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[F.R. Doc. 69-4138; Filed, Apr. 8, 1969;
8:48 a.m.]

FEDERAL RESERVE SYSTEM

[12 CFR Part 226]

[Reg. Z]

TRUTH IN LENDING

State Exemption Procedures and Criteria

The Board of Governors of the Federal Reserve System is considering the adoption of the following Supplement II to Part 226 (Regulation Z), containing procedures and criteria under which any State may apply for an exemption from Chapter 2 of the Truth in Lending Act, which is Title I of the Consumer Credit Protection Act (Public Law 90-321, 82 Stat. 146).

The Federal Truth in Lending Act, which becomes effective on July 1, 1969, provides in section 123 that the Board shall exempt from the requirements of Chapter 2 of the Act "any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed," by the Federal law, and "that there is adequate provision for enforcement." The Truth in Lending provisions relating to the advertising of credit do not fall within Chapter 2 of the Act, and consequently will remain subject to Federal jurisdiction although a State may otherwise have obtained an exemption for a class of credit transactions.

This notice is published pursuant to section 553(b) of Title 5, United States Code, and § 262.2(a) of the rules of procedure of the Board of Governors of the Federal Reserve System.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, or arguments. Such comments should be submitted in writing to the Board by April 30, either directly or through the 12 Federal Reserve Banks. (15 U.S.C. 1601-1605)

Dated at Washington, D.C., this 1st day of April 1969.

By order of the Board of Governors.

[SEAL] ROBERT P. FORRESTAL,
Assistant Secretary.

SUPPLEMENT II TO REGULATION Z

PROCEDURES AND CRITERIA UNDER WHICH ANY STATE MAY APPLY FOR EXEMPTION PURSUANT TO PARAGRAPH (A) OF § 226.12

(a) *Procedure.* Any State may make application to the Board for its determination that under the laws of that State,¹ any class of transactions within that State is subject

¹ Any reference to State law in Supplement II includes a reference to any regulations which implement State law, and to applicable judicial decisions.

to requirements substantially similar to those requirements imposed under Chapter 2 of the Act² and that there is adequate provision for enforcement. Such determination shall constitute an exemption of such class of transactions from the requirements of Chapter 2 of that Act. Any such application shall be:

(1) Made with respect to any class of transactions described in subparagraph (c) (1) which involves creditors who extend, arrange to extend, offer to extend, or offer to arrange to extend consumer credit in connection with such transactions within the State; and

(2) Made by letter addressed to the Board, signed by an appropriately authorized officer of the State, and submitted in triplicate of which only the original need be signed.

(b) *Supporting documents.* Each copy of the application shall be accompanied by:

(1) A copy of the authorization under which the application is filed;

(2) A copy of the laws of the State which the applicant maintains to be substantially similar in requirements to those requirements imposed under Chapter 2 of the Act;

(3) A statement by legal counsel for the State setting forth detailed comparisons of the requirements of State law and the requirements of Chapter 2 of the Act with supporting opinions and reasons showing that applicable requirements of State law are substantially similar to those imposed under Chapter 2 of the Act, that any differences are not inconsistent with the requirements of Chapter 2 of the Act, and that there are no other State laws which are inconsistent with the requirements of Chapter 2 of the Act.

(4) A copy of the laws of the State which provide for enforcement of the State laws referred to in subparagraph (2) of this paragraph; and

(5) A statement by legal counsel for the State with supporting opinion and reasons showing that provisions of State law referred to in subparagraph (4) of this paragraph with regard to administrative enforcement, criminal liability for willful and knowing violation, civil liability for failure to make required disclosures, and remedies for incorrect disclosures constitute adequate provision for enforcement.

(c) *Criteria for determination.* The Board will consider the following criteria in making a determination of whether the law of a State imposes requirements substantially similar to those requirements imposed under Chapter 2 of the Act, and whether there is adequate provision for enforcement of such laws:

(1) A class of transactions shall be:

(i) Transactions under open end consumer credit plans which are subject to the requirements of section 127 of the Act;

(ii) Consumer credit sale transactions not under open end credit plans which are subject to the requirements of section 128 of the Act; or

(iii) Consumer loan transactions not under open end credit plans which are subject to the requirements of section 129 of the Act.

(2) In order for requirements of State law to be substantially similar to requirements imposed under Chapter 2 of the Act, the provisions of State law³ shall require that:

² Any reference to Chapter 2 of the Act or any section thereof in Supplement II includes a reference to the implementing provisions of this part.

³ This paragraph is not to be construed as indicating that the Board would consider adversely any additional requirements of State law which are not inconsistent with the purpose of the Act or the requirements imposed under Chapter 2 of the Act.

(i) Creditors make disclosures and deliver notices in form, content, and terminology and under definitions and rules of construction prescribed in this part;

(ii) Creditors make disclosures of the finance charge determined as prescribed in § 226.4;

(iii) Creditors make disclosures of the annual percentage rate determined as prescribed in § 226.5;

(iv) Customers shall have a right to rescind certain transactions and will be afforded remedies in event of rescission as provided in § 226.9;

(v) Creditors make delivery of required disclosures and notices in the circumstances and at the time prescribed in §§ 226.7, 226.8, and 226.9, as applicable, and if the Comparative Index of Credit Cost is permitted or required to be disclosed, in accordance with § 226.11; and

(vi) Creditors comply with general disclosure requirements prescribed in accordance with paragraphs (a), (d), and (i) of § 226.6.

(3) In determining whether provision for enforcement of State law referred to in subparagraph (2) of this paragraph is adequate, consideration will be given to the extent to which State law provides for:

(i) Administrative enforcement;

(ii) Criminal liability for willful and knowing violation;

(iii) Civil liability for failure to make required disclosures; and

(iv) Remedies for incorrect disclosures.

(d) *Exemption from requirements of Chapter 2.* If the Board determines that under the law of a State any class of transactions is subject to requirements substantially similar to those requirements imposed under Chapter 2 of the Act and that under the law of that State there is adequate provision for enforcement, the Board will exempt such class of transactions in that State from the requirements of Chapter 2 of the Act in the following manner and subject to the following conditions:

(1) The proposed exemption will be published as a notice of proposed rule making in the FEDERAL REGISTER, and time will be allowed for written comments to be submitted to the Board;

(2) If and when the Board issues its exemption of a class of transactions within any State from the requirements imposed under Chapter 2 of the Act, the official who made application for such exemption will be so notified in writing, and notice of the exemption will be published in the FEDERAL REGISTER;

(3) During the time that any such exemption is in effect, in order that the Board may be in a position to determine whether the State law continues to impose requirements substantially similar to those requirements imposed under Chapter 2 of the Act with respect to the class of transactions to which the exemption applies, and that there continues to be adequate provision for enforcement of such law, any State which receives an exemption shall inform the Board within 30 days of the occurrence of any change in its related law, and shall file with the Board from time to time such reports as the Board may require. The report of any such change shall contain copies of that change together with statements setting forth the information and opinions with respect to that change as specified in subparagraphs (3) and (5) of paragraph (b).

(4) The Board will inform any State which receives an exemption of any subsequent amendments to Chapter 2 of the Act (or the implementing provisions of this part) which might call for amendment of State law or regulations;

(5) The Board reserves the right to revoke any such exemption issued to a State if upon

review it finds that the law of that State no longer imposes requirements which are substantially similar to those requirements imposed under Chapter 2 of the Act or that under State law there is no longer adequate provision for enforcement; and

(6) In the event of revocation of any such exemption, notice of such revocation shall be published in the FEDERAL REGISTER and communicated to an appropriate State official, and the class of transactions affected within that State shall then be subject to the requirements of Chapter 2 of the Act.

[F.R. Doc. 69-4092; Filed, Apr. 8, 1969; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1307]

[Ex Parte No. MC-77]

RESTRICTIONS ON SERVICE BY MOTOR COMMON CARRIERS

Notice of Proposed Rule Making

APRIL 4, 1969.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 12th day of March 1969.

Common carriers by motor vehicle are a public institution upon which the general public must depend for adequate, economical, and efficient transportation. They are engaged in what has always been regarded as a public calling, and by reason of that fact they are subject to specific legal obligations. They must, according to their abilities, serve all who seek their services, and serve them equally and fairly. They may not pick and choose. This Commission's regulatory powers over motor common carriers under the Interstate Commerce Act are designed to enforce these basic obligations comprehensively and strictly. Motor common carrier authority to serve imports a corresponding duty and obligation to serve.

The National Transportation Policy (49 U.S.C., preceding section 1 of the Interstate Commerce Act), declares it to be the purpose of Congress:

"* * * to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; * * *—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.

All of the provisions of the Act are to be administered and enforced with a view to carrying out this congressional policy. In furtherance of these goals it has been

the consistent practice of this Commission to insist that a motor common carrier provide service to the full extent of its operating authority and to discourage the filing of any tariff that would be more limiting or restrictive on the carrier's obligation or undertaking than the terms of its operating authority.

Section 217(a) of the Act requires every common carrier by motor vehicle to file with this Commission tariffs showing all the rates and all services in connection therewith for transportation of property in interstate or foreign commerce. In addition, this Commission has ample authority to require motor common carriers to observe reasonable practices in connection with their rates and services and to consider complaints alleging unreasonable practices in the publication of rates or the conduct of operations. See sections 204(c) and 216(b) of the Act. These and other provisions of the statute establish the comprehensive jurisdiction and broad powers of this Commission to regulate the transportation of property by motor common carriers engaged in interstate or foreign commerce and to establish and enforce reasonable requirements with respect to the provision of continuous and adequate service by such carriers.

We have recently become aware of what appears to be an increasing practice of motor common carriers of property limiting the service rendered or held out to the public. This is accomplished in several ways. For example, a carrier holding a certificate of public convenience and necessity or a certificate of registration, which contains no restriction as to the size or measurement of shipments which may be accepted, nevertheless by tariff publication advises shippers that it will not accept shipments of less than a certain size or weight. Another such carrier provides in its tariffs that certain points on its line will be "served only on shipments of _____ pounds or more." Still other carriers require, by tariff rule or other provision, that charges on all small size shipments be based on a stated minimum weight. In many such instances, an embargo is thereby imposed in effect on small shipments. At the same time, this Commission's records fail to reveal that written embargoes, which properly may only be temporary, have been issued by the carriers imposing such restrictions although the regulations outstanding require:

Whenever any motor common carrier of property subject to the Interstate Commerce Act finds that because of a lack of facilities or personnel, or because it is required to give preference and precedence to other traffic legally entitled to such priority, or because of other compelling circumstances not within the control of the carrier, it is or will be unable to perform all authorized transportation services requested of it, and that it will be necessary for it temporarily to suspend the offering of services in the transportation of any commodity, commodities, or class of traffic, to or from any territory, point, shipper, consignee, or connecting carrier, or over any route, it shall immediately give public notice of such fact by a written notice of an embargo, specifying the extent thereof, the date the embargo is to become effective, its

duration, if known, and the reasons why the placing of the embargo is necessary.

See 49 CFR 1059.1, 1059.2, and 1059.3.

Representative examples of limitations on service imposed by tariff provisions are shown in appendix A to this order. Most, if not all, of these tariff limitations appear in reissuances of or supplements to tariffs previously on file; and the extent to which, if at all, such limitations or restrictions might prevent the rendition of any service authorized and required to be performed by the carriers' operating rights has not been readily ascertainable. Such restrictions, it seems safe to say, would have been questioned had it been known that the scope of the carriers' service obligations under their authorities would thereby be materially lessened.

In these circumstances, it appears that a feasible way in which to achieve sound and impartial regulation, and to be certain that motor common carriers and their customers understand and are constantly aware of the carriers' responsibilities under the Interstate Commerce Act and their respective certificates, is by the adoption of an appropriate tariff rule which will reflect these essential common carrier obligations by forbidding the filing of any tariff restricting the scope of the carriers' authorized operations. A proposed tariff regulation designed to accomplish this purpose is set forth in Appendix B to this order. Under that proposed rule all of the service limitations and restrictions described in this order and in Appendix A thereto would be precluded save where specifically included in the carrier's underlying certificate. We recognize, of course, that a number of existing tariffs would have to be supplemented or reissued for the purpose of eliminating the prohibited restrictions or limitations, and the proposed regulation provides a reasonable time period within which this may be accomplished. Any tariffs or supplements filed after the effective date of the considered regulation, however, would be subject to its requirements.

Upon consideration of the above-described matters and good cause appearing therefor:

It is ordered, That a proceeding be, and it is hereby, instituted under the authority of Part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.) including more specifically sections 204(a) (1), 204(a) (6), 208(a), 212(a), 216, and 217, and pursuant to 5 U.S.C. 553 and 559 (the Administrative Procedure Act), to determine whether the facts and circumstances require or warrant the making of the proposed regulation, or other regulations of similar purport applicable to motor common carriers of property operating in interstate or foreign commerce subject to the Interstate Commerce Act, and for the purpose of taking such other and further action as the facts and circumstances may justify or require.

It is further ordered, That all motor common carriers of property operating in interstate or foreign commerce within the United States and subject to the Interstate Commerce Act be, and they