

forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on November 4, 2005 (70 FR 67096). Copies of the proposed rule were also mailed or sent via facsimile to all walnut handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending on November 14, 2005, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving the 2005 walnut crop from growers. The marketing year began on August 1, 2005, and the assessment rate applies to all walnuts received during the 2005–06 and subsequent seasons. The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also a 10-day comment period was provided in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

■ For the reasons set forth in the preamble, 7 CFR part 984 is to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 2005, an assessment rate of \$0.0096 per kernelweight pound is established for California merchantable walnuts.

Dated: December 5, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–23818 Filed 12–5–05; 4:29 pm]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

RIN 3133–AC57

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: As required by the Truth in Savings Act, the NCUA is amending its rule and official staff interpretation to address the uniformity and adequacy of information provided to members when they overdraw their share accounts. The amendments address services referred to as “bounced-check protection” or “courtesy overdraft protection” that pay members’ checks and allow other overdrafts when there are insufficient funds in the account. The interim final rule creates a new section in the regulation and requires credit unions that promote the payment of overdrafts in advertisements to disclose fees and other information in advertisements of overdraft services.

DATES: This rule is effective December 8, 2005. To allow time for any necessary operational changes, however, the mandatory compliance date for the interim final rule is July 1, 2006. Comments must be received on or before February 6, 2006.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web site: <http://www.ncua.gov/>

RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.

• E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Part 707 Truth in Savings” in the e-mail subject line.

• Fax: (703) 518–6319. Use the subject line described above for e-mail.

• Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• Hand Delivery/Courier: Same as mail address.

Public Inspection: All public comments are available on the agency’s Web site at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6540 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Moissette I. Green or Frank S. Kressman, Staff Attorneys, at the address above or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2002, the Board of Governors of the Federal Reserve System (Federal Reserve) solicited comment about financial institutions’ current overdraft services to determine the need for guidance to depository institutions under 12 CFR part 226 (Regulation Z) and other laws. 67 FR 72618 (December 6, 2002). Based on comments it received, the Federal Reserve amended 12 CFR part 230 (Regulation DD), and its staff commentary in May 2005. 70 FR 29582 (May 24, 2005). Regulation DD, the Federal Reserve’s implementation of the Truth in Savings Act (TISA), now requires banks to disclose rates and fees charged as a part of “bounced-check protection” or “courtesy overdraft protection” programs offered as an alternative to traditional overdraft lines of credit. The Federal Reserve’s final rule also requires financial institutions that promote the payment of overdrafts in an advertisement to: (1) Disclose the total fees imposed for paying overdrafts and returning unpaid items on periodic statements for both the statement period and the calendar year to date and (2)

include certain other disclosures in advertisements of overdraft services.

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, NCUA is issuing this interim final rule with request for comments that is substantially similar to the Federal Reserve's May 2005 final rule.

Part 707 of NCUA's regulations implements TISA for credit unions. 12 CFR part 707. Part 707 requires, among other things, disclosure of yields, fees and other terms concerning share accounts to members before an account is opened, upon a member's request, before an adverse change in account terms occurs, before the renewal of certificates of deposit, and in periodic statements. Credit unions are not required to provide periodic statements, but if they do, statements must have the disclosures TISA requires.

Part 707 and TISA have rules for advertising share accounts and prohibit advertisements, announcements, or solicitations that are inaccurate or misleading, or that misrepresent the credit union's account contract. 12 CFR 707.8(a). For example, credit unions are prohibited from describing an account as "free" or using words of similar meaning if any maintenance or activity fee may be imposed. *Id.*

II. The Interim Final Rule

To comply with the Board's obligation under TISA, it is adopting interim final revisions to part 707 and the accompanying official staff interpretation that are substantially similar to the Federal Reserve's final rule in May 2005. NCUA has made some modifications to the rule to account for the unique nature of credit unions. The interim final rule consolidates the guidance for credit unions that promote the payment of overdrafts in a new § 707.11 to facilitate compliance. To give credit unions sufficient time to implement the necessary system changes to comply with the regulation, compliance with the interim final rule will not become mandatory until July 1, 2006.

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. Although the Federal Reserve's rule will not be effective until July 1, 2006, credit unions and their accounting software providers will need to adapt their current systems to accommodate these changes. The Board wants to provide adequate lead time for these changes. 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, compliance will not become mandatory until July 1, 2006 to give credit unions sufficient time to implement the necessary system changes to comply with the regulation. Even so, the NCUA Board encourages interested parties to submit comments.

Summary of Revisions to the Regulation

The following is a summary of the interim final rule. This interim final rule tracks closely the Federal Reserve's recent amendments to Regulation DD. A section-by-section analysis of the regulatory language and staff commentary is in the Federal Reserve's final rule. 70 FR 29582 (May 24, 2005).

Disclosures Concerning Overdraft Fees on Periodic Statements

Courtesy overdraft protection allows the payment of a check or debit transaction that would otherwise be rejected for non-sufficient funds (NSF). Payment of the item overdraws the member's account, and a fee is charged for paying the NSF item. Under overdraft protection programs, there is no written agreement between the member and credit union to pay NSF items. Instead, payment is made at the discretion of the credit union, and a fee is charged for each item paid. Generally, overdraft protection services allowed the occasional, manual payment of an overdraft. Some financial institutions have automated the decision and payment process however.

Credit unions that provide courtesy overdraft protection must separately disclose on their periodic statements the total amount of fees or charges imposed on the share account for paying overdrafts and returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date. Credit unions that

do not provide this service would not be required to provide the new disclosures.

Account-Opening Disclosures

Credit unions must specify in account-opening disclosures the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient to state that the fee is imposed for overdrafts created by checks, in-person withdrawals, ATM withdrawals, or by other electronic means, as applicable. This requirement applies to all credit unions, including credit unions that do not promote the payment of overdrafts in an advertisement.

Advertising Rules

To avoid confusion with traditional lines of credit, credit unions that promote the payment of overdrafts must include certain disclosures in their advertisements about the service:

- (1) The applicable fees or charges, the categories of transactions covered;
- (2) The time period members have to repay or cover any overdraft; and
- (3) The circumstances under which the credit union would not pay an overdraft.

Stating the available overdraft limit or the amount of funds available on a periodic statement would be considered an advertisement triggering the required disclosures.

The interim final rule provides safe harbors from the advertising requirements similar to those for the periodic statement disclosure requirements. For example, the advertising disclosure requirements would not apply to credit unions when they provide educational materials, respond to a member-initiated inquiry about overdrafts or share accounts, or notify a member about a specific overdraft in their account.

Advertising disclosures are not required on ATM receipts, due to space limitations. Similarly, advertising disclosures are not required for advertisements using broadcast media, billboards, or telephone response systems. This parallels an exemption in part 707 for other types of advertising disclosures. Limited advertising disclosures are required on ATM screens, telephone response machines, and indoor signs. For example, a sign in a credit union lobby advertising courtesy overdraft protection must state that fees may apply and direct members to contact a credit union employee for more information.

Prohibiting Misleading Advertisements

TISA's prohibition against advertisements, announcements, or solicitations that are misleading or misrepresent the deposit contract is extended to communications with members about the terms of their existing accounts.

Examples of Misleading Advertisements

The staff interpretation is revised to provide five examples of advertisements that would ordinarily be deemed misleading:

- (1) Representing an overdraft service as a "line of credit";
- (2) Representing that the credit union will honor all checks or transactions if the credit union in fact retains discretion not to honor a transaction;
- (3) Representing that members with an overdrawn account can maintain a negative balance if the overdraft service requires members to return the share account to a positive balance promptly;
- (4) Describing an overdraft service solely as protection against bounced checks, if the credit union also permits and charges a fee for ATM withdrawals and other electronic fund transfers that permit members to overdraw their account; and
- (5) Describing an account as "free" or "no cost" in an advertisement that also promotes a service for which there is a fee, including an overdraft service, unless the advertisement clearly and conspicuously indicates the cost associated with the service.

Possible Coverage Under the Truth in Lending Act (TILA)

The amendments to part 707 recognize that an overdraft service is a feature and term of a share account, and that the fees associated with the service are assessed against the share account. The adoption of interim final rules under part 707 does not preclude a future determination by the Federal Reserve that TILA disclosures would also benefit consumers.

III. Regulatory Flexibility Analysis

The Board has prepared a final regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow members to make meaningful comparisons between different accounts and also allow members to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the

purpose and provisions of the statute. 12 U.S.C. 4308(a)(1), 4311(b). The Board is adopting revisions to part 707 to address the uniformity and adequacy of credit unions' disclosure of fees associated with overdraft services generally and to address concerns about advertised overdraft services in particular. The existing regulation is amended to require credit unions offering certain overdraft services to provide more complete information regarding those services. The Board believes that the revisions to part 707 are within the Board's authority to adopt provisions that carry out the purposes of the statute.

There are other laws that credit unions must consider when administering an overdraft protection program. Although other laws and regulations may apply to credit unions' payment of overdrafts, the final revisions to part 707 do not duplicate or conflict with the requirements imposed by these laws. The Board has also considered the interagency guidance on overdraft protection programs issued in February 2005, and has determined that issuance of the final revisions to part 707 is consistent with the interagency guidance. 70 FR 9127 (February 24, 2005).

Approximately 2,666 of the credit unions in the United States that must comply with TISA have assets of \$10 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act, based on 2004 call report data. The Board believes that almost all small credit unions that offer accounts where overdraft or returned-item fees are imposed currently send periodic statements on those accounts, although the number of small credit unions that promote their overdraft services is unknown. For those credit unions that promote the payment of overdrafts in an advertisement, periodic statement disclosures will need to be revised to display aggregate overdraft and aggregate returned-item fees for the statement period and year to date. All small credit unions will have to review, and perhaps revise account-opening disclosures and marketing materials.

The revisions to part 707 require all credit unions to provide more complete information to members regarding overdraft services. Account-opening disclosures and marketing materials would describe more completely how fees may be triggered. Credit unions that provide overdraft services must separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the

total dollar amount for returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date for each account to which the service is provided. Certain advertising practices are prohibited, and additional disclosures on advertisements of overdraft services are required.

The Board is soliciting comment on how the burden of disclosures on credit unions could be minimized. The interim final rule limits the requirement to disclose aggregate totals for overdraft and returned-item fees for the statement period and the calendar year to date to credit unions that provide *ad hoc* payments of overdrafts or promote the payment of overdrafts in an advertisement, thereby encouraging the routine use of the service. It also specifies certain practices that would not trigger the new overdraft disclosures. The safe harbors provide additional certainty to credit unions in determining whether compliance with the rule is required in particular circumstances. Consistent with the rule requiring periodic statement disclosures, the interim final rule also provides safe harbors to specify circumstances when a credit union would not be required to provide additional advertising disclosures.

Under the interim final rule, credit unions are permitted to provide an illustrative list of categories by which overdrafts may be created to generally eliminate the need to provide a change-in-terms notice each time a new channel for creating overdrafts is added. The interim final rule also provides additional guidance regarding the types of fees that should be included in the total dollar amount of fees and charges imposed on the account for paying overdrafts and in the total dollar amount for returning items unpaid.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Board has submitted the information collection requirements contained in this interim final rule to the Office of Management and Budget (OMB). The NCUA 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 current OMB control number for the Truth in Savings program is 3133-0134. This information collection will be revised to include the requirements of this interim final rule.

The collection of information that is revised by this rulemaking is found in 12 CFR part 707 and Appendix C. This

collection is mandatory to evidence compliance with the requirements of part 707 and TISA. 15 U.S.C. 4301 *et seq.* Credit unions must retain records for twenty-four months. This regulation applies to all types of credit unions, not just federally-insured credit unions.

The revisions provide that credit unions offering certain overdraft payment services must provide more complete information regarding those services. Account-opening disclosures and other marketing materials describe more completely how fees may be triggered. Credit unions that promote the payment of overdrafts must separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount of fees charged to the account for returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date for each account to which an advertisement applies. Certain advertising practices are prohibited, and additional disclosures in advertisements for the payment of overdrafts are required. Although the interim final rule adds these requirements, it is expected that these revisions would not significantly increase the ongoing paperwork burden of credit unions. However, respondents would face a one-time burden to reprogram and update their systems to include these new notice requirements.

There are an estimated 9,128 credit unions. The NCUA estimates that it will take the respondents, on average, 8 hours or one business day to make these one-time system changes. Additionally, Respondents would also face a one-time burden to revise and update their advertising materials. NCUA estimates that it will take approximately 40 hours, one business week to update these materials. NCUA estimates respondents will incur a burden of 12,514,201 hours meeting the requirements of this interim final rule. NCUA estimates that the total, continuing annual burden for the Truth in Savings program to be 12,076,057 hours. Prior to this interim final rule, NCUA estimated the annual burden to be 10,467,679 hours. The annual burden under this interim final rule will increase 1,608,378 burden hours.

NCUA invites comment on:

(1) The accuracy of NCUA's estimate of the burden of the information collection;

(2) Ways to minimize the burden of the information collection on credit unions, including the use of automated collection techniques or other forms of information technology; and

(3) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Interested may submit comments regarding the information collection requirements in this rule. Comments must be received within 30 days from the publication of this interim final rule. Include "Comments on Part 707 Truth in Savings" in the comments header and send them to NCUA using one of the methods described above and to: NCUA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395-6974.

List of Subjects in 12 CFR Part 707

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

By the National Credit Union Administration Board on November 29, 2005.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 707 as set forth below:

PART 707—TRUTH IN SAVINGS

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

Authority: 12 U.S.C. 4311.

■ 2. Section 707.2 is amended by revising paragraph (b) to read as follows:

§ 707.2 Definitions.

* * * * *

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly:

(1) The availability or terms of, or a deposit in, a new account; and

(2) For purposes of § 707.8(a) and § 707.11 of this part, the terms of, or a deposit in, a new or existing account.

* * * * *

■ 3. Section 707.6 is amended by republishing paragraph (b) introductory text and revising paragraph (b)(3) to read as follows:

§ 707.6 Periodic statement disclosures.

* * * * *

(b) *Statement disclosures.* If a credit union mails or delivers a periodic statement, the statement must include the following disclosures:

* * * * *

(3) *Fees imposed.* Fees required to be disclosed under § 707.4(b)(4) of this part that were debited from the account during the statement period. The fees must be itemized by type and dollar

amounts. Except as provided in § 707.11(a)(1) of this part, when fees of the same type are imposed more than once in a statement period, a credit union may itemize each fee separately or group the fees together and disclose a total dollar amount for all fees of that type.

* * * * *

■ 4. Section 707.8 is amended by revising paragraph (a), and adding a new paragraph (f) to read as follows:

§ 707.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement must not:

(1) Be misleading or inaccurate or misrepresent a credit union's account agreement; or

(2) Refer to or describe an account as "free" or "no cost" or contain a similar term if any maintenance or activity fee may be imposed on the account. The word "profit" must not be used in referring to dividends or interest paid on an account.

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(f) *Additional disclosures in connection with the payment of overdrafts.* Credit unions that promote the payment of overdrafts in an advertisement must include in the advertisement the disclosures required by § 707.11(b) of this part.

* * * * *

■ 5. Section 707.11 is added to read as follows:

§ 707.11 Additional disclosure requirements for credit unions advertising the payment of overdrafts.

(a) *Periodic statement disclosures.* (1) *Disclosure of Total Fees.* (i) Except as provided in paragraph (a)(2) of this section, if a credit union promotes the payment of overdrafts in an advertisement, the credit union must separately disclose on each periodic statement:

(A) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient funds and the account becomes overdrawn; and

(B) The total dollar amount for all fees imposed on the account for returning items unpaid.

(ii) The disclosures required by this paragraph must be provided for the statement period and for the calendar year to date, for any account to which the advertisement applies.

(2) *Communications not triggering disclosure of total fees.* The following communications by a credit union do not trigger the disclosures required by paragraph (a)(1) of this section:

(i) Promoting in an advertisement a service for paying overdrafts where the credit union's payment of overdrafts will be agreed upon in writing and subject to part 226 of this title (Regulation Z);

(ii) Communicating, whether by telephone, electronically, or otherwise, about the payment of overdrafts in response to a member-initiated inquiry about share accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, an automated teller machine (ATM), or a credit union's Internet site, is not a response to a member-initiated inquiry for purposes of this paragraph;

(iii) Engaging in an in-person discussion with a member;

(iv) Making disclosures that are required by Federal or other applicable law;

(v) Providing a notice or including information on a periodic statement informing a member about a specific overdrawn item or the amount the account is overdrawn;

(vi) Including in a share account agreement a discussion of the credit union's right to pay overdrafts;

(vii) Providing a notice to a member, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or providing a general notice that items overdrawing an account may trigger a fee; or

(viii) Providing informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service.

(3) *Time period covered by disclosures.* A credit union must make the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after a credit union advertises the payment of overdrafts. A credit union may disclose total fees imposed for the calendar year by aggregating fees imposed since the beginning of the calendar year, or since the beginning of the first statement period that year for which such disclosures are required.

(4) *Termination of promotions.* Paragraph (a)(1) of this section becomes inapplicable with respect to a share account two years after the date of a credit union's last advertisement promoting the payment of overdrafts related to that account.

(5) *Acquired accounts.* A credit union that acquires an account must thereafter provide the disclosures required by paragraph (a)(1) of this section for the

first statement period that begins after the credit union promotes the payment of overdrafts in an advertisement that applies to the acquired account. If disclosures under paragraph (a)(1) of this section are required for the acquired account, the credit union may, but is not required to, include fees imposed before acquisition of the account.

(b) *Advertising disclosures for overdraft services.* (1) *Disclosures.* Except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this section, any advertisement promoting the payment of overdrafts must disclose in a clear and conspicuous manner:

(i) The fee or fees for the payment of each overdraft;

(ii) The categories of transactions for which a fee for paying an overdraft may be imposed;

(iii) The time period by which the member must repay or cover any overdraft; and

(iv) The circumstances under which the credit union will not pay an overdraft.

(2) *Communications about the payment of overdrafts not subject to additional advertising disclosures.* Paragraph (b)(1) of this section does not apply to:

(i) An advertisement promoting a service where the credit union's payment of overdrafts will be agreed upon in writing and subject to part 226 of this title (Regulation Z);

(ii) A communication by a credit union about the payment of overdrafts in response to a member-initiated inquiry about share accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, ATM, or a credit union's Internet site, is not a response to a member-initiated inquiry for purposes of this paragraph;

(iii) An advertisement made through broadcast or electronic media, such as television or radio;

(iv) An advertisement made on outdoor media, such as billboards;

(v) An ATM receipt;

(vi) An in-person discussion with a member;

(vii) Disclosures required by Federal or other applicable law;

(viii) Information included on a periodic statement or a notice informing a member about a specific overdrawn item or the amount the account is overdrawn;

(ix) A term in a share account agreement discussing the credit union's right to pay overdrafts;

(x) A notice provided to a member, such as at an ATM, that completing a

requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee; or

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service.

(3) *Exception for ATM screens and telephone response machines.* The disclosures described in paragraphs (b)(1)(ii) and (b)(1)(iv) of this section are not required in connection with any advertisement made on an ATM screen or using a telephone response machine.

(4) *Exception for indoor signs.*

Paragraph (b)(1) of this section does not apply to advertisements for the payment of overdrafts on indoor signs as described by § 707.8(e)(2) of this part, provided that the sign contains a clear and conspicuous statement that fees may apply and that members should contact an employee for further information about applicable fees and terms. For purposes of this paragraph (b)(4), an indoor sign does not include an ATM screen.

■ 6. Amend Appendix C to part 707 as follows:

■ a. Under § 707.2 Definitions, under (b) *Advertisement*, the introductory sentence to paragraph 2 is republished, paragraph 2.iv is revised, and new paragraphs 2.v through 2.vii are added.

■ b. Under § 707.4 Account disclosures, under (b)(4) *Fees*, a new paragraph 6 is added.

■ c. Under § 707.6 Periodic statement disclosures, under (b)(3) *Fees imposed*, paragraph 2 is revised.

■ d. Under § 707.8 Advertising, under (a) *Misleading or inaccurate advertisements*, a new paragraph 10 is added.

■ e. A new § 707.11 Additional disclosure requirements for credit unions advertising the payment of overdrafts, is added in numerical order.

The additions and revisions read as follows:

Appendix C To Part 707—Official Staff Interpretations

* * * * *

§ 707.2 Definitions.

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(b) Advertisement

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2. *Other messages.* Examples of messages that are not advertisements are—

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iv. For purposes of § 707.8(b) of this part through § 707.8(e) of this part, information given to members about

existing accounts, such as current rates recorded on a voice-response machine or notices for automatically renewable time account sent before renewal.

- v. Information about a particular transaction in an existing account.
- vi. Disclosures required by Federal or other applicable law.
- vii. A share account agreement.

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§ 707.4 Account Disclosures.

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(b) Content of account disclosures

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(b)(4) Fees

* * * * *

6. *Fees for overdrawing an account.* Under § 707.4(b)(4) of this part, credit unions must disclose the conditions under which a fee may be imposed. In satisfying this requirement credit unions must specify the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient for a credit union to state that the fee applies to overdrafts “created by check, in-person withdrawal, ATM withdrawal, or other electronic means.” Disclosing a fee “for overdraft items” would not be sufficient.

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§ 707.6 Periodic statement disclosures.

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(b) Statement Disclosures

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(b)(3) Fees imposed

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2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, credit unions may group fees if they are the same type. See § 707.11(a)(1) of this part regarding certain fees that must be grouped when a credit union promotes the payment of overdrafts. When fees of the same type are grouped together, the description must make clear that the dollar figure represents more than a single fee, for example, “total fees for checks written this period.” Examples of fees that may not be grouped together are—

- i. Monthly maintenance and excess-activity fees.
- ii. “Transfer” fees, if different dollar amounts are imposed, such as \$.50 for deposits and \$1.00 for withdrawals.
- iii. Fees for electronic fund transfers and fees for other services, such as balance-inquiry or maintenance fees.
- iv. Fees for paying overdrafts and fees for returning checks or other items unpaid.

* * * * *

§ 707.8 Advertising.

(a) Misleading or inaccurate advertisements

* * * * *

10. *Examples.* Examples of advertisements that would ordinarily be misleading, inaccurate, or misrepresent the deposit contract are:

- i. Representing an overdraft service as a “line of credit,” unless the service is subject to 12 CFR part 226 (Regulation Z).
- ii. Representing that the credit union will honor all checks or authorize payment of all transactions that overdraw an account, with or without a specified dollar limit, when the credit union retains discretion at any time not to honor checks or authorize transactions.
- iii. Representing that members with an overdrawn account can maintain a negative balance when the terms of the account’s overdraft service require members promptly to return the share account to a positive balance.
- iv. Describing a credit union’s overdraft service solely as protection against bounced checks when the credit union also permits overdrafts for a fee for overdrawing their accounts by other means, such as ATM withdrawals, debit card transactions, or other electronic fund transfers.
- v. Advertising an account-related service for which the credit union charges a fee in an advertisement that also uses the word “free” or “no cost” or a similar term to describe the account, unless the advertisement clearly and conspicuously indicates that there is a cost associated with the service. If the fee is a maintenance or activity fee under § 707.8(a)(2) of this part, however, an advertisement may not describe the account as “free” or “no cost” or contain a similar term even if the fee is disclosed in the advertisement.

* * * * *

§ 707.11 Additional disclosure requirements for credit unions advertising the payment of overdrafts.

(a) Periodic statement disclosures.

(a)(1) Disclosure of total fees.

1. *Examples of credit unions advertising the payment of overdrafts.* A credit union would trigger the periodic statement disclosures if it:

- i. Promotes the credit union’s policy or practice of paying some overdrafts, unless the service would be subject to 12 CFR part 226 (Regulation Z), in advertisements using broadcast media, brochures, telephone solicitations ,or electronic mail, or on Internet sites, ATM screens or receipts, billboards, or

indoor signs. But see, § 707.11(a)(2) of this part regarding communications about the payment of overdrafts that would not trigger periodic statement disclosures;

- ii. Includes a message on a periodic statement informing the member of an overdraft limit or the amount of funds available for overdrafts. For example, a credit union that includes a message on a periodic statement informing the member of a \$500 overdraft limit or that the member has \$300 remaining on the overdraft limit, is promoting an overdraft service;

- iii. Discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed by any means, including on an ATM receipt or on an automated system, such as a telephone response machine, ATM screen, or the credit union’s Internet site.

2. *Applicability of periodic statement disclosures.* The periodic statement disclosures apply to all accounts for which the credit union has advertised the payment of overdrafts. For example, if an advertisement promoting the payment of overdrafts specifies the types of accounts to which the advertisement applies, the credit union would not be required to provide the periodic statement disclosures for other types of accounts offered by the credit union for which the advertisement does not apply. If an advertisement does not specify the types of accounts to which it applies, the advertisement would be considered to apply to all of a credit union’s share accounts.

3. *Transfer services.* The overdraft services covered by § 707.11(a)(1) of this part do not include a service providing for the transfer of funds from another share account of the member to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

4. *Fees for paying overdrafts.* A credit union that advertises the payment of overdrafts must disclose on periodic statements a total dollar amount for all fees charged to the account for paying overdrafts. The credit union must disclose separate totals for the statement period and for the calendar year to date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another account to avoid an overdraft, or fees

charged when the credit union has previously agreed in writing to pay items that overdraw the account and the service is subject to 12 CFR part 226 (Regulation Z).

5. *Fees for returning items unpaid.* A credit union that advertises the payment of overdrafts must disclose a total dollar amount for all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The credit union must disclose separate totals for the statement period and for the calendar year to date. Fees imposed when deposited items are returned are not included.

6. *Waived fees.* In some cases, a credit union may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Credit unions may, but are not required to, reflect the adjustment in the total for the calendar year to date. Such adjustments should not affect the total disclosed for fees imposed during the current statement period.

7. *Totals for the calendar year to date.* Some credit unions' statement periods do not coincide with the calendar month. In such cases, the credit union may disclose a calendar year-to-date total by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2006 through January 9, 2007 may disclose the year-to-date total for fees imposed from January 10, 2006 through January 9, 2007. Alternatively, the credit union could provide a statement for the cycle ending January 9, 2007, showing the year-to-date total for fees imposed January 1, 2006 through December 31, 2006.

8. *Itemization of fees.* A credit union may itemize each fee in addition to providing the disclosures required by § 707.11(a)(1) of this part.

(a)(3) *Time period covered by disclosures*

1. *Periodic statement disclosures.* The disclosures under § 707.11(a)(1) of this part must be included on periodic statements provided by a credit union reflecting the first statement period that begins after the credit union advertises the payment of overdrafts. For example, if a member's statement period typically closes on the 15th of each month, a credit union that promotes the payment of overdrafts on July 1, 2006, must provide the disclosures required by § 707.11(a)(1) of this part on subsequent periodic statements for that member

beginning with the statement reflecting the period from July 16, 2006 through August 15, 2006. Only credit unions that promote the payment of overdrafts in an advertisement on or after July 1, 2006 must provide disclosures on periodic statements under § 707.11(a)(1) of this part.

(a)(5) *Acquired accounts*

1. *Examples.* As provided in § 707.11(a)(5) of this part, a credit union that acquires share accounts through merger must provide the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after the credit union promotes the payment of overdrafts in an advertisement that applies to the acquired account. If the acquiring credit union does not advertise the payment of overdrafts, or the advertisement does not apply to the acquired accounts, the credit union need not provide the disclosures required by § 707.11(a)(1) of this part for the acquired accounts, even if the credit union that previously held the accounts advertised the payment of overdrafts with respect to those accounts.

(b) *Advertising disclosures in connection with overdraft services*

1. *Examples of credit unions promoting the payment of overdrafts.* A credit union must include the advertising disclosures in § 707.11(b)(1) of this part if the credit union:

- i. Promotes the credit union's policy or practice of paying overdrafts, unless the service would be subject to 12 CFR part 226 (Regulation Z). This includes advertisements using print media such as newspapers or brochures, telephone solicitations, electronic mail, or messages posted on an Internet site. But see, § 707.11(b)(2) of this part for communications that are not subject to the additional advertising disclosures;
- ii. Includes a message on a periodic statement informing the member of an overdraft limit or the amount of funds available for overdrafts. For example, a credit union that includes a message on a periodic statement informing the member of a \$500 overdraft limit or that the member has \$300 remaining on the overdraft limit, is promoting an overdraft service.
- iii. Discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen, or the credit union's Internet site. See, however, § 707.11(b)(3) of this part.

2. *Transfer services.* The overdraft services covered by § 707.11(b)(1) of this

part do not include a service providing for the transfer of funds from another share account of the member to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

3. *Electronic media.* The exception for advertisements made through broadcast or electronic media, such as television or radio, does not apply to advertisements posted on a credit union's Internet site, on an ATM screen, provided on telephone response machines, or sent by electronic mail.

4. *Fees.* The fees that must be disclosed under § 707.11(b)(1) of this part include per-item fees as well as interest charges, daily or other periodic fees, and fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. The fees also include fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. The fees do not include fees for transferring funds from another account to avoid an overdraft or fees charged when the credit union has previously agreed in writing to pay items that overdraw the account and the service is subject to 12 CFR part 226 (Regulation Z).

5. *Categories of transactions.* An exhaustive list of transactions is not required. Disclosing that a fee may be imposed for covering overdrafts "created by check, in-person withdrawal, ATM withdrawal, or other electronic means would satisfy the requirements of § 707.11(b)(1)(ii) of this part where the fee may be imposed in these circumstances. See comment 4(b)(4)-5 of this part.

6. *Time period to repay.* If a credit union reserves the right to require a member to pay an overdraft immediately or on demand instead of affording members a specific time period to establish a positive balance in the account, a credit union may comply with § 707.11(b)(1)(iii) of this part by disclosing this fact.

7. *Circumstances for nonpayment.* A credit union must describe the circumstances under which it will not pay an overdraft. It is sufficient to state, as applicable: "Whether your overdrafts will be paid is discretionary and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts."

8. *Advertising an account as "free."* If the advertised account-related service is an overdraft service subject to the requirements of § 707.11(b)(1) of this

part, credit unions must disclose the fee or fees for the payment of each overdraft, not merely that a cost is associated with the overdraft service, as well as other required information. Compliance with comment 8(a)—10.v is not sufficient.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-23187; Directorate Identifier 2005-NM-203-AD; Amendment 39-14397; AD 2005-25-04]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135BJ, -135ER, -135KE, -135KL, -135LR, -145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all EMBRAER Model EMB-135BJ, -135ER, -135KE, -135KL, -135LR, -145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. This AD requires reviewing the airplane maintenance records for recent reports of vibration from the tail section or rudder pedals. This AD also requires

repetitively inspecting the skin, attachment fittings, and control rods of rudder II to detect cracking, loose parts, wear, or damage; and related investigative/corrective actions if necessary. This AD results from reports of rudder vibration due to wear. We are issuing this AD to prevent failure of multiple hinge fittings, which could result in severe vibration, and to prevent failure of the rudder control rods, which could result in jamming of the rudder II; and possible structural failure and reduced controllability of the airplane.

DATES: This AD becomes effective December 23, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 23, 2005.

We must receive comments on this AD by February 6, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos

Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all EMBRAER Model EMB-135BJ, -135ER, -135KE, -135KL, -135LR, -145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. The DAC advises that it has received reports of rudder vibration. Investigation revealed wear in the attachment flange bushings of rudder II that progressed over the hinge fittings of rudder II. Investigation also revealed excessive freeplay of the end-to-rod attachment of the lower control rod on rudder II. Failure of multiple hinge fittings could result in severe vibration, and failure of the rudder control rods could result in jamming of the rudder II. These conditions, if not corrected, could result in possible structural failure and reduced controllability of the airplane.

Relevant Service Information

EMBRAER has issued Alert Service Bulletins 145LEG-55-A010, dated August 26, 2005, and 145-55-A036, Revision 01, dated September 5, 2005. The following table identifies the actions described in the service bulletins, which are divided into six parts.

SERVICE BULLETIN PROCEDURES

| Part | Action | Condition | Related investigative and corrective actions |
|------|---|--|--|
| I | Visual inspection of the rudder II skin. Inspection of the rudder II control rods. Detailed visual inspection of the rudder II attachment fittings. | Crack Relative movement between a control rod and its rod end. Wear or damage at only one attachment. Wear or damage at more than one attachment. | Repair or replacement of the affected area. Replacement of the control rod. Part(s) II, III, IV, or V, as applicable, of the service bulletin. Parts II, III, IV, and V of the service bulletin. |
| II-V | Dimensional inspection of hinge attachment points I, II, III, and IV. | Adequate measurements Measurements within certain limits. Measurements for the bushing less than certain limits. | Part VI of the service bulletin. Replacement of the bolt and/or bushing, and accomplishment of the remaining parts of the service bulletin. Repair as approved by EMBRAER. |
| VI | Install washers in hinge fittings Install washers in control rod assembly. | Group and modification status Modification status | Installation as specified in Figure 4 of the service bulletin, or restoration of modified airplanes as specified in the airplane maintenance manual (AMM). Installation as specified in Figure 5 of the service bulletin, or restoration of modified airplanes as specified in the AMM. |