**§ 381.129 False or misleading labeling on containers.**

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(d)(i) When a product containing cheese includes in its name the name of a specific cheese or the term "cheese," any cheese substitute or imitation cheese used as an ingredient must also be indicated in the name of the product. Such ingredients shall appear in the product name in identical type, in their order of predominance by formula weight. For example, the name of a sandwich spread formulated, in part, with 10 percent cheddar cheese and 15 percent cheddar cheese substitute, might be called "Chicken, Cheddar Cheese Substitute and Cheddar Cheese Spread." If the cheese substitute were nutritionally inferior to cheese the product might be called "Chicken, Imitation Cheddar Cheese and Cheddar Cheese Spread."

(ii) When a product containing cheese substitute or imitation cheese does not declare "cheese" in the product name, but the product otherwise purports or would be reasonably expected to contain cheese, the product name shall be qualified by a phrase declaring that cheese, cheese substitute, or imitation cheese was used in formulating the product. The qualifying phrase "Containing ——— and ———" shall be shown contiguous to the product name, in the same print style, in print no less than one-half the size of the product name. The blanks shall be filled in with the name of the cheese or the term "Cheese," and the name of the cheese substitute or the term "Cheese Substitute," as appropriate in their order of predominance by formula weight. For example, "Chicken Cordon Bleu" would be qualified by "Containing Cheese Substitute and Cheese," in that order if the quantity of cheese substitute exceeded the quantity of cheese. If the cheese substitute were nutritionally inferior to cheese, the product would be qualified by "Containing Imitation Cheese and Cheese," in their order of predominance by formula weight.

(iii) For purposes of this regulation, the term "cheese" refers to any variety of cheese subject to a Food and Drug Administration (FDA) standard of identity regulation. The term "cheese substitute" refers to any ingredient that substitutes for or resembles any cheese. Pasteurized/processed cheese foods and cheese spreads, although also subject to FDA standard-of-identity regulations, shall be considered "cheese substitutes," if used together with, or in place of, a specific variety of cheese. Nonstandardized "cheese substitutes" must be identified by a nonmisleading, descriptive name or common or usual name. The names of cheese substitutes that are nutritionally inferior to the cheese for which they substitute must include the term "Imitation," e.g., "Imitation Cheddar Cheese."

Done at Washington, D.C., on July 25, 1983.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 83-21409 Filed 8-4-83; 8:45 am]

BILLING CODE 3410-DM-M

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 226

**[Reg. Z; Doc. No. R-0477]**

## Truth in Lending; Intent To Make Determinations of Effect on State Laws; New Hampshire and New Jersey

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of intent to make determinations of effect on state laws.

**SUMMARY:** The Board is publishing for comment proposed determinations as to whether certain provisions in the laws of New Hampshire and New Jersey are inconsistent with, and therefore preempted by, the Truth in Lending Act or Regulation Z. The request for preemption determinations concerns state laws governing the offering of cash discounts in the sale of motor vehicle fuel. The Board believes that these laws may be of a type not subject to the Board's preemption authority and specifically requests comment on this question. Alternatively, the Board has assumed—for discussion purposes—that these laws are subject to a preemption determination, and proposes to find that the laws are not preempted.

**DATE:** Comments must be received on or before October 7, 1983.

**ADDRESS:** Comments should refer to Docket No. R-0477 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, NW., Washington, D.C., between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

**FOR FURTHER INFORMATION CONTACT:** Gerald Hurst or Lynn Goldfaden, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3667 or 452-3867.

**SUPPLEMENTARY INFORMATION:** (1) *General.* The Board has received a request for a determination as to whether provisions of certain laws in New Hampshire and New Jersey are inconsistent with, and therefore preempted by, the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR Part 226). This notice is issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(2); 48 FR 4454, February 1, 1983).

Section 111(a)(1) of the act authorizes the Board to determine whether any inconsistency exists between chapters 1 (General Provisions), 2 (Credit Transactions), or 3 (Credit Advertising) of the Truth in Lending Act or its implementing regulation, Regulation Z, and any state law relating to the disclosure of information in connection with consumer credit transactions. Section 171(a) of the act authorizes the Board to determine whether any inconsistency exists between chapter 4 (Credit Billing) of the act or its implementing regulation and any state law relating to credit billing practices.

Section 167(b), the federal statutory provision relevant to these determinations, is located in chapter 4 of the act, but its purpose is to provide an exception for certain cash discounts to the finance charge rules in section 106, which is found in chapter 1. Since section 167(b) is significant only in its relationship to the finance charge rules, the Board believes that section 111(a)(1), instead of section 171(a), provides the appropriate standard for review for preemption determinations concerning the federal cash discount provision.

The Board believes, however, that the state laws addressed in the present preemption request may be outside the scope of the Board's preemption authority under the Truth in Lending Act. The state laws deal with permissible sales and pricing practices in the sale of motor vehicle fuel rather than with the disclosure of information in connection with consumer credit transactions. Section 111(b) of the act, which limits the effect of the federal act on state laws, provides that:

> This title does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, *but not limited to,* laws relating to *the types, amounts or rates of charges, or any* element or elements of charges, permissible under such laws in connection with the extension or use of credit * * *. (Emphasis added.)

If the state laws contained in this request do not fall within the scope of *section 111(a)(1), it appears that the*

Board would not be authorized to make preemption determinations as to those laws. The Board believes that the state laws included in the present request may not be subject to preemption determinations because they do not relate to the disclosure of credit terms. Comment is specifically requested on this point.

If the Board, however, ultimately finds that these state laws are within the scope of section 111(a)(1), it will be necessary to make preemption determinations as to those laws. Therefore, in order to facilitate public comment, this notice includes proposed determinations, on the assumption that the state laws may be subject to the Board's preemption authority.

(2) *Standards for and effect of preemption determinations.* In determining whether a state law is inconsistent with the federal provisions, § 226.28(a)(1) of Regulation Z, which implements § 111 of the act, provides that a state law is inconsistent if it requires a creditor[1] to make disclosures or take actions that contradict the federal law. A state law is contradictory, and therefore preempted, if it significantly impedes the operation of the federal law or interferes with the purposes of the federal statute.

In general, preemption determinations are limited to those provisions of state law identified in the request for a determination. At the Board's discretion, however, other state provisions that may be affected by the federal law also may be addressed.

If the Board determines that a state requirement is inconsistent with the federal law, the state law is preempted to the extent of the inconsistency. Creditors in that state may not make disclosures using the inconsistent term or form, even on a separate document from the federal disclosures. A determination on provisions in the law of one state will have no effect in the validity of similar provisions in other states.

Preemption determinations have an effective date of the October 1 that follows the determination by at least 6 months, as required by section 105(d) of the act. It is expected that these proposed determinations, if adopted, would have an effective date of October 1, 1984, although creditors could begin complying with the determinations before that time.

(3) *Discussion of specific requests and proposed determinations.* In response to a request from a federation of trade associations representing independent petroleum marketers, the Board has reviewed provisions in the laws of New Hampshire and New Jersey. The request is available for public inspection and copying, subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261). The proposed determinations regarding the state laws at issue, together with the reasons for the proposals, are set forth below.

*New Hampshire.* The federation has requested a determination of whether section 339–B:8,II of New Hampshire Revised Statutes Annotated (1981 Supp.) (N.H. Rev. Stat. Ann.), as interpreted by the state Attorney General's office, is inconsistent with, and therefore preempted by, the Truth in Lending Act and Regulation Z. Under that law it is unlawful for any person operating a retail gasoline station to:

> Post a different price at one pump for the same grade of gasoline as is dispensed from another pump when both pumps are supplied from a common storage at the same service station and when the gasoline dispensed from both is represented to be and is sold as the same quality of gasoline; provided, however, that this paragraph shall not prohibit such price differences between a self-service and an attendant-operated pump supplied from a common storage as described hereinabove.

The New Hampshire Attorney General's office, in opinions dated May 26, 1982, and January 21, 1983, has interpreted N.H. Rev. Stat. Ann. section 339–B:8,II as prohibiting the establishment of separate "cash pumps" and "credit pumps" with different posted prices for the same grade of gasoline, but permitting the dealer to vary the price charged for separate sales of gasoline from the same pump according to the method of payment. As a result, dealers in New Hampshire may offer "a discount for cash program which involves the posting and charging of one price for the same grade of gasoline with a discount provided for customers who pay with cash, if advertised and operated in a manner which is neither deceptive nor misleading."

The federation argues that since the federal law contains a provision stating that the establishment of separate pumps or islands for cash and credit sales is an allowable means of offering a cash discount (see Comment 4(b)(9)–3 of the Official Staff Commentary to Regulation Z (12 CFR Part 226, Supplement I; as amended, 48 FR 41343, September 20, 1982) the state law, as interpreted, is inconsistent with federal law, impedes and interferes with the offering of cash discounts, and is preempted. The Board, however, does not believe that the state law is preempted.

In discussing the term "regular price" in the Official Staff Commentary, the staff made clear that offering a discount by establishing separate cash and credit pumps, and posting only the cash or credit prices on these pumps, would be considered an appropriate means of offering a discount under section 167(b) of the act and would not result in a surcharge prohibited under section 167(a)(2). However, this material only describes a permissible means of offering a cash discount under federal law, not a required or the sole means of doing so.

The purpose of the federal cash discount provision is to encourage the offering of cash discounts by removing certain impediments to offering them. Specifically, Congress provided that a discount offered in accordance with section 167(b) of the act would not be a finance charge under the federal Truth in Lending Act, or a finance charge or other charge for credit under state usury or disclosure laws (see section 171(c) of the act). The New Hampshire law does not provide that a discount offered in accordance with the federal law is to be a finance charge for disclosure or usury purposes. Rather, the state law, by prohibiting a particular practice in the sale of gasoline, prohibits one manner of offering discounts that is permissible under federal law while allowing dealers to offer discounts in another manner. As a result, the Board does not believe that the state law significantly impedes or interferes with the federal scheme and therefore the state law is not preempted.

*New Jersey.* The federation has also requested a determination on two provisions of New Jersey law as they have been interpreted in relation to the offering of cash discounts by petroleum retailers. The first provision in question provides:

> A retail dealer may sell similar fuels at different prices to cash and credit customers, and the price posted on top of the pump and on the pump meter shall be the credit purchase price. A conspicuous sign shall also be displayed at the pump or at the island posting the price per gallon (or per gallon and per liter) reduction for cash purchasers of fuels.

New Jersey Administrative Code (N.J.A.C.) § 18;19–2.7(b).

A February 9, 1983 memorandum from the New Jersey Department of Law and Public Safety clarified this provision by stating:

1. All gasoline pumps will show the posted price per gallon and/or liter at the higher or credit card price. A sign

[1] A service station operator accepting credit cards is a "creditor" for limited purposes under § 226.2(a)(17)(iii) of Regulation Z, 12 CFR Part 226.

disclosing the cents-off per gallon discount may be shown at the pump or at the island site. The lower cash price may be posted on a street sign or some other sign not in close proximity to the pumps themselves. This sign shall be accessible to the public.

2. Separate islands for cash and/or credit may be used provided that the pump posted signs and computer prices on both the cash island and credit card island reflect the higher credit card price.

The federation believes that these provisions result in two positions that are contradictory to positions taken by the Board and should be preempted. Specifically, the positions are:

(1) New Jersey law requires the meter on a gasoline pump dedicated to cash sales to display the higher credit card price.

(2) New Jersey law requires the meter on a gasoline pump used for both cash and credit card sales to display the higher credit card price.

With respect to the first position, the federal law does permit a service station operator to designate separate pumps or separate islands as being for either cash or credit purchases while displaying only the appropriate cash or credit price at the pumps. (See Comment 4(b)(9)–3 of the Official Staff commentary to Regulation Z.) The New Jersey law, however, like the New Hampshire law described above, requires certain sales practices to be followed by persons offering cash discounts in the sale of gasoline.

The federal law, as interpreted by the staff, simply gives an example of a permissible means of offering a discount under section 167(b). The federal law does not require the use of this method and a state's decision to prohibit a specific method of offering cash discounts does not significantly impede the operation of the federal law or interfere with its purposes. Therefore, the Board believes that the provisions of New Jersey law are not preempted.

With respect to the second position, the staff has not taken a position as to whether it is appropriate to display the cash price on the meter of a pump used for both cash and credit card sales. However, even if a position had been taken that it was permitted, the Board believes the state law would not be preempted. Once again, the federal law would only be providing an example of a method of giving a discount that is proper under federal law.

The federation also asks for a determination that New Jersey Attorney General's Formal Opinion No. 2—1982 is preempted. The opinion addresses section 56:6–2(e) of New Jersey Statutes Annotated, which provides:

> No rebates, allowances, concessions or benefits shall be given directly or indirectly, so as to permit any person to obtain motor fuels from a retail dealer below the posted price or at a net price lower than the posted price applicable at the time of sale.

Relying largely upon a court decision, *Sperry and Hutchinson Co. v. Margetts*, 15 N.J. 203 (1954), that discusses the Statutory provision, the Attorney General concluded that:

> There is no statutory impediment under the Motor Fuel Act to a motor fuel retail dealer establishing one price for the sale of gasoline to its credit customers and a separate lower price to its cash customers, *provided a discount would approximate the economic value to the retailer of providing a discount to his cash customers.* (Emphasis added.)

The federation argues that this opinion, in implicitly placing a limit on the amount of the discount that can be offered to cash customers, is inconsistent with the federal cash discount provision and therefore should be preempted.

Congress, in passing the Cash Discount Act of 1981, expressly removed the five percent limitation on the amount of a cash discount that could be offered to cash customers and excluded from the treatment as a finance charge in credit card transactions. Once again, however, the federal law is permissive with respect to the amount of a cash discount that is allowed under the federal cash discount provision. The state law, as interpreted, results in an absolute prohibtion on the offering of discounts in a certain manner. The law does not say that cash discounts in excess of a specific amount, or in excess of an amount that approximates "the economic value to the retailer of providing a discount to his cash customers," is to be treated as a finance charge or other charge for credit under state disclosure or usury laws; instead the law prohibits a retail dealer from offering a discount at all under certain circumstances. A retail dealer can offer a cash discount in compliance with the state law and still take advantage of the benefits of the federal cash discount provision, although the dealer may not take advantage of the unlimited nature of the federal cash discount provision. As a result, the Board believes that the state position, as set forth in the formal opinion of the Attorney General, does not significantly impede the operation of the federal law or interfere with its purposes, and therefore is not preempted.

(4) *Comment requested.* Interested persons are invited to submit comments regarding the proposed finding that these state laws are not subject to the Board's preemption authority and the proposed determinations. After the close of the comment period and analysis of the comments received, notice of final action on the proposals will be published in the **Federal Register.**

**List of Subjects in 12 CFR Part 226**

Advertising, Credit, Consumer Protection, Finance, Truth in Lending.

Board of Governors of the Federal Reserve System, August 2, 1983.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 83-21395 Filed 8-4-83; 8:45 am]

**BILLING CODE 6210-01-M**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 460

### Trade Regulation Rule: Labeling and Advertising of Home Insulation

**AGENCY:** Federal Trade Commission.

**ACTION:** Invitation to comment on requested conditional partial exemption.

**SUMMARY:** The Federal Trade Commission invites submission of written public comments on a petition for a partial exemption for manufacturers of loose-fill cellulose insulation products from the requirement in Section 460.5(a)(2) of its trade regulation rule concerning the labeling and advertising of home insulation (16 CFR Part 460). Section 460.5(a)(2) requires that tests to determine the R-value of loose-fill cellulose insulation be conducted at the product's settled density, as determined by the settled density test procedure referenced in the General Services Administration's ("GSA") Federal Specification HH–I–515D (June 15, 1978) or Federal Specification HH–I–515D, Amendment-1 (Oct. 11, 1979). This partial exemption would be conditioned upon the use of an alternative procedure to determine settled density. Under the alternative procedure, loose-fill cellulose insulation manufacturers could determine settled density by applying a multiplier correction factor to the results of the cyclone shaker test procedure which currently is required by GSA's Federal Specification HH–I–515D, Amendment-1 (Oct. 11, 1979).

**DATES:** Written comments regarding the petition to allow the use of the alternative procedure will be accepted until October 4, 1983.

**ADDRESS:** Written comments should be addressed to the Secretary, Federal