Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The provisions of the Regulatory Flexibility Act are not applicable to this final rule because the Commission was not required to publish a notice of proposed rulemaking or to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and 604(a). Therefore, no regulatory flexibility analysis is required.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

■ For the reasons set out in the preamble, subchapter A, Chapter I of Title 11 of the *Code of Federal Regulations* is amended as follows:

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

■ 2. Section 111.30 is revised to read as follows:

§ 111.30 When will subpart B apply?

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers that relate to the reporting periods that begin on or after July 14, 2000 and end on or before December 31, 2013.

Dated: November 24, 2008.

On behalf of the Commission,

Donald F. McGahn II,

Chairman, Federal Election Commission.

[FR Doc. E8–28398 Filed 11–28–08; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 704

RIN 3133–AD43

Prompt Corrective Action; Amended Definition of Post-Merger Net Worth

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is adopting a final rule implementing a statutory amendment that expands the definition of ''net worth'' that applies to natural person credit unions under regulatory capital standards known as ''prompt corrective action.'' The expanded definition allows the acquiring credit union, in a merger of natural person credit unions, to combine the merging credit union's retained earnings with its own to determine the acquirer's post-merger ''net worth.'' For a merger in which the acquirer is a corporate credit union, the proposed rule similarly redefines corporate credit union capital to allow the acquirer to combine with its capital the retained earnings of the merging credit union to determine the acquirer's post-merger capital.

DATES: This rule is effective December 31, 2008, and applies to credit union mergers that are subject to financial reporting under Financial Accounting Statement No. 141(R), *Business Combinations* (2007).

FOR FURTHER INFORMATION CONTACT: *Technical:* Karen Kelbly, Chief Accountant, Office of Examination and Insurance, at the above address or by telephone: 703/518–6389; *Legal:* Steven W. Widerman, Trial Attorney, Office of General Counsel, at the above address or by telephone: 703/518–6557.

SUPPLEMENTARY INFORMATION:

A. Background

1. Natural Person Credit Unions

a. *Prompt Corrective Action.* The Credit Union Membership Access Act, Pub. L. No. 105–219, 112 Stat. 913 (1998) (''CUMAA''), mandated a system of regulatory capital standards for natural person credit unions called ''prompt corrective action'' (''PCA'' or ''regulatory capital''). 12 U.S.C. 1790d *et seq.* PCA imposes minimum capital standards and corresponding remedies to improve net worth. *Id.* The NCUA Board implemented a comprehensive system of PCA primarily under Part 702.[1] 12 CFR 702 *et seq.*

Under PCA, a natural person credit union's ''net worth ratio'' determines its classification among five statutory net worth categories. 12 U.S.C. 1790d(c); 12 CFR 702.102. CUMMA defined ''net worth ratio'' as the ratio of the credit union's net worth to its total assets. 12 U.S.C. 1790d(o)(3). It then expressly limited a credit union's ''net worth'' to ''the retained earnings balance of the credit union, as determined under generally accepted accounting principles [GAAP].'' *Id.* § 1790d(o)(2)(A).[2] The ''retained earnings only'' definition of net worth thus incorporated GAAP by reference generally, subject to future amendments and interpretations; it did not incorporate GAAP as a snapshot that preserved what GAAP then prescribed or how it was then interpreted.

b. *The ''Pooling Method'' of Financial Reporting.* The predominant practice under GAAP for financial reporting of a merger between credit unions has been to apply the ''pooling method.'' That method required an acquiring or continuing credit union (''acquiring credit union'') to combine with its own financial statement components the like components of the merging credit union. Under CUMAA's ''retained earnings only'' definition of net worth, the ''pooling method'' preserved an incentive to merge because it allowed an acquiring credit union to combine its own retained earnings with that of the merging credit union to determine the acquirer's post-merger net worth ratio.

c. *The ''Acquisition Method'' of Financial Reporting.* In 2001, the Financial Accounting Standards Board (''FASB''), the body that sets GAAP for financial reporting of business combinations, adopted Financial Accounting Statement No. 141, *Business Combinations* (2002). FAS 141 replaced the ''pooling method'' of financial reporting of business combinations between non-mutual ''for profit'' enterprises with the ''purchase method.'' In December 2007, FASB decided to extend the ''purchase method'' of financial reporting—which it renamed the ''acquisition method''—to business combinations between mutual ''for profit'' enterprises (''mutual combinations''), such as credit union mergers, that take place in the first annual reporting period beginning on or after December 15, 2008. Financial Accounting Statement No. 141(R), *Business Combinations* (2007) (''FAS 141(R)'') at ¶74.

[1] This is the fifth amendment to Part 702 since it was originally adopted in 2000. The first amendment incorporated limited technical corrections. 65 FR 55439 (Sept. 14, 2000). The second amendment deleted sections made obsolete by adoption of a uniform quarterly schedule for filing Call Reports. 67 FR 12459 (March 19, 2002). The third amendment incorporated a series of revisions and adjustments to improve and simplify the implementation of PCA. 67 FR 71078 (Nov. 29, 2002). Finally, the fourth amendment added a third risk-weighting tier to the standard risk-based net worth component for member business loans. 68 FR 56537, 56546 (Oct. 1, 2003). A proposal to modify the criteria for filing a net worth restoration plan, 67 FR 7113 (Nov. 29, 2002), was never adopted.

[2] The CUMAA definition of ''net worth'' applies to regulatory capital only. For financial reporting purposes, CUMMA requires credit unions to adhere to GAAP in the Call Reports required to be filed with the NCUA Board. 12 U.S.C. 1782(a)(6)(C)(i). The Financial Services Regulatory Relief Act of 2006, discussed *infra*, did not change that mandate.

Congress gave the other federal financial institution regulators the latitude to prescribe the ''relevant capital measures'' of their institutions. 12 U.S.C. 1831o(c)(1). As a result, the ''core capital'' of banks and thrifts is defined to include virtually all GAAP equity components, 12 CFR 325.2(v), not just the ''retained earnings'' component of equity.

The ''acquisition method'' of financial reporting of credit union mergers would require the fair value of the net assets acquired in a merger to be classified as a direct addition to the acquirer's equity, not as an addition to its retained earnings. FAS 141(R) at ¶A67. Since CUMMA defines a natural person credit union's ''net worth ratio'' as the ratio of its net worth to its total assets, 12 U.S.C. 1790d(o)(3), and because the ''retained earnings only'' definition of net worth does not permit credit unions to count ''additions of equity'' that are not retained earnings in their net worth (the numerator of the net worth ratio), an acquirer's net worth will not increase as the result of a merger. On the contrary, the ''acquisition method'' may well *reduce* an acquirer's post-merger net worth because, as a ratio of total assets (the denominator of the net worth ratio), it will be diluted by the addition and fair valuation of assets acquired in the merger.

Due to the ''retained earnings only'' limitation on net worth that applies to credit unions, the ''acquisition method'' of financial reporting would have exactly the opposite effect of the ''pooling method.'' It would discourage credit union mergers by excluding a merging credit union's retained earnings from the post-merger net worth of the acquiring credit union.

d. *Statutory Expansion of Net Worth Definition.* Out of concern that FAS 141(R), when subject to the ''retained earnings only'' definition of net worth, would stifle credit union mergers, Congress amended the CUMAA definition. The Financial Services Regulatory Relief Act of 2006, Pub. L. No. 109–351, 120 Stat. 1966 (''2006 Relief Act''), expanded the definition of a natural person credit union's ''net worth'' for PCA purposes to include, in addition to its own retained earnings, ''any amounts that were previously retained earnings of any other credit union with which [it] has combined.'' 12 U.S.C. 1790d(o)(2)(A) (2006).[3] The expanded definition permits the acquiring credit union ''to follow the new FASB rule while still allowing the capital of both credit unions to flow forward as regulatory capital and thus preserve the incentive for desirable credit union mergers.'' [4] For a comparison of the financial reporting and regulatory capital consequences of a credit union merger under present GAAP (the pre-FAS 141(R) ''pooling method'') and under new GAAP (the post-FAS 141(R) ''acquisition method'') both with and without implementing the expanded net worth definition, see the proposed rule. 73 FR 44197, 44199 (July 30, 2008).

2. Corporate Credit Unions

The 2006 Relief Act did not affect corporate credit unions because they are exempt from PCA. 12 U.S.C. 1790d(m). But corporate credit unions are subject by regulation to a minimum ''capital ratio,'' 12 CFR 704.3(d), and to a minimum ''retained earnings ratio'' calculated on a monthly basis. *Id.* § 704.3(i). When either ratio falls below the prescribed minimum, the corporate credit union is subject to PCA-like remedies (*e.g.,* ''capital restoration plan,'' earnings retention requirement, and ''capital directives''). *Id.* §§ 704.2(g)–(i), 704.3(i). The definitions associated with corporate credit union capital in Part 704 must be modified to correspond with the expanded definition of PCA net worth to enable an acquiring corporate credit union to include in its post-merger capital the merging credit union's retained earnings.

3. Proposed Rule

The NCUA Board issued a proposed rule to implement the expanded definition of PCA net worth in advance of the effective date of FAS 141(R) to benefit natural person credit union mergers taking place after that date. 73 FR 44197 (July 30, 2008). The proposed rule also modifies Part 704 to expand the corresponding definitions associated with corporate credit union capital. 12 CFR 704.2.

NCUA received 15 comment letters on the proposed rule—four from federally-chartered natural person credit unions, three from state-chartered natural person credit unions, one from a corporate credit union, six from credit union industry trade associations, and one from a banking industry trade association. Three commenters supported the rule without reservation, 10 offered qualified support, some suggesting specific revisions to the rule text, and two commenters opposed the rule, advocating revisions that exceed the scope of the NCUA Board's rulemaking authority. The comments on the proposed rule are addressed below.

B. Discussion of Comments on Proposed Rule

1. Part 702—Natural Person Credit Union's Post-Merger Net Worth

The proposed rule expanded the ''retained earnings only'' definition of a natural person credit union's ''net worth'' by reorganizing and then revising the PCA definition of ''net worth.'' *Id.* § 702.2(f). The rule added the critical language: ''For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, at the point of acquisition.'' 73 FR at 44201. The critical language used the term ''mutual combination'' in place of ''merger'' and defined it (consistent with GAAP) as ''a transaction in which a credit union acquires another credit union, or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union for the purpose of providing a return in the form of economic benefits directly to owner members.'' FAS 141(R) at ¶¶ 3d–e.

The term ''mutual combination'' was defined to narrowly extend the expanded ''net worth'' definition beyond just mergers between intact credit unions to include certain purchase and assumption (''P&A'') transactions in which a ''whole institution'' is conveyed exclusive of certain collateral obligations that would arise under a pre-existing contract. *Id.* An example of such a transaction takes place when NCUA liquidates a credit union and, in a P&A transaction, then sells the liquidated credit union's assets, liabilities, and existing depositor relationships, etc., to another credit union, but only after repudiating the executory obligations of a contract for servicing the liquidated credit union's loan portfolio.

Of the commenters who focused on the language of the proposed rule, several sought clarification of the definition of a ''mutual combination.'' Two commenters sought to insert the words ''upon combination'' as follows in the phrase ''an integrated set of assets and activities that *upon combination* is capable of being conducted and managed as a credit union.'' To modify the definition as the commenters suggested would allow the acquisition of a group of assets that does *not* constitute a business, and thus is ineligible for the ''acquisition method'' in the first place, to receive the regulatory capital benefit of this rule—replicating the result of the ''pooling method.'' FASB, not NCUA, drew the

[3] NCUA advocated expanding the ''retained earnings only'' definition more broadly to include the ''equity acquired in a merger.'' This would have more closely aligned the post-merger regulatory capital definition with CUMAA's financial reporting requirement that credit unions adhere to GAAP in Call Reports required to be filed with the NCUA Board. 12 U.S.C. 1782(a)(6)(C)(i).

[4] Staff of Senate Comm. on Banking, Housing and Urban Affairs, 109th Cong., *Section-by-Section Analysis of Financial Services Regulatory Relief Act of 2006* (Comm. Print 2006) at 3 (available at: *http://banking.senate.gov/public/_files/RegRel_summary.pdf*)

distinction between assets that constitute a business and those that do not, but the final rule is intended to benefit only those transactions to which FAS 141(R) applies.

Of the others who addressed the ''mutual combination'' definition, two were critical of the management ''purpose'' criterion. They contended that requiring ''an integrated set of assets and activities * * * to be managed as a credit union *for the purpose of providing a return in the form of economic benefits directly to owner members*'' could be construed to unnecessarily restrict a credit union's ability to consider all factors relevant to determining whether a merger would benefit its members. The management ''purpose'' criterion is part of the FAS 141(R) definition of a ''business.'' FAS 141(R) at ¶3.d. However, the commenter's argument has merit because the proposed rule was never meant to be construed to impose such an obstacle. Accordingly, the final rule excludes the ''for the purpose of * * *'' language from subsection (3) of its definition ''net worth.''

Several commenters expressed a fundamental disagreement with the result of this rulemaking. One commenter maintained that CUMAA's ''retained earnings only'' definition of ''net worth'' deviated from GAAP, and that the proposed rule's expanded definition is no better. To comply with GAAP, this commenter advocated defining ''net worth'' to include all components of GAAP ''equity'' like the bank regulators do. Despite acknowledging that NCUA has no control over applicable accounting standards, another commenter insisted on retaining the ''pooling method'' instead of following the ''acquisition method.'' One commenter criticized the proposed rule because the ''acquisition method'' mandated by FAS 141(R) relies on ''fair value accounting,'' which will compel credit unions to hire valuation professionals on a continuing basis. Finally, one commenter who supported the proposed rule wanted to further expand net worth to encompass ''acquired equity including retained earnings after valuation of the acquired credit union.'' This would achieve for regulatory capital purposes precisely the result the ''acquisition method'' proscribes for financial reporting purposes: Combining the merging credit union's acquired equity with that of the acquirer. Without that result, the same commenter asked, how should a merging credit union's retained earnings be reported for accounting purposes?

With the exception of the last comment (which is addressed below), resolving these fundamental disagreements with the proposed rule is beyond the scope of the NCUA Board's rulemaking authority. NCUA does not establish GAAP, does not oversee FASB, and does not have the discretion to reinstate the ''pooling method'' or to disregard fair value accounting. The 2006 Relief Act authorized NCUA, by rulemaking, to expand the PCA definition of ''net worth'' to include the retained earnings of an acquired credit union. It did not give NCUA the authority to override or expand limitations and definitions set by law or by GAAP.

Finally, two commenters pointed out the need to amend the Call Report to accommodate the final rule. To that end, NCUA will revise the ''statement of financial condition'' in the Call Report so that it collects identifiable intangibles and goodwill, as well as an ''equity acquired'' component. Further, a supplementary schedule will collect data on post-December 31, 2008, credit union combinations, including the merging credit union's acquisition-point retained earnings as measured under GAAP. These reported amounts, if not taken during a given quarter to cover losses in excess of GAAP retained earnings, will flow forward to the Call Report's automatic net worth calculator in accordance with this rule. To the extent ''equity acquired'' is eroded by credit union losses, the acquired credit union's regulatory capital (*i.e.*, its retained earnings balance under GAAP as collected on the supplementary Call Report schedule) must be reduced accordingly. NCUA will furnish instructions explaining these Call Report revisions and clarifying how to report a merging credit union's retained earnings for regulatory reporting purposes.

With the modifications explained above, the final rule adopts the expanded ''net worth'' definition, thus enabling an acquiring credit union to approximate for PCA purposes the post-merger net worth that the ''pooling method'' would have produced,[5] while adhering to FAS 141(R) for purposes of financial reporting of the merger.

2. Part 704—Corporate Credit Union's Post-Merger Capital

The proposed rule modifies Part 704 to expand the definitions associated with corporate credit union capital to correspond to the expanded definition of PCA ''net worth'' in Part 702. To that end, the Board revised definitions of a corporate credit union's ''capital,'' ''core capital'' and ''retained earnings ratio'' to include ''the retained earnings of the acquired credit union, or of an integrated set of activities and assets, at the point of acquisition.'' 73 FR at 44201. As in Part 702, the definition of a ''mutual combination'' was used to encompass both the acquisition of a credit union by merger and also, very narrowly, the acquisition of a ''whole institution'' previously liquidated by NCUA, exclusive of certain collateral obligations that would arise under a pre-existing contract.

To more closely replicate the regulatory capital result the ''pooling method'' would have yielded, the proposed rule excluded identifiable and unidentifiable intangibles[6] from the definition of a corporate credit union's ''moving daily average net assets'' (''MDANA'')—the denominator of its ''capital ratio.'' 12 CFR 704.3(d); *see* note 5 *supra*. That denominator under the ''pooling method'' would not otherwise reflect a merging credit union's intangibles or the increased valuation of its tangible assets. While replicating the ''pooling method'' result, these modifications allow an acquiring corporate credit union to adhere to FAS 141(R) for purposes of financial reporting of the credit union merger. The NCUA Board invited public comment on the proposal to exclude intangibles from the definition of a corporate credit union's MDANA.

In addition to the comments on Part 702 in the preceding section that also apply to Part 704, three commenters addressed revisions that are specific to Part 704. Recognizing that the NCUA Board has flexibility in establishing regulatory capital requirements for corporate credit unions, one commenter recommended adding an acquired credit union's ''acquired equity'' to corporate ''capital,'' ''core capital'', and the numerator of the ''retained earnings ratio,'' rather than limiting the addition to the acquired credit union's retained earnings. The commenter believes this approach is consistent with GAAP, would help to promote efficiencies, and would allay uncertainties in the marketplace.

The NCUA Board has considered the recommended approach but declines to adopt it. The introduction of ''acquired equity'' would be inconsistent with Congressional intent as reflected in the

[5] The result approximates, but does not duplicate, that of the ''pooling method'' because neither CUMAA nor the 2006 Relief Act authorizes the exclusion of intangibles from the ''total assets'' denominator of a natural person credit union's net worth ratio.

[6] Identifiable intangibles could include existing member relationships (i.e., core deposit intangibles) and unserved portions of a field of membership; unidentifiable intangibles include predominantly goodwill.

fact that Congress chose not to include it in the regulatory capital of natural person credit unions. It would be appropriate to revisit ''acquired equity'' were the NCUA Board to consider restructuring corporate credit union regulatory capital to conform to GAAP. The same is true with respect to this commenter's suggestion to also reflect goodwill in the regulatory capital measure of a corporate credit union, as a GAAP measurement would do.

A commenter who, although displeased with FASB's elimination of the ''pooling method,'' supports the proposed rule asked for clarification of the rule's reference to the retained earnings of ''an integrated set of activities and assets, at the point of acquisition.'' For the reasons given above in reference to natural person credit unions, the purpose of this language in Part 704 is to extend the expanded definition of corporate credit union capital very narrowly to the acquisition of a ''whole institution'' that NCUA previously liquidated, exclusive of certain collateral obligations that would arise under a pre-existing contract. In this context, the ''integrated set of activities and assets'' language will ensure that the retained earnings that were earned and counted as net worth of the merging credit union will remain within the credit union system.

The same commenter asked whether the exclusion of intangibles from the definition of a corporate credit union's MDANA would apply to intangibles created before the final rule's effective date. The answer is that the exclusion applies to all identifiable intangibles and goodwill regardless of date of origination. The numerator of the ''capital,'' ''core capital'' and ''retained earnings'' ratios does not include intangibles and goodwill. In order not to dilute the ratios, and to duplicate the ''pooling method'' result, neither should the denominator.

A commenter objected that the NCUA Board lacks the authority to, in effect, preserve the ''pooling method'' for corporate credit union mergers by regulation. The premise of this objection is that CUMAA exempted corporate credit unions from PCA, and the 2006 Relief Act did not subject them to it. From this premise, the commenter draws the inference that NCUA needs explicit Congressional authorization to permit an acquiring corporate credit union to count the retained earnings of a merging credit union as part of its capital. Without that authority, corporate credit unions must apply the ''acquisition method'' to credit union mergers.

What this commenter overlooks is that Congress did authorize the NCUA Board to charter ''central credit unions'' and subject them to ''such rules, regulations and orders as the Board deems appropriate.'' 12 U.S.C. 1766(a). Thus, the NCUA Board has the authority to prescribe the capital structure of corporate credit unions and the flexibility to permit them to replicate the regulatory capital results of the ''pooling method.'' Even so, the NCUA Board still requires corporate credit unions to file regulatory reports that are consistent with GAAP.

Finally, among several minor technical corrections to the proposed revisions to Part 704, the final rule replaces the term ''unidentifiable intangibles'' with the term ''goodwill.''

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis describing any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $10 million in assets). The final rule implements an Act of Congress expanding the definition of a natural person credit union's net worth. 12 U.S.C. 1790d(o)(2)(A) (2006). The rule affects the calculation of the post-merger net worth of an acquiring credit union in a credit union merger, the vast majority of which exceed $10 million in assets. Accordingly, the final rule will not have a significant economic impact on a substantial number of small credit unions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule implements an Act of Congress expanding the definition of a natural person credit union's net worth. 12 U.S.C. 1790d(o)(2)(A) (2006). NCUA has determined that the rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. Control number 3133–0154 has been issued for Part 702 and control number 3133–0129 has been issued for Part 704. Both will be displayed in the table at 12 CFR Part 795.

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 final rule implements a statutory mandate that applies to all federally-insured credit unions, including State-chartered credit unions, and thus may raise some federalism implications. However, the proposal is unlikely to have a 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 because it facilitates, rather than diminishes, the ability of State-chartered credit unions to combine with other credit unions.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General 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) (SBREFA) 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 APA. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so this rule may be reviewed.

List of Subjects in 12 CFR Parts 702 and 704

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 20, 2008.

Mary Rupp,

Secretary of the Board.

■ For the reasons set forth above, 12 CFR parts 702 and 704 are amended as follows:

PART 702—PROMPT CORRECTIVE ACTION

■ 1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

■ 2. Amend § 702.2 by revising paragraph (f) to read as follows:

§ 702.2 Definitions.

* * * * *

(f) *Net Worth* means—

(1) The retained earnings balance of the credit union at quarter-end as determined under generally accepted accounting principles, subject to paragraph (f)(3) of this section. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities;

(2) For a low income-designated credit union, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders and the NCUSIF; and

(3) For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, at the point of acquisition. A mutual combination is a transaction in which a credit union acquires another credit union, or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

* * * * *

PART 704—CORPORATE CREDIT UNIONS

■ 1. The authority citation for Part 704 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, 1789.

■ 2. Amend § 704.2 by:

■ a. Revising the current definitions of *''Capital'', ''Core capital'', ''Moving daily average net assets''* and *''Retained earnings ratio''* to read as set forth below; and

■ b. Adding the definition of *''Mutual combination''* to read as follows:

§ 704.2 Definitions.

* * * * *

Capital means the sum of a corporate credit union's retained earnings, paid-in capital, and membership capital. For a corporate credit union that acquires another credit union in a mutual combination, capital includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, at the point of acquisition.

* * * * *

Core capital means the sum of a corporate credit union's retained earnings, and paid-in capital. For a corporate credit union that acquires another credit union in a mutual combination, core capital includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, at the point of acquisition.

* * * * *

Moving daily average net assets means the average of daily average net assets exclusive of identifiable intangibles and goodwill for the month being measured and the previous eleven (11) months.

Mutual combination means a transaction or event in which a corporate credit union acquires another credit union, or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

* * * * *

Retained earnings ratio means the corporate credit union's retained earnings divided by its moving daily average net assets. For a corporate credit union that acquires another credit union in a mutual combination, the numerator of the retained earnings ratio also includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, at the point of acquisition.

* * * * *

[FR Doc. E8–28462 Filed 11–28–08; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM08–1–001; Order No. 712–A]

Promotion of a More Efficient Capacity Release Market

Issued November 21, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order addressing the requests for clarification and/or rehearing of Order No. 712 [73 FR 37058, June 30, 2008]. Order No. 712 revised Commission regulations governing interstate natural gas pipelines to reflect changes in the market for short-term transportation services on pipelines and to improve the efficiency of the Commission's capacity release program. The order permitted market based pricing for short term capacity releases and facilitated asset management arrangements (AMA) by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. The Commission further clarified in the order that its prohibition on tying does not apply to conditions associated with gas inventory held in storage for releases of firm storage capacity. Finally, the Commission waived its prohibition on tying and bidding requirements for capacity releases made as part of state-approved open access programs. This order generally denies rehearing and clarifies Order No. 712.

DATES: *Effective Date:* The amendments to the regulations will become effective 30 days after publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and John Wellinghoff.

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