# 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

**[Regulation Z; Docket No. R-0687]**

## Truth in Lending; Home Equity Disclosure and Substantive Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** The Board is requesting comment on whether to delete or revise a provision in Regulation Z (Truth in Lending) that permits creditors to freeze the credit line when the rate cap on a home equity line is reached. The Board also is soliciting comment on the timing rule for providing disclosures about any repayment phase provided for in an agreement. The rules in question relate to the Home Equity Loan Consumer Protection Act of 1988, which requires creditors to provide consumers with information for open-end credit plans secured by the consumer's dwelling, and imposes substantive limitations on these plans. Although the final regulations implementing the law were adopted in June 1989, questions about the rate cap provision and the timing of disclosures for the repayment phase have been raised in recent litigation.

**DATES:** Comments must be received on or before April 20, 1990.

**ADDRESSES:** Comments should refer to Docket No. R-0687 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 to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) any time. Comments will be available for inspection in the Freedom of Information Office, Room B-1122 of the Eccles Building, between 9 a.m. and 5 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Leonard Chanin, Senior Attorney, or Sharon Bowman, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

### Background

The Home Equity Loan Consumer Protection Act was enacted in November 1988. On January 23, 1989, the Board published for comment a proposed rule to implement the statute (54 FR 3063) and on June 9, 1989, adopted a final rule (54 FR 24670). Compliance with the regulation was mandatory as of November 7, 1989.

On November 1, 1989, Consumers Union filed suit against the Board challenging certain aspects of the regulation. *Consumers Union* v. *Federal Reserve Board,* No. 89-3008 (U.S. District Court for the District of Columbia). Among other issues, Consumers Union challenges the provision in the regulation permitting creditors to suspend advances of credit during any period the rate cap is reached. Consumers Union also challenges the part of the regulation permitting creditors to give disclosures about any "repayment" period (that is, when advances are no longer made and the consumer is paying off the amount borrowed) at the time the repayment period begins, rather than at the time of application. This notice relates to these two issues.

### Proposed Amendments to Regulation Z

(i) *Rate Cap Provision.* Under section 137(c)(1) of the act, creditors are generally prohibited from unilaterally changing the terms of the plan after the account has been opened. Section 137(c)(2) of the act sets forth certain circumstances in which the creditor may prohibit additional extensions of credit or reduce the credit limit for a plan. Under section 105 of the Truth in Lending Act , the Board is authorized to provide for adjustments and exceptions for transactions that the Board believes are necessary or proper to effectuate the act, prevent circumvention or evasion, or facilitate compliance

Pursuant to the statute, the final regulation issued by the Board in June 1989 contained substantive limitations on the way home equity plans may be structured. The regulation incorporates the exceptions in section 137(c)(2) of the act limiting the ability of a creditor to change the terms of a plan after the account has been opened. The regulation adds an exception under which a creditor could freeze a line of credit if the rate cap is reached. Section 226.5b(f)(3)(vi)(G) permits a creditor to suspend additional advances or reduce the credit limit during any period in which the index value plus margin (the APR corresponding to the periodic rate) reaches the maximum APR (lifetime "cap") provided for in the agreement.[1] If the index and margin drop below the cap, credit privileges must be reinstated.

The regulation does not expressly require that the contract (as opposed to the disclosures) state that a creditor has the right to freeze a line of credit if the rate cap is reached. Creditors are specifically required to disclose if they have retained the ability to freeze a line when the rate cap is reached, and this disclosure duty may be met by including it in the agreement. As a practical matter, the Board believes that most creditors who wish to preserve this right include the provision in their contracts.

In the supplemental information accompanying the proposed regulation, the Board noted that the legislative history of the act supports the idea that a creditor could include in the agreement a provision permitting the suspension of advances of credit if the rate cap is reached. Very few commenters addressed this part of the proposed regulation. As a result, the administrative record does not contain much detail concerning this exception.

In the course of the litigation, questions have been raised about the inclusion of this provision in the regulation. In light of these questions, the Board is seeking comment on the advantages and disadvantages to consumers and creditors if the provision is deleted. Comment also is requested on alternatives, such as allowing

[1] Section 226.30 of the regulation, which implements section 1204 of the Competitive Equality Banking Act of 1987, requires creditors to include a maximum rate cap in their agreements for variable-rate open-end plans secured by a consumer's dwelling.

creditors to freeze the line if the rate cap is reached, but requiring them to expressly provide for this circumstance in their contracts.

(ii) *Delayed Timing Provision.* Some home equity plans provide in the initial agreement for two distinct phases: A "draw" period during which advances may be taken and a "repayment" period during which the balance is paid off and no new funds are advanced. Under the regulation, creditors are required to provide complete disclosures about both the draw and the repayment phases of the plan.

Several commenters requested guidance on the applicability of the home equity rule to the repayment phase of a plan. However, there was little discussion in the record on the question of whether consumers or creditors would be better served if the more detailed repayment disclosures were provided with the application or at the time of conversion to the repayment period.

In the supplemental information accompanying the final rule (54 FR 24672), the Board stated that while full disclosure about any repayment phase must be provided, creditors have a choice with regard to when those disclosures must be given. Creditors can either provide the information at the time the other disclosures are given (that is, with the application), or defer the bulk of the disclosures until the repayment phase begins. A sample form, G–14C, was provided in the appendix to the regulation for creditors using the second alternative. (The Board also stated that, even if a creditor chooses to give the bulk of the repayment disclosures at conversion, the basic information about the repayment phase—such as its length and how the minimum payment will be figured—must be provided with the other application disclosures.) The rule concerning delayed disclosure is also reflected in comment 5b–3 of the proposed Official Staff Commentary to the regulation, published for comment on November 22, 1989.

This rule has been challenged in the suit filed by Consumers Union referenced above. In addition there is a concern about whether the rulemaking record contains adequate information to support the Board's action. The Board is soliciting comment on the advantages and disadvantages of the delayed timing rule.

### Comments Requested

Interested parties are invited to submit comments on the proposal. Depending on the resolution of the rate cap and delayed timing issues, the Board may make conforming changes to the regulation, the model forms and clauses in Appendix G, and the Official Staff Commentary. With the final rule the Board also will provide guidance on the effective date of any changes, as well as whether and how any changes should be reflected in creditors' contracts and disclosures. Because prompt resolution of this matter is in the public interest, the comment period is 30 days. The comment period ends on April 20, 1990.

### Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

### List of Subjects in 12 CFR Part 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Truth in lending.

### Text of Proposed Revisions

Certain conventions have been used to highlight the revisions that would be necessary if the regulation were changed. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend Regulation Z, 12 CFR part 226, by removing § 226.5b(f)(3)(vi)(G), by modifying §§ 226.5b(f)(3)(i), 226.5b(f)(3)(vi)(E) and 226.5b(f)(3)(vi)(F), and by removing form G–14C in appendix G.

1. The authority citation for part 226 would continue to read:

**Authority:** Section 105, Truth in Lending Act, as amended by sec. 605, Public Law No. 96–221, 94 Stat 170 (15 U.S.C. 1604 *et seq*); Section 1204(c), Competitive Equality Banking Act, Pub. L. No. 100–86, 101 Stat. 552.

2. The proposed amendment to § 226.5b(f) would read as follows:

### Subpart B—Open-End Credit

**§ 226.5b Requirements for home equity plans.**

* * * * *

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise: * * *

(3) Change any term, except that a creditor may:

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which: * * *

(E) the priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; ►or◄

(F) the creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice ►.◄ [; or (G) the maximum annual percentage rate is reached.] * * *

3. In the alternative, the proposed amendment to § 226.5b(f) would read as follows:

### Subpart B—Open-End Credit

**§ 226.5b Requirements for home equity plans.**

* * * * *

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise: * * *

(3) Change any term, except that a creditor may:

(i) ►Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may ◄ provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment). * * *

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which: * * *

(E) the priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; ►or◄

(F) the creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice ►.◄ [; or (G) the maximum annual percentage rate is reached.] * * *

4. The proposed amendment to Appendix G would be amended by removing Form G–14C as follows:

**Subpart D—Miscellaneous**

**Appendix G—Open-End Model Forms and Clauses**

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[G–14C—Home Equity Sample (Repayment phase disclosed later) * * *]

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By order of the Board of Governors of the Federal Reserve System, March 16, 1990.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 90–6425 Filed 3–20–90; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. 26147; Notice No. 90–7]**

**RIN 2120–AD37**

### Use of Nitrogen or Other Inert Gas for Tire Inflation in Lieu of Air; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); correction.

**SUMMARY:** This action makes a correction to the Notice of proposed rulemaking published on March 5, 1990 (55 FR 7876). In the dates section we inadvertently inserted the wrong date. This action corrects that omission.

**FOR FURTHER INFORMATION CONTACT:** Brenda Courtney, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267–3327.

**SUPPLEMENTARY INFORMATION:**

**History**

This document corrects the comment date previously published in the **Federal Register** of March 5, 1990 (55 FR 7876). The FAA would like to change the July 2, 1990 comment date to read September 3, 1990.

Deborah Swank,

*Acting, Program Management Staff, Office of Chief Counsel.*

[FR Doc. 90–6479 Filed 3–20–90; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 500 and 582

**[Docket No. 89N–0213]**

### Restriction on Level of Copper in Animal Feed; Withdrawal of Proposal

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing its proposed rule that would have limited the maximum level of copper compounds in poultry and swine feed to good feeding practices, not to exceed 15 parts per million (ppm). The circumstances surrounding its use as a substance that is generally recognized as safe (GRAS) under 21 CFR 582.80 remain unchanged.

**FOR FURTHER INFORMATION CONTACT:** Samuel L. Hansard, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 14, 1973 (38 FR 25694), FDA published a proposal that would have placed restrictions on the use of copper compounds in poultry and swine feed. The proposal would have amended the regulations for certain copper substances that are GRAS by limiting to good feeding practices, at a level not to exceed 15 ppm, the amount of copper that could be added to swine and poultry feed. The notice covered the following copper compounds: copper carbonate, copper chloride, copper gluconate, copper hydroxide, copper orthophosphate, copper pyrophasphate, and copper sulfate. The proposal would have amended 21 CFR 121.101(f) (currently 21 CFR 582.80), which provides that these copper compounds are GRAS when used in accordance with good feeding practice.

In 1967, FDA received a new animal drug application (NADA) requesting approval to add copper to swine feed, up to 250 ppm, to promote growth. In reviewing the application, the agency identified questions concerning the safety of human food derived from swine consuming copper. The data then available also raised preliminary questions as to the environmental effects of feeding high levels of copper to animals. In addition, the agency received a report that high levels of copper were being fed to swine and poultry. Accordingly, the agency proposed to limit the levels of copper added to animal feed.

The initial comment period, which closed November 2, 1973, was later extended by FDA to December 12, 1973, by a notice published in the **Federal Register** of November 26, 1973 (38 FR 32496). The comment period was reopened and extended to July 3, 1974, by a notice published in the **Federal Register** of April 4, 1974 (38 FR 12259).

Eighty-four comments were filed with FDA's Dockets Management Branch (HFA–305). The comments included 30 from industry, 22 from university and cooperative extension service faculty, 12 from national associations and state livestock and poultry producer organizations, 1 from the Office of the Secretary, U.S. Department of Agriculture, 1 from the Committee on Agriculture, U.S. House of Representatives, and 18 from other individuals or small groups.

Eighty-one of the 84 comments opposed the proposed restriction. The comments generally stated that the listed copper compounds had been used for some time, were generally recognized as safe and, therefore, should be subject to use solely in accordance with good nutritional feeding practices. A number of the opposing comments expressed strong opposition to what the comments perceived as an attempt by FDA to establish good feeding practices by setting limits on the use of essential nutrients. Other comments emphasized the need for periodic feeding of copper (mainly copper sulfate) as a time-tested nutritional adjunct in modern poultry operations. Many of the comments which opposed the proposal included copies of published research and research reports that substantiated the written comments and supported the examples of industry usage and experience which were submitted.

Three comments favored the FDA proposal. The comments in general stated that the proposed restriction was justifiable, and one comment stated further that the restriction on use should be extended to sheep because that species was more susceptible to copper toxicity.

The 1973 proposal did not provide an estimate of the extent to which swine and poultry were being fed supplemental copper in excess of 15 ppm. The comments submitted in response to the 1973 proposal did not provide a reliable basis for quantifying such use.

There have been no reports of significant increases in feed use levels of copper since 1973. The National