

The United States Customs Service amended its regulations at 19 CFR 122.153 and 122.154 to permit travel to the same three designated airports in a final rule published in the **Federal Register** on October 4, 1999, at 64 FR 53627.

Good Cause Exception

Pursuant to the provisions of 5 U.S.C. 553(a)(1), public notice and comment procedure is not applicable to this rule because this rule falls within the foreign affairs function of the United States. As previously noted, the rule implements a January 5, 1999, announcement by the President that direct passenger flights would be authorized to and from Cuba and other U.S. cities as part of a humanitarian effort designed to reach out and ease the plight of the Cuban people. Because this document is not subject to the requirements of 5 U.S.C. 553, delayed effective date requirements are not applicable.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individuals and families and is intended to facilitate licensed travel to and from Cuba.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This regulation will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal

governments in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 234

Administrative practice and procedure, Aliens Passports and visas.

Accordingly, part 234 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 234—DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

1. The authority citation for part 234 continues to read as follows;

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

2. In § 234.2, paragraph (a) is amended by revising the last sentence to read as follows:

§ 234.2 Landing requirements.

(a) * * * Notwithstanding the foregoing, aircraft carrying passengers and crew required to be inspected under the act on flights originating in Cuba shall land only at John F. Kennedy International Airport, Jamaica, New York; the Los Angeles International Airport, Los Angeles, California; or the Miami International Airport, Miami, Florida, unless advance permission to land elsewhere has been obtained from the Office of Field Operations at Headquarters.

* * * * *

Dated: March 28, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1070]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule amending Regulation Z, which implements the Truth in Lending Act, to revise the disclosure requirements for credit and charge card solicitations and applications. The act requires disclosure of the annual percentage rate (APR) and other cost information in direct mail and other applications and solicitations to open card accounts. The amendments to Regulation Z are intended to enhance consumers' ability to notice and understand this cost information that generally must be provided in the form of a table. Under the final rule, disclosures must be in a readily understandable form and readily noticeable to consumers. The APR disclosed for purchase transactions must be in 18-point type. Cash advance and balance transfer APRs must be included in the table and any balance transfer fee must be disclosed either in or outside of the table. Additional guidance is provided on the requirement that the card solicitation and application disclosures be prominently located, and on the level of detail about cost information required or permitted in the table.

DATES: The rule is effective September 27, 2000; compliance is mandatory as of October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Stipick, Attorney, 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 requiring disclosures about its

terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison-shopping.

The Fair Credit and Charge Card Disclosure Act of 1988 (1988 Act) amended TILA generally to require that the APR and certain other terms (primarily applicable to purchase transactions) be disclosed in direct mail and certain other solicitations and applications to open credit and charge card accounts. The purpose of the 1988 Act was to ensure that consumers receive key cost information about credit and charge cards early enough to have the opportunity to comparison shop for such cards. The 1988 Act generally requires that card application and solicitation disclosures be provided in the form of a table (commonly referred to as the "Schumer box" after the law's chief sponsor) with headings for each item of information. The terms required to be in the table include: the name of the method used for calculating finance charges on an outstanding balance, any minimum finance charge per billing cycle, transaction fee, annual fee, grace period, and the APR for purchase transactions. The card issuer also must disclose any cash advance fee, late payment fee, or fee for exceeding a credit limit. These items may be either in the required table or clearly and conspicuously elsewhere. The applicable disclosures must also be provided for charge cards, which do not have a periodic rate that is used to compute a finance charge.

As with all TILA disclosures, the table is subject to the "clear and conspicuous" standard. Currently, the table meets the "clear and conspicuous" standard if the disclosures are in a "readily understandable form." There are no type-size requirements associated with this standard. The table is also required to be in a "prominent location" on or with the application or solicitation. Under the existing rules, this requirement is met if the table is "readily noticeable to the consumer" but the table need not be in any particular location to satisfy the requirement.

Over the years, the pricing of credit card programs has changed, and the cost disclosures accompanying card issuers' solicitations and applications have become more complex. Multiple APRs may apply to a single program. There may be a temporary introductory rate, a fixed or variable rate for all purchases

after the introductory period expires, and one or more "penalty rates" that apply if, for example, the consumer makes late payments. There may also be separate rates that apply to cash advances and balance transfers.

As interest rates and other account features have become more complex, and disclosures longer, some card issuers have compensated by using reduced type sizes for the table instead of allocating additional space for the disclosures. In such cases, consumers may have difficulty in using the table to readily identify key costs and terms. In contrast, the promotional materials that accompany the credit card application or solicitation may highlight a low introductory APR in a large, easy to read type size; oftentimes without the expiration date in close proximity. The APR in effect after the introductory rate expires typically is disclosed much less prominently—in a smaller type size—and it may only appear in the disclosure table and not at all in the promotional materials. The table may be in a location that is less likely to capture the consumer's attention, for example, on the reverse side of an application or on the last page of a multi-page solicitation.

Even with the format requirements, the current regulatory framework allows substantial flexibility in how and where disclosures are presented. While some card issuers' disclosures are fairly straightforward, other card issuers have created disclosures that are difficult for consumers to use. Accordingly, changes to the current regulatory scheme appear necessary to ensure that consumers receive meaningful disclosures on a more consistent basis, for comparison-shopping.

II. The Proposed Revisions

On May 24, 2000, the Board published proposed revisions to Regulation Z and the accompanying commentary to revise the disclosure requirements for credit and charge card solicitations and applications (65 FR 33499). The proposal was issued pursuant to the Board's authority under the 1988 Act to require disclosure of additional information or to modify disclosures required by the statute if the Board determines that such action is necessary to carry out the purposes of, or prevent evasions of the 1988 Act. See 15 U.S.C. 1637(c)(5). The proposed revisions were also issued under the Board's authority under section 105(a) of TILA to prescribe regulations to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. See 15 U.S.C. 1604(a).

Under the proposal, the APR applicable to purchase transactions would be subject to a type-size requirement, to highlight this information. It would be in 18-point type and would appear with any introductory rate under a separate heading from other APRs, such as the penalty rate. The proposal also more strictly construes the requirement that disclosures be clear and conspicuous by requiring that information in the table be "readily noticeable," in addition to being reasonably understandable. As to type size, disclosures in at least 12-point type were deemed readily noticeable.

The proposal gave additional guidance on satisfying the current requirements that disclosures be prominently located. Under the proposal, disclosures would be prominently located if, for example, they are on the same page as an application or solicitation reply form, or on a separate insert with a reference to the insert on the application or reply form.

To avoid clutter, guidance was proposed to reduce the level of detail required or permitted in the table, and to promote the use of more concise language. For example, card issuers must disclose the penalty rate APR and the conditions under which a rate may be imposed such as when payments are late. Under the proposal, only the rate could be included in the table; all explanatory information must be located elsewhere. The Board also solicited comment on whether additional rates and fees should be disclosed in the table.

The Board received more than 250 comment letters. More than half of the comment letters were from consumers that addressed issues outside of the scope of the proposal. More than 80 comment letters were received regarding the proposed revisions. Most of these comments were from financial institutions and their representatives; about one-fourth were from individual consumers.

In general, most commenters supported the Board's effort to improve disclosures for credit and charge card applications and solicitations. Most industry commenters, however, objected to specific aspects of the proposal or requested clarification of the rules. In particular, industry commenters objected to the use of type-size requirements and stated that the use of italics, bolding, or similar means of making disclosures clear and conspicuous is preferable. They raised concerns about the prominent location standard and requested more flexibility in locating the table within an

application or solicitation. Most industry commenters were supportive of efforts to decrease clutter and use more concise language, and these commenters supported the removal of the penalty rate explanation from the table. They also opposed the inclusion of additional rates and fees in the table. A few industry commenters objected to the Board's proposal to remove the penalty rate explanation from the table and suggested that the disclosure might be overlooked if it were outside the table.

Consumers were generally supportive of the proposal including the stricter clear and conspicuous standard. Consumers that commented generally favored including in one location all rates and fees along with any explanation of how the rates and fees are charged. In particular, they favored including in the table the rate and fee for balance transfers and the cash advance APR.

III. Summary of Final Rule

As discussed below, the Board is adopting the revisions substantially as proposed in order to effectuate the purposes of the 1988 Act and promote more effective disclosure of the costs and terms in credit and charge card applications and solicitations. Some revisions have been made for clarity or in response to commenters' requests for guidance.

Under the final rules, the APR for purchases must be in at least 18-point type and must appear under a separate heading from other APRs, such as the penalty rates. The disclosures must be "readily noticeable," as well as in a "reasonably understandable form." As to type size, disclosures in at least 12-point type would be deemed readily noticeable. Additional guidance is provided for electronic communications to clarify that card issuers comply with the rules if disclosures are provided in the required form even though the consumer may view the disclosures in a different form.

The final rule provides additional guidance on the current requirement that disclosures be prominently located but has been modified from the proposal to provide additional flexibility. Disclosures are sufficiently prominent, for example, if they are on the same page as an application or solicitation reply form. If located elsewhere, the disclosures still would be considered prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures.

As proposed, guidance is provided on the level of detail required or permitted in the table. Under existing rules, the

table must include any increased penalty APR that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit exceeding the credit limit. Card issuers must also provide a description of the specific events that can trigger an increase. To simplify the table, the existing commentary is revised so that only the penalty rates can appear inside the table; the explanatory information must appear outside the table.

Currently the regulation only requires disclosure of the APR for purchase transactions in the table. The final rule also requires disclosure of the APRs for cash advances and balance transfers in the table and the disclosure of balance transfer fees either in or outside the table, as is currently the case for cash advance, late payment, and over-the-limit fees.

Generally, updates to the Board's staff commentary are effective within 30 days of 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 documents to accommodate TILA's disclosure requirements. Accordingly, compliance with the revised credit card provisions is mandatory as of October 1, 2001.

IV. Section-by-Section Analysis of the Final Rule

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures

Section 226.5(a)(1) states the general rule that TILA disclosures for open-end credit plans must be made clearly and conspicuously. Existing comment 5(a)(1)–1 interprets this standard to require disclosures to be in a "reasonably understandable form." Under the final rule, as proposed, this standard is more strictly construed for purposes of the disclosures required under § 226.5a for credit and charge card applications and solicitations. Accordingly, comment 5(a)(1)–1 is revised to reflect this fact, by including a cross-reference to the special rules for § 226.5a disclosures. See comments 5a(a)(2)–1 and –2.

Section 226.5(a)(2) n.9 provides that the APRs under § 226.5a need not be more conspicuous than other disclosures. Footnote 9 is revised by adding a cross-reference to reflect the special type-size rule under § 226.5a for

purchases APRs. Comment 5(a)(2)–1 is also revised to make a technical correction.

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(a) General Rules

5a(a)(2) Form of Disclosures

Disclosures that are required by § 226.5a must be clear and conspicuous and prominently located on or with an application or solicitation or other applicable document. Certain of these disclosures also are required to be in a table format. As proposed, comment 5a(a)(2)–1 is added to establish a stricter standard for satisfying the "clear and conspicuous" standard with respect to credit or charge card application or solicitation disclosures. Comment 5a(a)(2)–2 provides additional interpretative guidance on the requirement that certain disclosures be prominently located. Because the interpretations differ somewhat from those currently provided, they are intended to apply prospectively.

Currently, disclosures meet the "clear and conspicuous" requirement if they are reasonably understandable. To ensure that consumers receive meaningful disclosures on a consistent basis, comment 5a(a)(2)–1 provides that disclosures are clear and conspicuous if they are both reasonably understandable and readily noticeable.

Industry commenters that opposed the revision cited a variety of reasons including the belief that a court might apply the stricter construction of the clear and conspicuous standard under § 226.5a to other sections of Regulation Z. Consumers and their representatives generally favored the stricter construction and thought the revisions would assist consumers in comparison-shopping for credit and charge cards by making disclosures more noticeable.

Many commenters representing financial institutions expressed a belief that the stricter construction of the "clear and conspicuous" standard is unnecessary and the same result could be achieved through more rigorous enforcement of the existing standard. These commenters generally objected to the proposal's use of particular type-size examples. Under the final rule, comment 5a(a)(2)–1 provides, as proposed, that as to type size, disclosures are deemed to be readily noticeable if they are in at least 12-point type. A number of commenters stated that using the example of 12-point type to satisfy the standard would have the effect of establishing a minimum type-size requirement. Accordingly, some commenters suggested that the final rule

use 10-point type as the example of a conspicuous type size, or that the final rule includes additional language clarifying that some disclosures smaller than 12-point may also satisfy the rule. To address commenters' concerns, the comment states that disclosures printed in less than 12-point type do not automatically violate the standard. Disclosures in less than 8-point type, however, would likely be too small to satisfy the standard.

Some commenters requested further guidance on whether the new "clear and conspicuous standard" would apply only to information required to be disclosed in a tabular format, or to all disclosures required under § 226.5a. In response to the comment received, comment 226.5a(a)(2)–1 provides that the stricter clear and conspicuous standard applies to all § 226.5a disclosures.

Comment 5a(a)(2)–2 addresses the requirement that certain disclosures be prominently located. Currently, the standard does not require disclosures to be located in any particular location. For example, card issuers may locate disclosures that are required to be in a tabular format on the reverse side of an application or on the last page of a multi-page solicitation. Consumers may see the promotional materials and fill out the application without being aware that there is additional cost information elsewhere following the application.

Under the proposal, the table would have been deemed to be prominently located, for example, if it appeared on the same page as the application or solicitation reply form, or on a separate insert with a reference to the insert on the application or reply form. Many commenters, including both consumers and some financial institution representatives suggested that card issuers might favor the use of inserts instead of locating the table on the application or reply form. These commenters were concerned that inserts might be overlooked by consumers and they urged that the Board grant flexibility to card issuers that cannot fit their disclosures on the same page as the application. Commenters also requested additional guidance. For example, some suggested that disclosures on the reverse side of a one-page application might be considered to be on the same page as the application. (They would not; each side would be considered a separate page.)

In response to commenters' concerns, comment 5(a)(2)–2 provides additional flexibility. Disclosures that do not appear on the same page as the application or solicitation reply form will also be considered prominently

located if a clear and conspicuous reference to the location of the disclosures is on the application or solicitation reply form indicating that they contain additional information about rates, fees, and other costs, as applicable.

The revised comment clarifies that the tabular disclosures required under § 226.5a(b) must all appear on the same page. Disclosures required under § 226.5a(b)(8)–(11) that appear outside the table must start on the same page as the table but may continue on subsequent pages.

Electronic Disclosures—In September 1999, the Board published a proposal that would amend Regulation Z to authorize creditors to use electronic communication to deliver required disclosures. 64 FR 49722 (September 14, 1999). On June 30, 2000, the Electronic Signatures in Global and National Commerce Act was signed into law, which authorizes the use of electronic records to provide written disclosures to consumers. Pub. L. 106–229, 114 Stat. 464. That law is effective October 1, 2000.

The Board's proposal specifically requested comment on any guidance that may be needed when credit and charge card applications and solicitations are provided by electronic communication. The majority of commenters requested that the Board provide guidance in the final rule on the use of electronic disclosures for credit and charge card applications and solicitations. Some commenters requested clarification that electronically transmitting or posting the APR disclosures in the required type size is sufficient in light of the consumer's ability to alter the appearance of information received electronically. In response to commenters' concerns, comment 5a(a)(2)–1 indicates that if disclosures required by § 226.5a(b) are provided by electronic communication, they are judged for purposes of the clear and conspicuous standard based on the form in which they are provided even though they may be viewed by consumers in a different format.

Commenters also requested guidance on complying with the requirement that certain disclosures be "prominently located" when electronic media are used. This guidance has been provided in comment 5a(a)(2)–2. Electronic disclosures are deemed to be prominently located if they are posted on a web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the

application or reply form, or they are located on the same page as an application or solicitation reply form that contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information as applicable.

5a(b) Required Disclosures

Disclosure of Additional Rates and Fees—The table required under § 226.5a provides consumers with key cost information, grouped together in one place to facilitate consumers' use of the information for comparison-shopping. These disclosures are not intended to be as detailed as disclosures provided to consumers at account opening. At the time the 1988 Act was adopted, the primary focus was on cost disclosures for purchase transactions. Thus, under the current rules the APR and transaction fees for purchases must be disclosed in the table, but not the APR for cash advances.

Because the services and features offered with credit and charge cards have evolved in recent years, the disclosures required by the 1988 Act do not capture costs that are commonly assessed on such cards, such as the APR assessed on a balance transfer (which the card issuer may characterize as a cash advance). Accordingly, the Board solicited comment on whether consumers would be aided in comparison-shopping by having additional rates and fees disclosed in the table. In particular, commenters were asked to address whether the APR and transaction fee for balance transfers and the APR for cash advances should be included in the table.

Many of the consumers and consumer advocates supported the inclusion of additional rate and fee information. These commenters generally favored including the APR and transaction fee for balance transfers and the APR for cash advances. They noted that these card features are common and that disclosure of these terms aids consumers in more effective comparison-shopping. Industry commenters generally opposed the inclusion of new fees and rates. They believe that the application and solicitation disclosures are more likely to be effective if they are simpler. They are also concerned that adding new disclosures based on card issuer's current program features is likely to lead to further expansion of the disclosures in response to new trends in future industry card programs.

On balance, the Board believes that consumers seeking to comparison-shop would benefit from having the APR and

transaction fee for balance transfers and the APR for cash advances provided in a consistent and uniform manner along with other key cost information. Balance transfer features have become common and cash advance features are an integral part of many card programs. Frequently, these features are prominently listed by card issuers in their promotional materials, sometimes as part of an introductory offer that expires after several months. Consumers' ability to understand the offered terms is likely to be enhanced by more uniform disclosure of these terms, particularly as consumers become familiar with the new format. Accordingly, § 226.5a(b)(1) has been revised to include the APR for cash advances and balance transfers in the tabular disclosures. Under the final rule, § 226.5a(b)(11) has also been added to provide that a balance transfer fee must also be disclosed, either in the table, or clearly or conspicuously elsewhere.

APR for Purchase Transactions—Section 226.5a(b)(1) requires card issuers to disclose in the table each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an APR. The final rule is being adopted, as proposed, to require the APR for purchases to be disclosed in the table in at least 18-point type. This type-size requirement does not apply to temporary initial rates, that are lower than the APR that will apply after the temporary rate expires (to the extent such programs exist), or to penalty rates that result upon the occurrence of one or more specific events (such as a late payment or an extension of credit that exceeds the credit limit). See comment 5a(b)(1)–6. The APR for purchases must also appear with any introductory rate under a separate heading from other APRs, such as penalty rates, or rates for cash advances.

The Board proposed the use of this larger type size to highlight the significance of this information, particularly in light of the larger type sizes typically used by card issuers to promote introductory rates. Under existing rules, the APR information is often obscured due to the amount of other information provided in the table and the small type size used by some card issuers.

Consumers and consumer advocates generally believed that the type-size requirement is appropriate to ensure that the APR for purchases is clear and conspicuous. Industry commenters generally opposed the type-size requirement. Many of these commenters stated that the larger type size would place too much emphasis on the APR

for purchases even though consumers may have differing opinions regarding which disclosures are most important. Many industry commenters suggested that highlighting the APR for purchases in this manner would diminish the effectiveness of other disclosures in the table.

Some financial institutions contend that an increase in type size will increase paper and production costs, although few institutions attempted to quantify the cost. One financial institution estimated that under the new rule its paper costs would increase 7% annually. Some credit unions expressed concern regarding increased costs; however, many indicated that the increased costs could be avoided if the final rule does not become effective for at least six months thereby, permitting them to use their existing stock of disclosures.

Overall, the benefits of requiring 18-point type in disclosing the APR for purchases seem to outweigh any potential adverse effects. Even though some consumers comparison-shop for credit and charge cards based on a variety of features, the APR for purchases remains one of the key features that consumers consider. Moreover, many card issuers use larger than 18-point type to promote introductory APRs and other features in their credit and charge card promotional materials. Also, to aid consumers in better understanding the rates being imposed on a card account, card issuers are encouraged to disclose, in close proximity with any introductory rate being promoted, the period of time that the rate is in effect, and the post-introductory APR for purchases.

Rules to Simplify the Table—Card issuers are required to disclose “penalty rates” in the table, along with a description of the specific events that can trigger a rate increase and any index or margin used to determine the penalty rate. Under existing comment 5a(b)(1)–7, card issuers have the option of including this information inside the table or elsewhere. To simplify the table, the comment has been revised to provide that only the penalty rate should appear inside the table; the explanatory information must appear outside the table. Card issuers must use an asterisk or other means to direct the consumer to the additional information.

Most commenters believed that removing the explanatory information from the table would decrease clutter and promote the use of concise language in the table. A few consumers, however, stated that the significant impact of penalty rates justifies leaving the explanation in the table to prevent it

from being overlooked. The Board has determined that consumers are more likely to notice the penalty APRs if the table is uncluttered by removing the explanatory information. Moreover, the stricter interpretation of the “clear and conspicuous” standard should ensure that the explanatory information appears outside in a readily noticeable form.

Appendices G and H to Part 226—Open-end and Closed-End Model Forms and Clauses

Revisions to comment App. G and H–1 are adopted, as proposed, to clarify that there are special rules for disclosures required under § 226.5a for applications and solicitations for credit and charge cards.

Appendix G to Part 226—Open-end Model Forms and Clauses

The Board provides model forms to aid compliance with the disclosure requirements of § 226.5a(b). See Appendix G–10(A)–(C). Model form G–10(A) is revised and model form G–10(B) has been removed as unnecessary. A new sample form G–10(B) is added to illustrate an account with an introductory rate and a penalty rate. The forms also reflect the inclusion of the cash advance APR, balance transfer APR, and the balance transfer fee. Also comment G–5 is revised to clarify that there are format and sequence requirements for certain § 226.5a disclosures.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the amendments to Regulation Z. The amendments require creditors to use a specific type size for the APR for purchases, to add the APR and fee for balance transfers and the APR for cash advances; to provide supplemental information about penalty rates outside the table; and to locate the table on the same page as the application or solicitation reply form, or elsewhere with a reference in the application or reply form to the location and content of the disclosures.

Some smaller financial institutions, particularly credit unions, expressed concerns that the need to revise disclosures to comply would increase costs; however, costs could be minimized by delaying the mandatory compliance date for at least six months thereby permitting them to utilize existing stocks of disclosures. Since the mandatory compliance date is October 1, 2001, the amendments do not have any significant impact on small entities beyond these initial revisions.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The revisions require creditors to revise disclosures for credit card solicitations and applications by: (1) Requiring an 18-point type-size for the APR for purchase transactions, (2) requiring creditors to provide supplemental information about penalty rates outside the table, (3) requiring disclosure of the APR and fee for balance transfers and cash advance APR, and (4) requiring that such table be located on the same page as the application or solicitation reply form or elsewhere with a reference to the location on the application or reply form. Although the final rule adds these requirements, it is expected that these revisions would not significantly increase the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondent/recordkeepers and an average frequency of 136,294 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 1,863,754 hours. Because these revisions modify preexisting tables, there is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the

Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

The Federal Reserve has a continuing interest in the public's opinion of our collections of information. At any time, comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden estimate, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

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 Regulation Z, 12 CFR part 226, as set forth below:

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).

Subpart B—Open-End Credit

2. Section 226.5 is amended by revising footnote 9 to read as follows:

Section 226.5 General disclosure requirements.

* * * * *

⁹ The terms need not be more conspicuous when used under § 226.5a generally for credit and charge card applications and solicitations under § 226.7(d) on periodic statements, under § 226.9(e) in credit and charge card renewal disclosures, and under § 226.16 in advertisements. (But see special rule for annual percentage rate for purchases, § 226.5a(b)(1).)

3. Section 226.5a is amended by:

- a. Revising paragraphs (a)(2)(ii), (a)(5), (b) introductory text and (b)(1) introductory text; and
- b. Adding a new paragraph (b)(11).

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(a) * * *

(a)(2) *Form of disclosures.* * * *

(ii) The disclosures in paragraphs (b)(8) through (11) of this section shall be provided either in the table containing the disclosures in paragraphs (b)(1) through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

* * * * *

(a)(5) *Certain fees that vary by state.*

If the amount of any fee referred to in paragraphs (b)(8) through (11) of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), or (e) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), and (7) through (11) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 18-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that will apply upon the occurrence of one or more specific events.

* * * * *

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

* * * * *

4. Appendix G to Part 226 is amended by:

- a. Revising the table of contents at the beginning of the appendix;
- b. Revising Model G-10(A); and
- c. Removing Model G-10(B) and adding a new Sample G-10(B) in its place.

Appendix G To Part 226—Open-End Model Forms and Clauses

G-1 Balance-Computation Methods Model Clauses (§§ 226.6 and 226.7)

G-2 Liability for Unauthorized Use Model Clause (§ 226.12)

G-3 Long-Form Billing-Error Rights Model Form (§§ 226.6 and 226.9)
 G-4 Alternative Billing-Error Rights Model Form (§ 226.9)
 G-5 Rescission Model Form (When Opening an Account) (§ 226.15)
 G-6 Rescission Model Form (For Each Transaction) (§ 226.15)
 G-7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)
 G-8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)
 G-9 Rescission Model Form (When Increasing the Security) (§ 226.15)

G-10(A) Applications and Solicitations Model Forms (Credit Cards) (§ 226.5a(b))
 G-10(B) Applications and Solicitations Sample (Credit Card) (§ 226.5a(b))
 G-10(C) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))
 G-11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))
 G-12 Charge Card Model Clause (When Access to Plan Offered by Another) (§ 226.5a(f))

G-13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))
 G-13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))
 G-14A Home Equity Sample
 G-14B Home Equity Sample
 G-15 Home Equity Model Clauses
 * * * * *

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G-10(A)—Applications and Solicitations Model Form (Credit Cards)

Annual percentage rate (APR) for purchases	_____ % until (expiration date), after that, _____ %
Other APRs	Balance transfer APR: _____ % Cash advance APR: _____ % Penalty APR: _____ % See explanation below*
Variable-rate information	Your APR may vary. The rate for [purchases] [cash advances][balance transfers] is determined by (explanation). See explanation below**
Grace period for repayment of balances for purchases	[__ days] [until ____] [not less than __ days] [between __ and __ days] [__ days on average] [You have no grace period in which to repay your balance for purchases before a finance charge will be imposed.]
Method of computing the balance for purchases	
Annual fees	[Annual] [Membership] fee: \$ _____ per year [(type of fee): \$ _____ per year] [(type of fee): \$ _____]
Minimum finance charge	\$ _____
Transaction fee for purchases	[\$ _____] [_____ % of _____]
Transaction fee for cash advances:	[\$ _____] [_____ % of _____]
Balance transfer fee:	[\$ _____] [_____ % of _____]
Late-payment fee:	[\$ _____] [_____ % of _____]
Over-the-credit-limit fee:	\$ _____

* Explanation of penalty.

**Explanation of variable rate.

G-10(B)—Applications and Solicitations Sample (Credit Cards)

Annual percentage rate (APR) for purchases	2.9% until 11/1/00, after that, 14.9%
Other APRs	Cash advance APR: 15.9% Balance transfer APR: 15.9% Penalty rate: 23.9%. See explanation below.*
Variable-rate information	Your APR for purchase transactions may vary. The rate is determined monthly by adding 5.9% to the Prime Rate**
Grace period for repayment of balances for purchases	25 days on average
Method of computing the balance for purchases	Average daily balance (excluding new purchases)
Annual fees	None
Minimum finance charge	\$.50
Transaction fee for cash advances: 3% of the amount advanced Balance transfer fee: 3% of the amount transferred Late-payment fee: \$ 25 Over-the-credit-limit fee: \$ 25	

* Explanation of penalty.

** The Prime Rate used to determine your APR is the rate published in _____ on the ____ day of the prior month.

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* * * * *

5. In Supplement I to Part 226, MAKE the following amendments:

a. Under *Section 226.5—General Disclosure Requirements*, under *Paragraph 5(a)(1)*, paragraph 1. introductory text is revised;

b. Under *Section 226.5—General Disclosure Requirements*, under *Paragraph 5(a)(2)*, the first sentence in paragraph 1 is revised;

c. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(a)(2) Form of Disclosures*, paragraph 1 through paragraph 6 are redesignated as paragraph 2 through paragraph 7 respectively, a new paragraph 1 is added, and newly designated paragraph 2 is revised.

d. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(b)(1) Annual*

Percentage Rate, paragraphs 6 and 7 are revised.

e. Under *Appendices G and H—Open-End and Closed-End Model Forms and Clauses*, a new sentence is added after the second sentence in paragraph 1.

f. Under *Appendix G—Open-end Model Forms and Clauses*, paragraph 5 is revised.

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

* * * * *

Subpart B—End Credit

§ 226.5—General Disclosure Requirements

5(a) Form of disclosures.
Paragraph 5(a)(1).

1. *Clear and conspicuous.* The *clear and conspicuous* standard requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not require that disclosures be segregated from

other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. (But see comments 5a(a)(2)–1 and –2 for special rules concerning § 226.5a disclosures for credit card applications and solicitations.) The standard does not prohibit:

* * * * *

Paragraph 5(a)(2).

1. *When disclosures must be more conspicuous.* The term *finance charge* and *annual percentage rate*, when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in footnote 9. * * *

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General Rules

5a(a)(2) Form of Disclosures

1. *Clear and conspicuous standard.* For purposes of § 226.5a disclosures, *clear and*

conspicuous means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of § 226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear and conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.

2. *Prominent location.* i. *Generally.* Certain of the required disclosures provided on or with an application or solicitation must be prominently located. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable. Disclosures required by § 226.5a(b) that are placed outside the table must begin on the same page as the table but need not end on the same page.

ii. *Electronic disclosures.* Electronic disclosures are deemed to be prominently located if:

A. They are posted on a web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form; or

B. They are located on the same page as an application or solicitation reply form, that contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

* * * * *

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

* * * * *

6. *Introductory rates—premium rates.* If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate in the table. The initial rate must be in at least 18-point type unless the issuer also discloses in the table the permanently applicable rate. The issuer may disclose in the table the permanently applicable rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect. In that case, the permanently applicable rate must be in at least 18-point type.

7. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose in the table the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased

margin, the issuer must also disclose in the table the index and the margin as well as the specific event or events that may result in the increased rate, such as “applies to accounts 60 days late.” If the penalty rate cannot be determined at the time disclosures are given, the issuer must provide an explanation of the specific event or events that may result in imposing an increased rate. In describing the specific event or events that may result in an increased rate, issuers need not be as detailed as for the disclosures required under § 226.6(a)(2). For issuers using a tabular format, the specific event or events must be placed outside the table and an asterisk or other means shall be used to direct the consumer to the additional information. At its option, the issuer may include in the explanation of the penalty rate the period for which the increased rate will remain in effect, such as “until you make three timely payments.” The issuer need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* * * * (But see Appendix G comment 5 for special rules concerning certain disclosures required under § 226.5a for credit and charge card applications and solicitations). * * *

* * * * *

APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES

* * * * *

5. Model G—10(A), Sample G—10(B) and Model G—10(C). i. Model G—10(A) and Sample G—10(B) illustrate, in the tabular format, all of the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G—10(B) is a sample disclosure illustrating an account with a lower introductory rate and penalty rate. Model G—10(C) illustrates the tabular format disclosure for charge card applications and solicitations and reflects all of the disclosures in the table.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G—10(A) and (C). The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table. While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings and disclosures other than those in the forms (with an exception relating to the use of “grace period”) if they are clear and concise and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to § 226.5a(a)(2).

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 27, 2000.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 00-25316 Filed 10-2-00; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 774

[Docket No. 000920265-0265-01]

RIN 0694-AC13

Revisions and Clarifications to the Commerce Control List; Chemical and Biological Weapons Controls; Australia Group

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Commerce Control List (CCL) of the Export Administration Regulations to implement an October 1999 Australia Group agreement to clarify the scope of controls on saxitoxin, toxic gas monitoring systems, and cross-flow filtration equipment, as well as clarifying the application of the rule for mixtures containing Australia Group (AG) chemicals that are also identified as Schedule 1 chemicals under the Chemical Weapons Convention. The final rule also amends the CCL to authorize, without a license, exports of certain medical products containing botulinum toxin, and certain diagnostic and food testing kits that contain AG-controlled toxins. Finally, this final rule amends the CCL to add titanium carbide and silicon carbide to the list of construction materials for heat exchangers. Restrictions on chemicals and toxins that are also controlled for CW (Chemical Weapons Convention) purposes continue to apply. This rule will result in an overall decreased licensing burden on U.S. industry.

EFFECTIVE DATE: This rule is effective: October 3, 2000.

FOR FURTHER INFORMATION CONTACT: James Seevaratnam, Director, Chemical and Biological Controls Division, Bureau of Export Administration, (202) 501-7900.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1999, the Bureau of Export Administration (BXA) published a final rule amending the Export Administration Regulations (EAR) to implement the October 1998 Australia Group agreement to amend controls on toxic gas monitoring systems and to amend the CCL to authorize, without a license, exports of medical products containing controlled biological toxins that are developed, packaged and sold for medical treatment.