

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act), requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends part 502, chapter V, title 12, Code of Federal Regulations as set forth below.

PART 502—ASSESSMENTS AND FEES

1. The authority citation for part 502 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

2. Section 502.20 is revised to read as follows:

§ 502.20 How does OTS determine my condition component?

OTS uses the following chart to determine your condition component.

If your component rating is:	Then your condition component is:
1 or 2	Zero.
3	50 percent of your size component.
4 or 5	100 percent of your size component.

Dated: June 13, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

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NATIONAL CREDIT UNION ADMINISTRATION**12 CFR PART 707****Truth in Savings**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its regulation that implements the Truth in Savings Act (TISA). This interim final rule establishes uniform standards for the electronic delivery of disclosures required by TISA. NCUA is also amending its regulation to address electronic advertisements. These amendments conform to the Electronic Signatures in Global and National Commerce Act (E-Sign Act).

DATES: This rule is effective June 21, 2001. To allow time for any necessary operational changes, however, the mandatory compliance date is October 1, 2001. Comments must be received on or before August 20, 2001.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. You may also fax comments to (703) 518-6319 or e-mail comments to regcomments@ncua.gov. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION**A. Background**

Part 707 of NCUA's regulations implements TISA. 12 CFR part 707. The purpose of part 707 and TISA is to assist members in making meaningful comparisons among accounts offered by credit unions and other financial institutions. Part 707 and TISA require, among other things, disclosure of yields, fees and other terms concerning share accounts to members at account opening, upon request, when changes in terms occur and in periodic statements. Many of these disclosures must be written.

In April 2001, The Board of Governors of the Federal Reserve System (Federal Reserve) issued an interim rule amending its Regulation DD, which implements TISA (April 2001 Interim Rule). That rule established uniform standards for the timing and electronic delivery of disclosures required by TISA and Regulation DD, and addressed

electronic advertisements. 66 FR 17795 (April 4, 2001). The Federal Reserve has stated that electronic disclosures can effectively reduce compliance costs for financial institutions and allow them to provide Regulation DD disclosures to the consumer more efficiently without adversely affecting consumer protections. Under that rule, disclosures may be sent by e-mail to an electronic address designated by the consumer, or made available at another location, such as an Internet web site. If disclosures are not sent by e-mail, consumers must receive a notice informing them that they are available elsewhere. If posted to a web site, disclosures must be available for at least 90 days to allow consumers adequate time to access them. For disclosures that must be provided before account opening, consumers are required to access them before the account is opened. Under this rule, financial institutions must make a good faith attempt to redeliver electronic disclosures that are returned as undelivered, using the address information available in their files.

These amendments conform to the E-Sign Act. 15 U.S.C. 7001. The E-Sign Act was enacted in June 2000, to encourage the continued expansion of electronic commerce. It generally provides that electronic documents and signatures have the same validity as paper documents and handwritten signatures. It provides that consumer disclosures may be provided in electronic form only if the consumer affirmatively consents after receiving information specified in the statute. The consumer consent provisions in the E-Sign Act became effective October 1, 2000. Section 101(c)(5) of the E-Sign Act provides that consumers who gave consent prior to the effective date are not subject to those consent requirements.

In September 1999, before enactment of the E-Sign Act, the Federal Reserve issued an interim rule that also amended Regulation DD (September 1999 Interim Rule). 64 FR 49846 (September 14, 1999). With the issuance of the April 2001 Interim Rule, the Federal Reserve has withdrawn the September 1999 Interim Rule.

TISA requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve within 90 days of the effective date of the Federal Reserve's rules. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. In compliance with TISA, as discussed more fully below, NCUA is issuing this interim final rule with

request for comments that is substantially similar to the Federal Reserve's April 2001 Interim Rule.

B. Interim Final Rule

The NCUA Board is issuing this rule as an interim final rule because there is a strong public interest in having in place consumer oriented rules that are consistent with those recently promulgated by the Federal Reserve. Additionally, as discussed above, NCUA is statutorily required to issue rules substantively similar to those of the Federal Reserve within 90 days of the effective date of the Federal Reserve's rules. Accordingly, for good cause, the Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule will be effective immediately and without 30 days advance notice of publication. Although the rule is being issued as an interim final rule and is effective immediately, the NCUA Board encourages interested parties to submit comments.

C. Section by Section Analysis

Section 707.3 General Disclosure Requirements

Section 707.3(a) is revised to reflect that the disclosures required by the newly created § 707.10 pertaining to electronic communications are subject to the same requirements as other disclosures required under part 707. Section 707.3(g) is added to provide a cross reference to other rules governing the electronic delivery of disclosures referenced in the newly created § 707.10.

Section 707.4(a)(1) Account Disclosures—Account-Opening

Credit unions must provide account-opening disclosures to members or potential members before an account is opened or a service is provided. Credit unions may delay delivering these disclosures if the member is not present when the account is opened or service is provided. This section provides that in such cases, account-opening disclosures must be mailed or delivered no later than 20 calendar days after the account is opened or the service is provided, whichever is earlier. The corresponding section in Regulation DD permits a 10-business day delay. NCUA amends this provision to conform to the Federal Reserve's time frame.

Furthermore, this section is amended to provide that credit unions may not delay delivering account-opening disclosures when an account is opened

by an "electronic communication" as defined in § 707.10. The Federal Reserve has determined that the difficulties in providing disclosures for accounts opened by mail or telephone are not present for accounts opened by electronic communication using visual text. As a result, required disclosures must be provided before an account is opened by an electronic communication. Neither TISA nor part 707 specifies when an account is considered opened. Credit unions may establish policies and procedures to address after-hours requests to open accounts to ensure that accurate disclosures are provided before the account is deemed opened by the credit union.

Section 707.4(a)(2) Account Disclosures—Requests

Section 707.4(a)(2)(i) is revised to require credit unions to mail or deliver disclosures in paper form or electronically to members or potential members who request them, but who are not present at the credit union when the request is made. The credit union has a reasonable time in which to do this. To provide disclosures electronically, the credit union must send the disclosures to the member's e-mail address, or send a notice alerting the member to the location of the disclosures, such as the credit union's web site.

Appendix C—Section 707.4(a)(2)(i)—3—Timing for Response

Section 707.4(a)(2)(i) does not define what a "reasonable time" is for responding to requests for account information from members who are not present at the credit union at the time of the request. Section 707.4(a)(2)(i)—3 in Appendix C to part 707 is revised to provide that ten business days is a reasonable time for responding to these requests.

Appendix C—Section 707.4(a)(2)(i)—4—Request by Electronic Communication

Section 707.4(a)(2)(i) permits credit unions to deliver requested disclosures electronically if the member provides an e-mail address where the disclosures may be sent. Section 707.4(a)(2)(i)—4 in Appendix C to part 707 is added to clarify that posting disclosures on a credit union's web site generally does not relieve the credit union's duty to provide disclosures upon request. If the member has provided an e-mail address, the credit union must either send the disclosures by e-mail or send a notice to the member pursuant to § 707.10(d)(2)(i) to inform the member where the disclosures are posted.

Section 707.6 Periodic Statement Disclosures

The E-Sign Act permits credit unions to provide disclosures to members using electronic communication, if the credit union complies with Section 101(c) of that statute. Section 101(c) of the E-Sign Act requires credit unions to provide specific information about the electronic delivery of disclosures and obtain the member's affirmative consent to receive electronic disclosures. As discussed more fully below, § 707.10(b) is adopted to set forth the general rule that credit unions may provide disclosures electronically only if the credit union complies with Section 101(c) of the E-Sign Act. This requirement applies to periodic statement disclosures.

After the Federal Reserve issued the September 1999 Interim Rule, NCUA amended § 707.6 by adding paragraph (c) to permit credit unions to deliver periodic statements electronically. 64 FR 66355 (November 26, 1999); 65 FR 21131 (April 20, 2000). With the adoption of § 707.10(b), however, § 707.6(c) is no longer current and is withdrawn.

Appendix C—Section 707.8(a)—Misleading or Inaccurate Advertisements

Stating certain account terms in an advertisement for a deposit account triggers the disclosure of additional terms. If an advertisement using electronic communication displays a triggering term, such as "bonus" or "annual percentage yield", the advertisement must clearly refer the member to the location where the additional required information begins. For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link in close proximity that directly takes the member to the additional information. Paragraph (9) is added to § 707.8(a) in Appendix C to part 707 to reflect this interpretation.

Appendix C—Section 707.8(b)—Permissible Rates

Section 707.8(b) generally permits credit unions to state a dividend rate in addition to the annual percentage yield (APY), provided the dividend rate is stated in conjunction with, but not more conspicuously than, the APY. For advertisements using electronic communications, the member must be able to view both rates simultaneously. This requirement is not satisfied if the member can only view the APY by use of a link that connects the member to information appearing at another location. Paragraph (4) is added to

§ 707.8(b) in Appendix C to part 707 to reflect this interpretation.

Appendix C—Section 707.8(e)(1)(i)—Exemption for Certain Advertisements

Section 707.8(e) exempts from some requirements advertisements made through broadcast or electronic media, such as television and radio or outdoor billboards. This exemption does not apply to electronic advertisements using electronic communication, such as Internet advertisements, because they do not have the same time and space constraints as other exempted advertisements. New paragraph (1) is added to § 707.8(e)(1)(i) in Appendix C to part 707 to reflect this interpretation.

Section 707.10(a) Electronic Communication

Electronic communication is defined as a message transmitted electronically between a credit union and a member in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor. Equipment is not limited to personal computers, provided the visual display used to deliver the disclosures meets the “clear and conspicuous” format requirement discussed below. Credit unions that accommodate vision-impaired members by providing disclosures that do not use visual text must also provide disclosures using visual text.

Section 707.10(b) General Rule

The E-Sign Act permits credit unions to provide disclosures using electronic communication, if the credit union complies with the consumer consent requirements in Section 101(c) of the E-Sign Act. Section 101(c) requires credit unions to provide specific information about the electronic delivery of disclosures before obtaining the member’s affirmative consent to receive electronic disclosures.

The E-Sign Act does not affect any requirement imposed under TISA other than a provision that requires disclosures to be in paper form, nor does it affect the content or timing of disclosures. Electronic disclosures are subject to the format, timing and retainability rules and the clear and conspicuous standard of part 707. This guidance is reflected generally in § 707.10(b) in Appendix C to part 707.

Credit unions must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act: (1) The credit union must disclose the requirements for accessing and retaining disclosures in that format; (2) the member must demonstrate the ability to access the information electronically and

affirmatively consent to electronic delivery; and (3) the credit union must provide the disclosures in accordance with the specified requirements. Except to the extent required by part 707, disclosures do not have to be provided separately from other information. Electronically delivered disclosures must comply with existing timing requirements under TISA and part 707. Consistent with rules for paper disclosures, disclosures provided periodically by e-mail are timely if sent by the required time. Disclosures posted at an Internet web site are timely if, by the required time, the credit union makes the disclosures available at that location and sends a notice alerting the member that the disclosures have been posted. This guidance is reflected in § 707.10(b)(3)(ii) in Appendix C to part 707.

When a credit union permits a member to open an account on-line, the member must be required to access disclosures required by § 707.4 before the account is opened. A link to the disclosures satisfies this timing rule if the member cannot bypass the disclosure before opening the account, or the disclosures must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. It is not sufficient for credit unions to provide a bypassable navigational tool that gives members the option of receiving disclosures. This approach reduces the likelihood that members will actually receive the disclosures. This guidance is reflected in § 707.10(b)(3)(i) in Appendix C to part 707.

Disclosures required by TISA and part 707 to be in writing must also be in a form the member can retain. Electronic disclosures are subject to this same requirement. This guidance is reflected in § 707.10(b)(4) in Appendix C to part 707.

A credit union that controls the equipment providing electronic disclosures to a member, such as a computer terminal in the credit union’s lobby or a public kiosk, must ensure that the equipment satisfies part 707’s requirements to provide timely disclosures in a clear and conspicuous format and in a form that the member may keep. For example, if disclosures are required at the time of an on-line transaction, the disclosures must be sent to the member’s e-mail address or must be posted at another location such as the credit union’s web site, unless the credit union provides a printer that automatically prints the disclosures. This guidance is reflected in § 707.10(b)(5) in Appendix C to part 707.

Section 707.10(c) When Consent Is Required

Under the E-Sign Act, a member must give his affirmative consent to receive from the credit union electronic disclosures “relating to a transaction” that are required to be in writing by law or regulation. Section 707.10(c) provides that disclosures related to advertisements (§ 707.8) and those that are provided upon request (§ 707.4(a)(2)) are deemed not to be “related to a transaction” for purposes of this consent requirement.

Section 707.10(d)(1) Address or Location To Receive Electronic Communication.

Credit unions may deliver electronic disclosures to a member’s e-mail address or make them available at another location such as a web site. If the credit union makes a disclosure available at such a location, it effectively delivers the disclosure by sending a notice alerting the member when the disclosure can be accessed and making it available for at least 90 days.

For purposes of § 707.10(d), a member’s electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the credit union. This guidance is reflected in § 707.10(d) in Appendix C to part 707. An electronic address would not include systems that permit communication only between the member and the credit union, such as a home-banking program that allows a member to communicate directly with the credit union on-line with the use of a computer and modem. These systems, like a credit union’s web site accessed via the Internet, give members access to account information at a location controlled by the credit union. In both instances, the credit union determines how long disclosures will be available to the member. Members who receive disclosures at their e-mail addresses, however, may choose when to review, and for how long to retain, account information. Members who receive disclosures by contacting a credit union’s web site, however, also need to be alerted when the information is first available to ensure that they have the opportunity to access the information before it is removed. Accordingly, disclosures provided using systems such as home-banking programs are treated in the same manner as disclosures made available at a web site. They require a notice to alert the member when disclosures are posted and the notice must be sent by e-mail or

to a postal address, at the credit union's option.

Section 707.10(d)(2)(i) Identifying the Account

Section 707.10(d)(2)(i) requires that the alert notice discussed above identify the account involved and the address or other location where the disclosure is available. Section 707.10(d)(2)-1 in Appendix C to part 707 provides guidance on the level of detail required in identifying the account.

Section 707.10(d)(2)(ii) 90-Day Rule

Section 707.10(d)(2)(ii) requires that disclosures provided at a web site must remain available for at least 90 days. This helps ensure that members have adequate time to access and retain a disclosure under a variety of circumstances, such as when a member may not be able for an extended period of time to access the information due to computer malfunctions, travel, or illness. The 90-day period is uniform for all disclosures, for ease of compliance. Section 707.10(d)(2)-2 in Appendix C to part 707 provides that while disclosures must be available for the entire 90-day period, the credit union has the discretion to determine whether they should be available at the same location for the entire period.

Section 707.10(d)(3) Exceptions

Section 707.10(d)(3) clarifies that the requirements of § 707.10(d)(2)(i) and (ii) do not apply to disclosures in certain advertisements (§ 707.8), and the requirements of § 707.10(d)(2)(ii) do not apply to disclosures made available upon a member's request (§ 707.4(a)).

Section 707.10(e) Redelivery

Part 707 does not require a credit union to verify that electronic disclosures it has sent were actually received by its members. The cost and burden of doing so would not be warranted. When electronic disclosures are returned undelivered, however, § 707.10(e) imposes a duty on the credit union to attempt redelivery (either electronically or to a postal address) based on information in the credit union's own files. Where a credit union actually knows that the delivery of an electronic disclosure did not take place, the credit union should take reasonable steps to effectuate delivery in some way. For example, if an e-mail message to a member containing an alert notice or other disclosure is returned as undeliverable, the credit union satisfies the redelivery requirement if it sends the disclosure to a different e-mail address or postal address that it has on file. Sending the disclosure a second

time to the same electronic address would not be sufficient if the credit union has a different address for the member on file. Section 707.10(e)-1 in Appendix C to part 707 provides this guidance.

This redelivery requirement is limited to instances where the electronic communication has not been delivered. It does not apply to instances where the disclosure is delivered but cannot be read by the member due to technical problems with the member's software. A credit union will have complied with timing requirements for sending a disclosure when the disclosure is initially sent in a timely manner, even though it is returned undelivered and the credit union is required to take reasonable steps to attempt redelivery.

Section 707.10(f) Entities Other Than a Credit Union

Section 707.10(f) provides that a person other than a credit union that is required to comply with part 707 may use electronic communication in accordance with the requirements of § 707.10, as applicable.

D. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact agency rulemaking may have on a substantial number of small credit unions. For purposes of this analysis, credit unions under \$1 million in assets are considered small credit unions.

This interim final rule provides credit unions with the flexibility of using an optional and alternative method of delivering certain required disclosures. Credit unions are free to choose not to utilize this alternative. Credit unions that choose to use this alternative will likely realize a reduction in their costs of delivery as a result. The NCUA has determined and certifies that this interim final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that these amendments to part 707 do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory

actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This interim final rule applies to all federally-insured credit unions, but does 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. NCUA has determined that this interim final rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act, 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects 12 CFR Part 707

Advertising, Consumer protection, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

By the National Credit Union Administration Board on June 14, 2001.

Becky Baker,

Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR part 707 as follows:

PART 707—TRUTH IN SAVINGS

1. The authority citation for part 707 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 707.3 is amended by revising paragraph (a) and adding a new paragraph (g) to read as follows:

§ 707.3 General disclosure requirements.

(a) *Form.* Credit unions must make the disclosures required by §§ 707.4

through 707.6 and § 707.10 of this part, as applicable, clearly and conspicuously, in writing, and in a form the member or potential member may keep. Disclosures for each account offered by a credit union may be presented separately or combined with disclosures for the credit union's other accounts, as long as it is clear which disclosures are applicable to the member's account.

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(g) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 707.10.

3. Section 707.4 is amended by revising paragraph (a)(1) and paragraph (a)(2)(i) to read as follows:

§ 707.4 Account disclosures.

(a) *Delivery of account disclosures.*—

(1) *Account opening.*—(i) *General.* A credit union must provide account disclosures to a member or potential member before an account is opened or a service is provided, whichever is earlier. A credit union is deemed to have provided a service when a fee required to be disclosed is assessed. Except as provided in paragraph (a)(1)(ii) of this section, if the member is not present at the credit union when the account is opened or the service is provided and has not already received the disclosures, the credit union must mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier.

(ii) *Electronic communication.* If a member or potential member who is not present at the credit union uses electronic communication (as defined in § 707.10) to open an account or request a service, the disclosures required under paragraph (a)(1) of this section must be provided before an account is opened or a service is provided.

(2) *Requests.* (i) A credit union must provide account disclosures to a member or potential member upon request. If a member who is not present at the credit union makes a request, the credit union must mail or deliver the disclosures within a reasonable time after it receives the request and may provide the disclosures in paper form, or electronically if the member provides an electronic mail address.

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4. Section 707.6 is amended by removing paragraph (c).

5. Add a new § 707.10 to read as follows:

§ 707.10 Electronic communication.

(a) *Definition.* Electronic communication means a message transmitted electronically between a credit union and a member in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a credit union may provide by electronic communication any disclosure required by this part to be in writing.

(c) *When consent is required.* Under the E-Sign Act, a credit union must obtain a member's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under §§ 707.4(a)(2) and 707.8 are deemed not to be related to a transaction.

(d) *Address or location to receive electronic communication.* A credit union that uses electronic communication to provide disclosures required by this part must:

(1) Send the disclosure to the member's electronic address; or
(2) Make the disclosure available at another location such as an Internet web site; and

(i) Alert the member of the disclosure's availability by sending a notice to the member's electronic address (or to a postal address, at the credit union's option). The notice must identify the account involved (if applicable) and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the member of the disclosure, whichever comes later.

(3) *Exceptions.* A credit union need not comply with paragraph (d)(2)(ii) of this section for disclosures required under § 707.4(a)(2), and need not comply with paragraphs (d)(2)(i) and (ii) of this section for disclosures required under § 707.8.

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a credit union undelivered, the credit union must take reasonable steps to attempt redelivery using information in its files.

(f) *Entities other than a credit union.* A person other than a credit union that is required to comply with this part may use electronic communication in accordance with the requirements of this section, as applicable.

6. In Appendix C to part 707, the following amendments are made:

a. Under Section 707.2 Definitions, under (t) Periodic statement, paragraph 2.ii. is removed and paragraph 2.iii. is redesignated as paragraph 2.ii.

b. Under Section 707.4 Account disclosures, under (a)(2) Requests, under (a)(2)(i), paragraph 3. is revised and a new paragraph 4. is added.

c. Under Section 707.8 Advertising, under (a) Misleading or inaccurate advertisements, a new paragraph 9. is added.

d. Under Section 707.8 Advertising, under (b) Permissible rates, a new paragraph 4. is added.

e. Under Section 707.8 Advertising, under (e)(1) Certain media, under (e)(1)(i), a new paragraph 2 is added.

f. A new Section 707.10, Requirements for electronic communication, is added after Section 707.9.

The amendments read as follows:

Appendix C to Part 707—Official Staff Interpretations

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Section 707.4—Account Disclosures

(a) *Delivery of Account Disclosures*

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(a)(2) Requests

(a)(2)(i)

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3. *Timing for response.* Ten business days is a reasonable time for responding to requests for account information that members do not make in person, including requests made by electronic communication.

4. *Requests by electronic communication.* Posting disclosures on a credit union's web site generally does not relieve the credit union's duty to provide disclosures upon request. If the member provides an e-mail address, the credit union may provide the disclosures electronically, but the credit union must either send the disclosures by e-mail or send a notice to the member's e-mail address pursuant to § 707.10(d)(2)(i) to inform the member where the disclosures are posted.

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Section 707.8—Advertising

(a) *Misleading or Inaccurate Advertisements*

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9. *Electronic advertising.* If an advertisement using electronic communication displays a triggering term (such as a bonus or annual percentage yield) the advertisement must clearly refer the member to the location where the additional required information begins. For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link that directly takes the member to the additional information.

(b) *Permissible Rates*

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4. *Electronic communication.* A dividend rate may be stated only if it is provided in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates. In an advertisement using electronic communication, the member must be able to view both rates simultaneously. This requirement is not satisfied if the member can view the annual percentage yield only by use of a link that connects the member to information appearing at another location.

* * * * *

(e)(1) *Certain Media*

(e)(1)(i)

2. *Internet advertisements.* The exemption for advertisements made through broadcast or electronic media does not extend to advertisements made by electronic communication, such as advertisements posted on the Internet or sent by e-mail.

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Section 707.10—Electronic Communication

(b) *General Rule*

1. *Relationship to the E-Sign Act.* The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a provision that requires disclosures to be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. For example, to satisfy the clear and conspicuous standard for disclosures, electronic disclosures must use visual text.

2. *Clear and conspicuous standard.* A credit union must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act:

- i. The credit union must disclose the requirements for accessing and retaining disclosures in that format;
- ii. The member must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and
- iii. The credit union must provide the disclosures in accordance with the specified requirements.

3. *Timing and effective delivery.*

i. *When a member opens an account online.* When a member opens an account online, the member must be required to access the disclosures required under § 707.4 before the account is opened or a service is provided, whichever is earlier. A link to the disclosures satisfies the timing rule if the member cannot bypass the disclosures before opening the account. Or the disclosures in this example must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. The credit union is not required to confirm that the member has read the disclosure.

ii. *For disclosures provided periodically.* Disclosures provided by mail are timely based on when the disclosures are sent. Disclosures posted at an Internet web site, such as periodic statements or change-in-terms and other notices, are timely when the

credit union has both made the disclosures available and sent a notice alerting the member that the disclosures have been posted. For example, under § 707.5, credit unions must give advance notice to affected members at least 30 calendar days in advance of certain changes. For a change in terms notice posted on the Internet, a credit union must both post the notice and notify members of its availability at least 30 days in advance of the change.

4. *Retainability of disclosures.* Credit unions satisfy the requirement that disclosures be in a form that the member may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under Section 101(c)(1)(C)(i) of the E-Sign Act, 15 U.S.C. 7001(c)(1)(C)(i), about the hardware and software requirements for accessing and retaining electronic disclosures.

5. *Disclosures provided on credit union's equipment.* A credit union that controls the equipment providing electronic disclosures to members (for example, a computer terminal located in a credit union's lobby or at a public kiosk) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the member may keep. For example, if disclosures are required at the time of an online transaction, the disclosures must be sent to the member's e-mail address or must be posted at another location such as the credit union's Internet web site, unless the credit union provides a printer that automatically prints the disclosures.

(d) *Address Or Location To Receive Electronic Communication*

(d)(1)

1. *Electronic address.* A member's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the credit union.

(d)(2)

1. *Identifying account involved.* A credit union may identify a specific account in a variety of ways and is not required to identify an account by reference to the account number. For example, where the member has only one share account, and no confusion would result, the credit union may refer to "your share account." If the member has two accounts, the credit union may, for example, differentiate accounts by using terms such as "primary account" and "secondary account" or by using a truncated account number.

2. *90-day rule.* The actual disclosures provided to a member must be available for at least 90 days, but the credit union has discretion to determine whether they should be available at the same location for the entire period.

(e) *Redelivery*

1. *E-mail returned as undeliverable.* If an e-mail to the member (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the credit union sends the disclosure to a different e-mail

address or postal address that the credit union has on file for the member. Sending the disclosures a second time to the same electronic address is not sufficient if the credit union has a different address for the member on file.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NE-15-AD; Amendment 39-12275; AD 2001-12-19]

RIN 2120-AA64

Airworthiness Directives; Turbomeca S.A. Artouste II and Artouste III Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Turbomeca S.A. Artouste II and Artouste III series turboshaft engines. This amendment requires installation of modification TU 24, TU 167, or TU 164, depending on the specific engine series. These modifications will prevent uncommanded partial closing or total closing of the electrical fuel cock, which will prevent uncommanded in-flight engine shutdown. From the effective date of this AD, and until the modification is installed, this amendment will also limit the duration of the engine operating cycle. This amendment is prompted by reports of unexpected power loss during test flights. The actions specified by this AD are intended to prevent unexpected power loss, which could result in an uncommanded in-flight engine shutdown, autorotation, and forced landing.

DATES: Effective date July 26, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca S.A., Turbomeca S.A. 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00, fax 33 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA., or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.