Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0672]

Truth in Lending; Intent To Make Determination of Effect on State Law; Wisconsin

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Board is publishing for comment a proposed determination that certain provisions in the law of Wisconsin dealing with disclosures and adjustment notices for variable-rate transactions are not inconsistent with the Truth in Lending Act and Regulation Z.

DATE: Comments must be received on or before October 11, 1989.

ADDRESSES: Comments should refer to Docket No. R-0672 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667. For the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544. Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Board has received a request for a determination that certain provisions of Wisconsin law are inconsistent with the Truth in Lending Act or Regulation Z, and therefore preempted. Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between chapters 1, 2, and 3 of the federal act or the implementing provisions of the regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. These proposed preemption determinations are 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)(3)).

The procedure for requesting a determination and the general procedures followed in making a determination are contained in Appendix A to 12 CFR Part 226.

Section 226.28(a)(1) of Regulation Z, which implements section 111(a)(1) of the Truth in Lending Act, provides that state requirements are inconsistent with, and therefore preempted by, the federal provisions if the state law requires a creditor to make disclosures or take actions that contradict the federal law. Under § 226.28(a)(10, a state law is contradictory, for example, if it requires the use of the same term for a different amount or a different meaning than the federal law, or if it requires the use of a different term than the federal law to describe the same item.

In previous preemption determinations (48 FR 4454, February 1, 1983) the Board developed principles to be applied in making preemption determinations. Such guiding principles require that preemption should occur only in those transactions in which an actual inconsistency exists between the state and federal law. In addition, a state law is not inconsistent merely because it requires more information than federal law or requires disclosure in transactions where federal law requires none.

Preemption determinations are generally 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 will also be addressed.

(2) Discussion of Specific Request and Proposed Determination

The Board has been asked to determine whether specific provisions of the Wisconsin Statutes requiring disclosures and adjustment notices for certain variable-rate transactions are inconsistent with amendments to Regulation Z (12 CFR 226.18(f)(1), 226.19(b)(2), and 226.20(c)) which regulate disclosure of variable-rate transactions. The requesting party asks whether Wisconsin Statutes sections 138.056(4) and (6) requiring creditors to provide consumers with notice of a change in the interest rate and disclosures, respectively, in the case of certain variable-rate transactions are preempted by §§ 226.18(f)(1), 226.19(b) and 226.20(c). The requesting party also questions whether Wisconsin Statutes section 422.421(5), part of the Wisconsin Consumer Act, is preempted by § 226.20(c) of Regulation Z.

A preliminary issue is whether there is an inconsistency between the state and federal definitions of variable-rate transaction. There does not appear to be any substantive difference in the definitions. Furthermore, the term is relevant only with regard to coverage of the respective rules and is not itself a disclosed term. Therefore, there is no basis for preempting the state law definition.

Content of Disclosures Under Wisconsin Statutes Section 138.056(6) and Section 226.19(b) of Regulation Z

The requesting party asked for a determination as to possible inconsistency between the state and federal requirements for early disclosures of variable rate transactions. Section 226.19(b) of Regulation Z applies to transactions secured by the consumer's principal dwelling with a term greater than one year if the annual percentage rate may increase after consummation. Section 226.19(b) requires that specific disclosures be provided at the time an application form is provided or before the consumer pays a non-refundable fee. Wisconsin Statutes section 138.056 applied to variable rate loans secured by first-lien mortgages on principal residences and requires creditors to make certain disclosures before making a variable rate loan.

The state law requires a disclosure that the loan contains a variable interest rate provision; § 226.19(b)(2)(i) requires a disclosure that the interest rate, as well as the payment or term of the loan can change. The state disclosure does not contradict federal law since a creditor could comply with both the state and federal provisions.

The state law requires an identification of the index used in the loan contract as well as the current base of the index; § 226.19(b)(2)(ii) requires identification of the index or formula used, as well as a source of information about the index or formula. The state disclosure does not contradict federal law since a creditor could comply with both provisions. The state law requirement of additional or different information does not by itself make the provision inconsistent with federal law.

The state law requires disclosure of the borrower's prepayment rights on receiving notice of a change in the interest rate; § 226.19(b) has no counterpart. Again, a state law provision is not inconsistent merely because it requires more information than federal law.

The state law requires disclosure that a notice of any interest rate increase must be given to the borrower; § 226.19(b)(2)(xii) requires disclosure of the type of information that will be contained in adjustment notices (including information about the index, interest rate, payment amount, and loan balance) as well as the timing of such notices. The state disclosure does not contradict federal law since a creditor could comply with both provisions.

As there is no requirement that the disclosures required by § 226.19(b) be segregated, creditors could comply with both the state and federal requirements by combining the disclosures in one form. It should be noted, however, that Wisconsin Statutes section 138.056(6) does not specify a precise time for providing disclosures. If a creditor combines the state and federal disclosures, it must provide them at the time specified by § 226.19(b) of Regulation Z (that is, when an application is provided or before the consumer pays a non-refundable fee).

As the provisions of Wisconsin Statutes section 138.056(6) do not contradict federal law, the Board proposes to determine these provisions are not preempted.

Content of Disclosures Under Wisconsin Statutes Section 138.056(6) and Section 226.18(f)(1) of Regulation Z

The requesting party also questioned whether Wisconsin Statutes section 138.056(6) conflicts with § 226.18(f)(1) of Regulation Z, which applies to variable-rate transactions not secured by the principal dwelling with a term of one year or less. Section 226.18(f)(1) requires disclosures of (1) circumstances under which the rate may increase; (2) any limitations on the increase in rate; (3) the effect of a rate increase; and (4) an example of the payment terms that would result from an increase. Disclosures pursuant to § 226.18(f)(1) must be provided to the consumer with the other Truth in Lending disclosures before consummation of the transaction. As discussed above, state law requires disclosure of the variable rate feature, the index and its current value, prepayment rights, and that an adjustment notice must be given. These state disclosures do not contradict federal law since a creditor could comply with both provisions. Moreover, the state law requirement of additional or different information (for example, prepayment rights) does not by itself make the provision inconsistent with federal law. Creditors should note that the § 226.18(f)(1) disclosures (with the exception of the example in section 18(f)(1)(iv)) are required to be segregated from other information pursuant to § 226.17(a)(1). Therefore, a creditor could not combine the state disclosures with those required under § 226.18(f)(1)(i)–(iii). However, if the creditor chooses to place the example in § 226.18(f)(1)(iv) apart from the other segregated federal disclosures, it may be combined with the state disclosures.

The Board proposes to determine these state law provisions are not preempted by the federal law.

Content of Notices Under Wisconsin Statutes Section 138.056(4) and Section 226.20(c) of Regulation Z

The requesting party also asked the Board to determine if the content of the disclosures required under Wisconsin Statutes section 138.056(4) is inconsistent with that of § 226.20(c) of Regulation Z. Section 138.056(4) requires a notice to be sent to the borrower when a change in the interest rate occurs and affects the loan terms. Section 226.20(c) requires a creditor to provide disclosures where an adjustment to the interest rate is made in a variable-rate transaction subject to § 226.19(b). Section 226.20(c) has two timing rules depending on whether payment changes accompany interest rate changes.

State law requires a disclosure of the effective date of the rate change; § 226.20(c) has no counterpart. A state law provision is not inconsistent merely because it requires more information than federal law.

State law requires disclosure of the amount of the rate change. Section 226.20(c)(1) requires disclosure of the current interest rate, as well as prior interest rates. The state disclosure does not contradict federal law since a creditor could comply with both provisions.

State law requires disclosure of changes in the index that resulted in the rate change; § 226.20(c)(2) requires disclosure of the index values upon which both the current and prior rates are based. Again it appears that creditors can comply with both provisions.

State law requires disclosure of the amount of the monthly interest and principal changes resulting from the rate change; § 226.20(c)(4) requires a broader disclosure of the contractual effects of the adjustment, including the new payment due, any change in the term or maturity, and a statement of the loan balance. This state disclosure does not contradict federal law since a creditor could comply with both provisions.

State law requires a disclosure of the borrower's prepayment rights; federal law has no counterpart under § 226.20(c). A state law provision is not considered inconsistent for requiring more information than federal law.

As the provisions of Wisconsin Statutes section 138.056(4) do not contradict federal law, the Board proposes to determine these provisions are not preempted.

Timing Requirements for Notices Under Wisconsin Statutes Section 138.056(4) and Section 226.20(c) of Regulation Z

The requesting party asked the Board to determine whether the timing requirements for notices under Wisconsin Statutes section 138.056(4) make them inconsistent with federal law. Under state law, if the rate change results in an increase in the payments (other than the final payment), the notice must be delivered at least 30 days before the rate change. Notice of a rate change must also be given no later than 15 days after any other rate change not involving an increase in the payments. Section 226.20(c) of Regulation Z requires notice at least once a year if the interest rate has changed, and at least 25, but no more than 120 days, before a payment at a new level is due. This applies to both increases and decreases in the payment.

Although the state timing requirement differs from that in the federal law, it does not contradict it since a creditor could comply with both state and federal provisions. In addition, the state and federal notice requirements could, in most cases, be combined as there is

no requirement for segregated disclosures, and both timing requirements could be met. However, since the federal notice is triggered by a change in payment (and specifies an outer time limit for notification of 120 days), and the state notice is triggered by a change in rate, there may be cases when a combined federal and state notice would not meet both timing requirments. For example, if the consumer makes payments only once a year on July 15th, it appears Wisconsin law would require disclosure by the middle of December (30 days before the rate went into effect). This would be more than 120 days before the new payment is due (July 15th) and thus would not comply with the requirements of § 226.20(c). In such a case, two notices would be required.

As the timing of the notice requirements of Wisconsin Statutes section 138.056(4) does not contradict federal law, the Board proposes to determine these provisions are not preempted.

Timing Requirements for Notices Under Wisconsin Statutes Section 422.421(5) and Section 226.20(c) of Regulation Z

The requesting party also asked the Board to determine whether the timing requirements for notices under Wisconsin Statutes section 422.421(5) make them inconsistent with federal law. This section of Wisconsin law applies to consumer transactions where the amount financed is $25,000 or less and the loan is not secured by a first-lien mortgage. The state law requires a notice of rate changes to be sent in certain circumstances.

Under state law, if the rate adjustment changes the amount of a payment (other than the final payment), notice must be sent to the consumer at least 15 days before the effective date of the rate adjustment. If the rate adjustment is not implemented through a payment change, the notice must be sent to the consumer not later than 30 days after the effective date of the rate adjustment.

This provision of Wisconsin law does not contradict federal law since a Wisconsin creditor could comply with both provisions. As discussed above in conjunction with timing requirements for section 138.056(4) of Wisconsin Statutes, the state and federal notices could, in most cases, be combined as there is no requirement of segregated disclosures, and both timing requirements could be met. However, since the federal notice is triggered by a change in payment (and specifies an outer time limit for notification of 120 days) and the state notice is triggered by a rate change, there may be cases when a combined federal and state notice would not meet both timing requirements. (See the example above.)

As the timing of the notice requirements under Wisconsin Statutes section 422.421(5) does not contradict federal law, the Board proposes to determine these provisions are not preempted.

(3) Comment requested

The Board requests comment on the consistency or inconsistency with the federal law of the provisions in the Wisconsin statutes discussed above. After the close of the comment period and analysis of the comments received, notice of final action on the proposal will be published in the **Federal Register.**

Lists of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

Board of Governors of the Federal Reserve System, July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18213 Filed 8-3-89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 88N-0437]

Cheeses; Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standards of identity for edam cheese (and by cross-reference, gouda cheese), swiss and emmentaler cheese, and swiss cheese for manufacturing to permit the use of antimycotics on the exterior of those bulk cheeses during curing and aging and on the exterior of the cheese for manufacturing. This action responds to a comment on a September 21, 1987, proposal to, among other things, permit similar use of antimycotics on a number of other standardized cheeses. The proposed amendment will reduce waste in cheese manufacturing and will promote honesty and fair dealing in the interest of consumers. Elsewhere in this issue of the **Federal Register,** FDA is amending the standards of identity for several other cheeses to: (1) Permit the use of antimycotics on the exterior of those bulk cheeses, (2) update the formats and language of the standards of identity to make them more consistent with the nine natural cheese standards that FDA revised in 1983 (48 FR 2736; January 21, 1983), (3) provide for safe and suitable functional ingredient categories, and (4) provide for optional ingredient labeling requirements.

DATES: Comments by October 3, 1989. The agency proposes that any final rule that may be issued based upon this proposal shall become effective 60 days after date of publication of the final rule in the **Federal Register.**

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 1987 (52 FR 35426), FDA published a proposal that was based on a petition from the National Cheese Institute (NCI), a trade association representing U.S. cheese manufacturers. In that document, FDA proposed to amend the standards of identity for brick cheese (21 CFR 133.108), brick cheese for manufacturing (21 CFR 133.109), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), granular and stirred curd cheese (21 CFR 133.144), granular cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), muenster and munster cheese (21 CFR 133.160), muenster and munster cheese for manufacturing (21 CFR 133.161), and high moisture jack cheese (21 CFR 133.154) to permit the expanded use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-sized packages for a number of standardized cheeses) on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing.

FDA also proposed to amend several standards to update their format and language to make the standards more consistent with the nine natural cheese standards that FDA had revised to