final rule also permitted the use of sodium lactate and potassium lactate in meat and poultry products, except for infant formulas and infant food, for purposes of inhibiting the growth of certain pathogens. This direct final rule was in response to petitions received by Armour Swift-Ekrich and Purac America, Inc.

FSIS provided for a 30-day comment period ending on February 22, 2000. FSIS received no comments in response to the direct final rule. Therefore, the amendments to the regulations will be effective on March 20, 2000.

Done at Washington, DC, on: March 27, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–8007 Filed 3–30–00; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1050]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The revisions address short-term cash advances commonly called ''payday loans.'' The Board is also publishing technical corrections to the commentary and regulation.

DATES: This rule is effective March 24, 2000. Compliance is optional until October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor, Counsel, or Michael L. Hentrel or David A. Stein, Staff Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Janice Simms at (202) 872–4984.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. The act also regulates certain practices of creditors.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

In November 1999, the Board published proposed amendments to the commentary (64 FR 60368, November 5, 1999). The Board received more than 50 comment letters. Most of the comments were from financial institutions, other creditors, and their representatives. Comments were also received from state attorneys general, state regulatory agencies, and consumer advocates. The comment letters were focused on the proposed comment concerning payday loans. Most commenters supported the proposal. A few commenters, mostly payday lenders and their representatives, were opposed.

As discussed below, the commentary is being adopted substantially as proposed. Some revisions have been made for clarity in response to commenters' suggestions. The commentary revision concerning payday loans clarifies that when such transactions involve an agreement to defer payment of a debt, they are within the definition of credit in TILA and Regulation Z. Several technical corrections are being made to the commentary and regulation.

II. Regulatory Revisions

Subpart B—Open-End Credit

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(a) General Rules.

5a(a)(3) Exceptions.

Section 226.5a(a)(3) is republished to correct a technical error. This section was published in its entirety in 1989. (54 FR 13865, April 6, 1989.) A portion of the text was inadvertently omitted from subsequent publications of the Code of Federal Regulations (54 FR 24670, June 9, 1989).

Section 226.12–Special Credit Card Provisions

12(g) Relation to Electronic Fund Transfer Act and Regulation Z.

Section 226.12(g) contains a reference and citation to the Board's Regulation E (Electronic Fund Transfers), 12 CFR Part 205. Technical amendments have been made to conform the citation in section 226.12(g) with organizational changes made to Regulation E in 1996. The references to sections 205.5 and 205.6 of Regulation E are replaced by a reference to section 205.12(a).

III. Commentary Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

2(a)(14) Credit.

The Board proposed to add comment 2(a)(14)–2 to clarify that transactions commonly known as ''payday loans'' constitute credit for purposes of TILA. These transactions may also be known as ''cash advance loans,'' ''check advance loans,'' ''post-dated check loans,'' ''delayed deposit checks,'' or ''deferred deposit checks.''

Typically in such transactions, a cash advance is made to a consumer in exchange for the consumer's personal check, or the consumer's authorization to debit the consumer's deposit account electronically. In either case, the consumer pays a fee in connection with the advance. Both parties understand that the amount advanced is not, or may not be, available from the consumer's deposit account at the time of the exchange. The parties agree, therefore, that the consumer's check will not be cashed or deposited for collection (or the consumer's deposit account debited) until a designated future date. On that date, the consumer may have the option of repaying the obligation or further deferring repayment of the advance. The consumer may repay the obligation in various ways, for example, by providing cash or by allowing the obligee to deposit the consumer's check or electronically debit the consumer's deposit account.

Most commenters supported the proposal because they believed that payday loans are credit transactions. A few commenters opposed the proposal. These commenters questioned whether payday loans should be covered under TILA when applicable state law does not treat such transactions as credit. They were concerned that Regulation Z would preempt state law where, for example, the transactions are regulated under check-cashing laws, and they also

asserted that providing TILA disclosures would result in unnecessary compliance costs. These commenters also questioned whether disclosure of the APR in such transactions provides consumers with useful information. One commenter asserted that the proposed comment's scope was unclear, and believed the comment might be interpreted too broadly, resulting in the application of Regulation Z to noncredit transactions. This commenter also suggested that payday lenders will be unable to determine whether transactions are consumer credit or for an exempt purpose, such as business credit.

For the reasons discussed below, comment 2(a)(14)–2 is adopted to clarify that payday loans, and similar transactions where there is an agreement to defer payment of a debt, constitute credit for purposes of TILA. Some revisions have been made for clarity to address commenters' concerns.

Consistent with section 103(e) of TILA, section 226.2(a)(14) of Regulation Z defines ''credit'' as the right to defer the payment of debt or the right to incur debt and defer its payment. Comment 2(a)(14)–2 is intended to provide an example of a specific transaction that involves an agreement to defer payment of a debt. In these transactions, the consumer receives a cash advance in exchange for the consumer's check or authorization to debit the consumer's deposit account. Because there is also an agreement to defer presentment of the check or defer debiting the consumer's account, there is an agreement to defer payment of the debt. Such agreements are deemed to be ''credit'' as defined by section 226.2(a)(14), however they are described—as payday loans, cash advances, check advance loans, deferred presentment transactions, or by another name. Contemporaneous check-cashing transactions will not be affected where there is no agreement to defer presentment of the consumer's check; the routine delay in debiting a consumer's deposit account during the check collection process does not constitute credit.

TILA, as implemented by Regulation Z, reflects the intent of the Congress to provide consumers with uniform cost disclosures to promote the informed use of credit and assist consumers in comparison shopping. This purpose is furthered by applying the regulation to transactions, such as payday loans, that fall within the statutory definition of credit, regardless of how such transactions are treated or regulated under state law. The fact that some creditors may have to comply with state laws as well as with Regulation Z, and that creditors may bear compliance costs, is not a sufficient basis to disregard TILA's applicability to the covered transactions. Where a creditor is unable to determine if a transaction is primarily for an exempt purpose, such as business-purpose credit, the creditor is free to make disclosures under TILA, and the fact that disclosures are made would not be controlling on the question of whether the transaction was exempt. See Comment 3(a)–1.

A few commenters questioned the effect of the proposed comment on state laws that regulate payday loans and similar transactions. Section 226.28 of Regulation Z describes the effect of TILA on state laws. As a general matter, state laws are preempted if they are inconsistent with the act and regulation, and then only to the extent of the inconsistency. A state law is inconsistent if it requires or permits creditors to make disclosures or take actions that contradict the requirements of federal law. A state law may not be deemed inconsistent if it is more protective of consumers.

TILA does not impair a state's authority to regulate or prohibit payday lending activities. Persons that regularly extend payday loans and otherwise meet the definition of creditor (§ 226.2(a)(17)) are required, however, to provide disclosures to consumers consistent with the requirements of Regulation Z. The Board notes that a number of state statutes expressly require payday lenders to provide federal TILA disclosures. The Board will review any issues brought to its attention regarding the effect of TILA and Regulation Z on particular state laws. Appendix A to Regulation Z outlines the Board's procedures for making such determinations.

Some commenters expressed concern that by referring specifically to ''payday loans,'' the proposed comment might be limited to transactions labeled as such. Comment 2(a)(14)–2 has been modified to address this concern. Transactions in which the parties agree to defer payment of a debt are ''credit'' transactions regardless of the label used to describe them.

In describing payday loan transactions, the proposed comment referred to the fact that consumers typically must pay a fee. Some commenters questioned whether such fees are finance charges for purposes of Regulation Z. These commenters noted that under some state laws, the fees charged for payday loans and similar transactions are not considered interest or finance charges.

A fee charged in connection with a payday loan may be a finance charge for purposes of TILA pursuant to section 226.4 of Regulation Z, regardless of how the fee is characterized for state law purposes. Where the fee charged constitutes a finance charge under TILA, and the person advancing funds regularly extends consumer credit, that person is a creditor covered by Regulation Z. See § 226.2(a)(17). Comment 2(a)(14)–2 has been revised to reflect this guidance.

A few commenters sought clarification on whether payday lenders obtain a security interest in the check provided by a consumer. Under Regulation Z, the existence of a security interest is determined by the applicable state law. See § 226.2(a)(25). Once a security interest is determined to exist, it must be disclosed according to section 226.6(c) for open-end credit plans, or section 226.18(m) for closed-end transactions. If a creditor is unsure whether a particular interest is a security interest under applicable law, the creditor may at its option treat it as a security interest for purposes of TILA. See Comment 2(a)(25)–1.

Comment 2(a)(14)–2 has been added as an example of a specific type of transaction that involves an agreement to defer payment of a debt. Because such a transaction falls within the existing statutory and regulatory definition of ''credit,'' the comment does not represent a change in the law. Generally, updates to the Board's staff commentary are effective upon publication. Consistent with the requirements of section 105(d) of TILA, however, the Board typically provides an implementation period of six months or longer. During that period, compliance with the published update is optional so that creditors may adjust their documents to accommodate TILA's disclosure requirements.

Subpart B—Open-End Credit

Section 226.13—Billing Error Resolution

13(i) Relation to Electronic Fund Transfer Act and Regulation E.

A technical amendment has been made to comment 13(i)–3 to conform a citation to Regulation E with organizational changes made to that regulation. The reference to section 205.11(e) of Regulation E has been replaced with a reference to section 205.11(c).

Subpart C—Closed-End Credit

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain variable-rate transactions.

The Board is adopting technical amendments to comments 19(b)–5, 19(b)(2)–4, 19(b)(2)(vi)–1, and 19(b)(2)(vii)–1 to conform the citations in those comments to section 226.19(b)(2) of Regulation Z, as amended. No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(a) Coverage.

32(a)(1)(ii).

TILA, as amended by the Home Ownership and Equity Protection Act of 1994 (HOEPA), imposes additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. See § 226.32. Such loans are covered by HOEPA if the total points and fees payable by the consumer at or before loan closing exceed the greater of $400 or 8 percent of the total loan amount. HOEPA requires the Board to adjust the $400 amount annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The adjusted amount for 2000 ($451), published on November 5, 1999 (64 FR 60335), is added to comment 32(a)(1)(ii)–2.

32(c) Disclosures.

32(c)(4) Variable-rate.

The Board is revising comment 32(c)(4)–1 to conform the citations in the comment to section 226.19(b)(2) of Regulation Z, as amended. No substantive change is intended.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.5a(a)(3) is revised to read as follows:

Subpart B—Open-End Credit

§ 226.5a Credit and charge card applications and solicitations

(a) * * *

(3) *Exceptions.* This section does not apply to home-equity plans accessible by a credit or charge card that are of the type subject to the requirements of § 226.5b; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; or lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines.

* * * * *

3. In § 226.12, paragraph (g) is revised to read as follows:

* * * * *

§ 226.12 Special credit card provisions.

* * * * *

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 226) or Regulation E (12 CFR part 205) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 205.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

4. In Supplement I to Part 226:

a. Under *Section 226.2—Definitions and Rules of Construction*, under *2(a)(14) Credit.*, paragraph 2. is added.

b. Under *Section 226.13—Billing Error Resolution*, under *13(i) Relation to Electronic Fund Transfer Act and Regulation E.*, paragraph 3. is revised.

c. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions*, paragraph 5. is revised.

d. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(2)*, paragraph 4. is amended by removing ''§ 226.19(b)(2)(xi)'' and adding ''§ 226.19(b)(2)(x)'' in its place.

e. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(2)(vi)*, paragraph 1. is amended by removing ''comments 19(b)(2)(viii)–7 and 19(b)(2)(x)–4'' and adding ''comments 19(b)(2)(viii)(A)–7 and 19(b)(2)(viii)(B)–4'' in its place.

f. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(2)(vii)*, paragraph 1. is amended by removing ''comments 19(b)(2)(viii)–6 and 19(b)(2)(x)–3'' and adding ''comments 19(b)(2)(viii)(A)–6 and 19(b)(2)(viii)(B)–3'' in its place.

g. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *paragraph 32(a)(1)(ii),* the second sentence of paragraph 2. is revised and paragraph 2.v. is added; and

h. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *paragraph 32(c)(4),* paragraph 1. is amended by removing ''§ 226.19(b)(2)(x)'' and adding ''§ 226.19(b)(2)(viii)(B)'' in its place.

SUPPLEMENT I TO PART 226 OFFICIAL STAFF INTERPRETATIONS

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Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(14) Credit.

* * * * *

2. *Payday loans; deferred presentment.* Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a ''payday loan'' or ''payday advance'' or ''deferred presentment loan.'' A fee charged in connection with such a transaction may be a finance charge for purposes of § 226.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under § 226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. See § 226.2(a)(17).

* * * * *

Subpart B-Open-End Credit

* * * * *

Section 226.13—Billing Error Resolution

* * * * *

13(i) Relation to Electronic Fund Transfer Act and Regulation E.

* * * * *

3. *Application to debit/credit transactions-examples.* If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under

§ 205.11(c)(2)(i) of Regulation E, for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under § 205.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of § 226.13(d) and (g) apply only to the credit portion of the transaction.

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

5. *Examples of variable-rate transactions.*

i. The following transactions, if they have a term greater than one year and are secured by the consumer's principal dwelling, constitute variable-rate transactions subject to the disclosure requirements of § 226.19(b).

A. Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (See comment 17(c)(1)–11 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.)

B. Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures under §§ 226.19(b)(1) and 226.19(b)(2)(v), (viii), (ix), and (xii) are not applicable to such loans.

C. ''Price-level-adjusted mortgages'' or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. The disclosures under § 226.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest-rate discounts: Section 226.19(b)(2)(i), (iii), (iv), (v), (vi), (vii), (viii), and (ix). (See comments 20(c)–2 and 30–1 regarding the inapplicability of variable-rate adjustment notices and interest-rate limitations to price-level-adjusted or similar mortgages.)

ii. Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

* * * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. *Annual adjustment of $400 amount.* * * * The $400 figure is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. * * *

* * * * *

v. For 2000, $451, reflecting a 2.3 percent increase in the CPI–U from June 1998 to June 1999, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs and the Secretary of the Board under delegated authority, March 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7714 Filed 3–30–00; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Liquidation of Collateral, Sale of Loans

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: With this rule, SBA amends its regulation regarding the liquidation and sale of loans. As part of a government-wide initiative, federal credit agencies are being directed by the Office of Management and Budget (OMB) to sell their loan portfolios. Previously, SBA amended its regulations to permit the sale of direct and purchased loans made under the authorities of the 7(a) and 501, 502, 503, and 504 programs (64 FR 44109). This final rule will permit SBA to sell its physical disaster home loans, physical disaster business loans and economic injury disaster loans (collectively referred to as Disaster Assistance Loans) in addition to direct and purchased commercial loans. This will include sales of both secured and unsecured Disaster Assistance Loans in performing and non-performing status. The Disaster Assistance Loans will be sold to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale.

DATES: This rule is effective May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Blewett, 202–205–4202.

SUPPLEMENTARY INFORMATION: SBA promulgates without change, a rule which it proposed on January 10, 2000 (65 FR 1349). SBA received no comments on the proposed rule and thus, is publishing the final rule as proposed.

13 CFR 120.540 sets forth SBA's policy for the liquidation of collateral and the sale of commercial loans. SBA amends and expands this rule to include the sale of Disaster Assistance Loans in asset sales. Public Law 104–134, the ''Debt Collection Improvement Act of 1996,'' enacted on April 26, 1996, provides that, ''the head of an executive * * * agency may sell, subject to section 504(b) of the Federal Credit Reform Act of 1990 and using competitive procedures, any non-tax debt owed to the United States that is delinquent for more than 90 days.'' 31 U.S.C. 3711(i)(1).

The Small Business Act, 15 U.S.C. 634(b)(2), provides that ''[The Administrator] may sell at public or private sale * * * in [her] discretion . . . any evidence of debt * * * personal property, or security * * *.'' It further provides in 15 U.S.C. 634(b)(7) that the Administrator may ''take any and all actions * * * when [she] determines such actions are necessary or desirable in * * * liquidating or otherwise dealing with or realizing on loans * * *.'' Pursuant to this statutory authority, SBA is establishing an Asset Sales Program to sell portions of its direct and participation loan portfolios.

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA has determined that this final rule is not a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This regulation concerns the ability of SBA to sell disaster loans as part of SBA's Asset Sales Program. There will be no economic impact upon the small businesses that received those loans because the loans that will be sold are merely changing ownership, so no new