goods. The fact that a lessor has taken a formal security interest in the very goods which were leased may not give the lessor any significant additional rights to those a lessor would normally enjoy, but the lessor's status as a secured party under the Uniform Commercial Code, for example, could affect the lessor's rights and duties with respect to the procedures for retaking the goods on default, or with respect to the consumer's liability for a deficiency judgment. Consequently, staff concludes that disclosures must be made whether the security interest is in the leased property or in other property.

2. As another approach, you indicate that some leases disclose that a third party financier will take a security interest in the lessor's reversionary interest in the goods and in the lessor's right to payment under the lease itself. This presumably refers to commercial security interests in the lessor's receivables retained by banks or others who make commercial loans to the lessors.

By the explicit language of § 226.15(b)(9), however, a security interest need be described only when it is "held or to be retained *by the lessor* in connection with the lease." The concern of the regulation is with interests security the lessee's obligation to the lessor, and not with secondary security interests in the chattel paper held by commercial financiers. The staff would conclude, therefore, that the disclosure of third-party security interests is inappropriate.

3. Apparently, State law in your area requires that for certain vehicle leases the lessee must be shown on the registration and title certificates as the "registered owner," and the lessor as the "legal owner." These are the same designations that would be used to describe the debtor and creditor in a traditional credit sale. You indicate that because of this requirement some lessors are disclosing the existence of a security interest in the leased vehicle whenever the lessee is designated the "registered owner."

4. You also indicate that some lessors are making a blanket statement that a security interest as defined in the Uniform Commercial Code, or as defined in Regulation Z, is being retained, and that such statements reflect an "excess of caution" by lessors who are uncertain whether a court might later treat their transactions as security interests under either of those definitions.

These latter two types of disclosures share common characteristics. In both, the lessor apparently does not intend to take a formal security interest in the leased goods and does not contract for one in the lease agreement. (Indeed it would be somewhat inconsistent with the lessor's desire to engage in "leasing" transactions to do so.) Rather, these lessors are apparently fearful that courts might subsequently find that their leases fall within the definition of a security interest in Regulation Z or in provisions of State law and are disclosing a security interest merely as a precaution. Staff believes, however, that the mere filing of a Uniform Commercial Code financing statement or the description of the lessee as the "registered owner" on a title certificate does not convert a true lease into a secured transaction. Such filings or notations may serve purposes quite different from creating a security relationship between a lessor and a lessee. Those purposes might include protecting the lessor's right from the claims of a lessee's creditors, or determining the applicability of automobile financial responsibility laws. Thus, the staff would conclude that disclosure of a security interest under § 226.15(b)(9) is not required unless the lessor in fact intends to create or reserve a security interest to secure the lessee's performance under that lease.

The staff recognizes that lessors may find themselves in something of a dilemma: if they do not mean to take a security interest and so do not disclose one, a court may later determine that the "lease" nonetheless constituted a secured transaction, and that the lessor has violated the Act by failing to disclose the security interest. The staff is not convinced, however, that the uncertainty is so great that lessors cannot make safe judgments. Since the Truth in Lending Act first went into effect in 1969, lessors have had to make similar judgments as to whether or not their "lease" transactions fit within the definition of "credit sale" under § 226.2(t) of Regulation Z, thus requiring the full range of Truth in Lending credit disclosures.

We appreciate that, with the limited scope just described, there may be relatively few instances in which true leases will need to contain security interest disclosures. Nothing in the legislative history of the Consumer Leasing Act suggests any intent to re-characterize any true lease as one constituting or containing a security interest. Those determinations remain within the province of State law and the agreement of the parties.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation and limited in its applicability to the facts and issues outlined herein. We trust it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

§ 226.8(g). The 8(g) disclosures constitute "all other material disclosures" referred to in 9(a) so as to begin running of the rescission period; the 8(h) disclosures along, however, are insufficient.

§ 226.8(h). The 8(g) disclosures constitute "all other material disclosures" referred to in 9(a) so as to begin running of the rescission period; the 8(h) disclosures alone, however, are insufficient.

§ 226.9(a). The 8(g) disclosures constitute "all other material disclosures" referred to in 9(a) so as to begin running of the rescission period; the 8(h) disclosures alone, however are insufficient. Right of rescission applies to each transaction on an open end account.

JULY 8, 1977.

This is in reply to your letter of * * *, in which you request an official staff interpretation concerning the operations of your client, a company selling building materials to customers who construct their own homes. Pursuant to a written agreement, the company provides the customer with the materials needed to build the "basic home." The customer agrees to pay in full within three years from the first delivery of materials, and the obligation is secured by the home being

built and the land on which it is located. The company provides the disclosures for the sale of these mobile home materials as well as the notice of the customer's right to rescind.

The company also grants the customer an option to purchase certain additional materials, such as kitchen cabinets, plumbing, heating, floor tile, etc., at prices prevailing at the time of purchase. The customer may exercise the option with respect to any or all of the additional materials, and any purchase resulting from that exercise is added to the total obligation to the company. Some, but not all, of these additional purchases are secured by the company's security interest in the home. Your question concerns the manner in which you propose to treat the purchase of the additional purchases.

Where local law permits, the company intends to adopt an open end credit system, establishing a line of credit for each customer against which all of the additional purchases will be charged. Prior to the first transaction on the account, the company will provide the disclosures required by § 226.7(a) and, thereafter, will provide the disclosures required by § 226.7(b) on periodic billing statements. Whenever the amount of a particular purchase will be added to the portion of the total obligation secured by the home, the company will provide the customer with a notice of the rescission right as required by § 226.9. The company will send the notice to the customer upon receipt of the customer's order for additional materials, inserting a date in the notice for the end of the rescission period six days from the date it mails the notice to the customer. The company will delay shipping the additional material until three days following the expiration of the customer's right to rescind. The customer will be advised that, in those instances where the amount of an additional purchase will not be added to the amount secured by the home, no notice of rescission will be sent.

It is staff's opinion that the procedures described above comply with the requirements of Regulation Z, provided that the estimated dates inserted in the § 226.9(b) notice and the delay for shipping make full allowance for mailing time. It has long been staff's position that each transaction on an open end account secured by the customer's home is subject to the right to rescind. Consequently, the § 226.9(b) notice should be provided in each case, and the company should delay its performance (*i.e.*, shipping of the additional purchases) in accordance with § 226.9(c).

In those States in which the company is precluded from utilizing an open end credit plan, it will structure its practices to comply with §§ 226.8(g) and 226.8(h). At the time the customer enters the contractual relationship with the company, he or she will be informed of the right to make additional purchases. The company will require the customer's approval of the annual percentage rate to be applied to the additional purchases as well as the method of treating any unearned finance charge on an existing outstanding balance in computing the finance charge. We understand that the company retains no security interest in property for which it has received payments equaling the sale price of that property plus any finance charge attributable thereto.

When the customer indicates a desire to exercise the option, the company mails printed information describing the additional items available, from which it is possible to determine the cash price, downpayment, finance charge, deferred payment price, annual percentage rate, and the number, frequency and amount of the payments with respect to any of the additional purchases. The specific disclosures concerning each such additional purchase will be deferred until the month during which the first payment is made with respect to that purchase. In those cases where the cost of the additional purchase will be secured by the security interest in the home, the notice of the right of rescission will be sent to the customer in the same manner set forth above in connection with the open end plan. In those instances in which the purchase price of additional materials will not be added to the amount so secured, the company will clearly indicate that fact to the customer.

You ask whether these procedures for the closed end credit plan, in which specific disclosures for a particular purchase of additional materials are delayed until the time the first payment for that purchase is due, comply with the requirements of Regulation Z. In particular, you wish to know if the timing of the rescission notice is proper and if the company has properly delayed performance in accordance with § 226.9(c).

Section 226.9(a) provides that the three-day right of rescission begins on the date the transaction is consummated or the date of delivery of the rescission notice "and all other material disclosures required by this Part, whichever is later." It is staff's opinion that where a creditor is making use of the provisions of § 226.8(g) and has provided its customers with printed information from which the items listed in that section can be determined, this information constitutes the "other material disclosures" referred to in § 226.9(a). The purpose behind the requirement that the rescission period begin only after delivery of the material Truth in Lending disclosures is to ensure that the customer has knowledge of the important credit terms and can properly evaluate whether to continue with the transaction. Since the printed information provided by the company supplies these terms, the customer should be in a position to intelligently choose whether or not the transaction should be rescinded.

Staff does not believe, however, that the information provided pursuant to § 226.8(h) would by itself be sufficient to constitute the "other material disclosures" referred to in § 226.9(a). The § 226.8(h) disclosures concern only the annual percentage rate and treatment of unearned finance charges on the existing balance; they do not provide enough information concerning all of the important credit terms so as to allow the customer to intelligently make a decision concerning rescission. Of course, since your client will be making the disclosures listed in both paragraphs (g) and (h) of § 226.8, the customer will have the necessary information to make the decision.

In the situation described above, where your client makes use of both paragraphs (g) and (h) of § 226.8, the rescission period will begin upon delivery of the § 226.9(b) notice to the customer. Since the company will delay shipping of the additional purchases until three days following expiration of the rescission period, compliance with the delay of performance requirements of § 226.9(c) will be achieved, provided again that full allowance has been made for mailing time when the company inserts the dates in the rescission notice and delays shipping of the materials.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation and limited to the facts and issues presented herein. I trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

§§ 226.808, 226.810, and 226.8(b)—Where credit plan involves both variable rates and uneven payment amounts, creditors may combine procedures under §§ 226.808 and 226.810 until Oct. 10, 1977, and §§ 226.808 and 226.8(b)(3) thereafter.

JULY 8, 1977.

This is in response to your letter of * * *, wherein you request an official Board interpretation or official staff interpretation as to whether the procedures outlined in Board Interpretations §§ 226.808 and 226.810 may be combined when making disclosures for closed end loans involving both a variable rate feature and payments which include a constant principal component and a finance charge component which is not constant. In addition, you ask whether § 226.8(b)(8), which was still in the proposed stage when you wrote your letter, and the provisions of § 226.808 may be combined when making disclosures for such loans when § 226.8(b)(8) becomes effective.

You indicate that your client makes consumer loans with repayment terms as follows:

Consecutive equal monthly instalments of principal and consecutive monthly instalments of accrued interest. The rate of interest shall be equal to 3 percent above the prime rate of creditor in effect from time to time for ninety-day loans to substantial and responsible commercial borrowers, each change in such rate to take effect on the day (whether or not a business day) such changes in such prime rate shall become effective; *Provided, however,* That the interest rate shall at no time be less than eight percent per annum or exceed fourteen and one-fourth percent per annum.

Staff believes that combining the disclosures called for in §§ 226.808 and 226.810 is permissible. The basic approach outlined in your letter by which you plan to combine the disclosures is satisfactory. Unfortunately, due to limited time and resources, staff has a policy of not reviewing individual creditors' forms. Consequently, staff cannot state whether the proposed language you submitted complies with the regulation in this regard.

You also ask several questions regarding the recent amendment to Regulation Z (§ 226.8(b)(8)) concerning variable rate disclosures. The amendment, as adopted, differs from the one proposed for comment in October, 1976, and I am enclosing a copy of the press release and related FEDERAL REGISTER material which discusses the differences. Since your questions relate to aspects of the proposed amendment which were changed in the final version, it would not be useful to answer them. Instead, I would draw your attention to the fact that § 226.8(b)(8), as finally adopted, requires disclosure of information relating only to increases in the annual percentage rate, rather than to both increases and decreases. Information concerning rate decreases may, however, be given as additional information pursuant to § 226.6(c), if the creditor so desires. You will also note that § 226.8((b)(8) (iii) and (iv) require that the hypothetical examples showing the effect of a rate change be based on an increase in the annual percentage rate of one quarter of one percent, whether or not the credit contract provides for limitations on the rate.

Section 226.8(b)(8) becomes effective on October 10, 1977, and Board Interpretation § 226.810 will be rescinded on the same date. Accordingly, your client may thereafter comply with the requirements of § 226.8(b)(8) and § 226.808 in a combined format if it wishes.

This is an official interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation. It is limited in its scope to the questions presented herein. I trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

§ 226.6(b), 226.6(c), and 226.8(d)—State-required disclosure of per diem finance charge in connection with demand loans secured by residential real property is not inconsistent with required disclosure of total amount of finance charge and may be disclosed as additional information.

JULY 8, 1977.

This is in response to your letter of * * *, requesting an interpretation of Regulation Z with regard to a recently enacted amendment to Maryland's law.

Your letter indicates that Senate Bill No. 216, 1977, amends Md. Ann. Code, Comm'l. Law Art., Tit. 12, Subtit. 1, § 12-106(b)(1)(i) to state that before the execution of a loan contract, the lender shall furnish to the borrower a written statement which sets forth:

The total principal amount of the loan and the total amount of finance charge as defined in the Federal Truth-in-Lending Act to be paid, stated in dollars, except that on loans payable on demand, the total amount of finance charge to be paid shall be stated on a per diem basis * * *.

You state that the bill further provides:

Paragraph (1)(i) of this subsection shall not apply to any loan subject to the disclosure provisions of the Federal Truth-In-Lending Act, if the lender complies with the applicable disclosure provisions of the Federal Act and its regulations provided, however, that the disclosures required by paragraph (1)(i) of this subsection shall be made in connection with any loan secured by residential real property.

In Maryland, by virtue of the above-quoted statute, in addition to required Truth in Lending disclosures, the per diem finance charge must be disclosed in connection with consumer credit transactions involving demand loans secured by residential real property. You ask whether this State law disclosure is inconsistent with Truth in Lending requirements within the meaning of § 226.6(b)(1) and, therefore, must be disclosed in the manner prescribed by § 226.6(c)(1) or (2), or whether the State law disclosure is simply additional information which may be intermingled with the disclosures required by the Truth in Lending Act and Regulation Z.

In connection with demand loans, Regulation Z requires the creditor to disclose the total amount of the finance charge based upon the assumption that the loan will mature in one-half year or on an alternate maturity date if any is stated in connection with the loan. (See § 226.8(d)(3) and § 226.4(g).) However, staff is of the opinion that also stating the finance charge on a per diem basis is not inconsistent with the federally required statement of the total amount of the finance charge. The per diem finance charge required to be disclosed by Maryland law is merely a fractional part of the total finance charge and may be shown with the required Truth in Lending disclosures as long as it is not "stated, utilized, or placed so as to mislead or confuse the customer * * * or contradict, obscure, or detract attention from the information required * * * to be disclosed" under Regulation Z. (See § 226.6(c).)

Finally, it should be noted that § 226.8(d)(3) of Regulation Z does not require the creditor to disclose the total amount of the finance charge in the case of a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling. Hence, if a demand loan involves this type of security, disclosure of the per diem finance charge as required by Maryland law would clearly not be inconsistent with any Truth in Lending requirement but would simply be additional information to be disclosed in accordance with § 226.6(c).

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation and limited to the facts and issues discussed herein. I trust that this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

§ 226.2(d)—Market research material made available to customers which contains triggering terms is not an advertisement.

JULY 6, 1977.

This is in response to your letter of * * *, in which you requested an official staff interpretation regarding §§ 226.2(d) and 226.10(c) of Regulation Z.

In your letter, you stated your client (a bank) currently operates an open end credit check overdraft plan (old plan). The bank is considering the advisability of terminating the old plan and offering a revised form of check overdraft credit (new plan), and wishes to conduct a market research project to aid in its determination of whether to convert from the old plan to the new plan. This market research project would involve interviewing approximately 400 to 600 customers of the bank at random when they came into a branch of the bank. Those interviewees who are users of the old plan would be presented with a brief description of the new plan and asked their reaction (i.e., whether they view it as more favorable, less favorable, or no different from the old plan). In addition, they would be presented with brief written comparisons on cards indicating the more fundamental differences between the old plan and the new plan. They would then again be asked what differences they perceived between the old plan and the new plan, which they would prefer, and whether they would convert to the new plan should it be offered by the bank. Interviewees who indicate that they would not wish to convert would be shown a card setting forth the effect upon their participation in the existing old plan if they did not convert and if the conversion to the new plan were effected by the bank. They would then be asked, based upon that description, whether they would convert to the new plan or decline the new plan and, if the latter, whether they would seek a similar line of credit from another bank.

You indicate that the descriptive cards which would be shown to the interviewees will disclose the differences between the monthly instalment requirements under the old plan (1/20 of the credit line) and under the new plan (at the customer's election, 1/12, 1/24, or 1/36 of his credit line, or of the balance outstanding at the end of the last month in which a loan was made, whichever is less). You point out that the disclosure in an advertisement of the number of instalments in which a loan may be repaid would constitute a disclosure of the "period of repayment" and would trigger the requirement under § 226.10(c) that the additional disclosures provided for therein be made. You have asked whether the proposed market research as described above would be considered an "advertisement" within the meaning of § 226.2(d).

Staff is of the opinion that the market research plan that you have outlined which involves the disclosure of the period of repayment for the old plan and the new plan would not be considered an advertisement as defined in § 226.2(d). The program does not constitute a solicitation for the old plan since only current participants therein will be interviewed. No extension of credit is offered or will be extended in connection with any interview, and the results of the interview could conceivably, together with other relevant considerations, result in a determination by the bank not to offer the new plan. The interviews are designed to elicit reactions, and the disclosures made are only for the purpose of providing to the interviewee the background necessary to respond to the questions. Staff does not feel that the market research outlined involves commercial messages so as to constitute an advertisement under § 226.2(d).

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) of the regulation and confined to the facts as stated. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

Board of Governors of the Federal Reserve System, July 20, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-21643 Filed 7-26-77;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 153—ANTIDUMPING

Cast Iron Soil Pipe From Poland; Revocation

AGENCY: United States Treasury Department.

ACTION: Revocation of a finding of dumping.

SUMMARY: This notice is to inform the public that cast iron soil pipe from Poland is no longer being sold at less than fair value under the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or third countries. As a result of this action, shipments of this merchandise which were entered or withdrawn from warehouse, for consumption on or after February 10, 1977, will not be liable for special dumping duties.

EFFECTIVE DATE: February 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. William T. Trujillo, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On November 2, 1967, a finding of dumping with respect to cast iron soil pipe from Poland was published in the FEDERAL REGISTER as T.D. 67-252 (32 FR 15155). A "Notice of Tentative Determination to Modify or Revoke Dumping Finding" applicable to this merchandise was published in the FEDERAL REGISTER of February 10, 1977 (42 FR 8446-7).

Reasons for the tentative determination were published in the above-mentioned notice, and interested persons were afforded an opportunity to provide written submissions or request the op-