account.'' For such accounts with remaining maturities of less than five years, the credit union shall reflect the capital value of the accounts in its financial statement in accordance with the following scale:

(i) Four to less than five years remaining maturity—80 percent.

(ii) Three to less than four years remaining maturity—60 percent.

(iii) Two to less than three years remaining maturity—40 percent.

(iv) One to less than two years remaining maturity—20 percent.

(v) Less than one year remaining maturity—0 percent.

(2) The credit union will reflect the full amount of the secondary capital on deposit in a footnote to its financial statement.

* * * * *

[FR Doc. 96–24457 Filed 9–26–96; 8:45 am]

BILLING CODE 7535–01–P

12 CFR Part 711

Management Official Interlocks

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: NCUA is revising its rules regarding management interlocks between credit unions and other types of depository institutions. The final rule, like the current regulation, does not apply when a credit union shares a management official with another credit union. The final rule conforms the interlocks rules to recent statutory changes, modernizes and clarifies the rules, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

EFFECTIVE DATE: September 27, 1996.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mooney, Staff Attorney (703/518–6563), Office of General Counsel, or Kimberly Iverson, Program Officer (703/518–6375), Office of Examination and Insurance.

SUPPLEMENTARY INFORMATION:

Background

The Depository Institution Management Interlocks Act (12 U.S. C. 3201 *et seq.*) (Interlocks Act) prohibits certain management interlocks between depository institutions. The Interlocks Act exempts interlocking arrangements between two credit unions and therefore, in the case of credit unions, only restricts interlocks between credit unions and other depository institutions—banks and savings associations.

The Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) amended the Interlocks Act by removing NCUA's broad authority to exempt otherwise impermissible interlocks and replacing it with the authority to exempt interlocks under more narrow circumstances. The CDRI Act also required a depository organization with a ''grandfathered'' interlock to apply for an extension of the grandfather period if the organization wanted to keep the interlock in place.

On March 25, 1996, the NCUA Board (Board) published a notice of proposed rulemaking (proposal) (61 FR 12043) to implement these statutory changes. In addition, the proposal permitted interlocks involving two institutions located in the same relevant metropolitan statistical area (RMSA) if the institutions were not also located in the same community and if at least one of the institutions had total assets of less than $20 million. Finally, the proposal streamlined and clarified NCUA's interlocks rules in various respects.

The Final Rule and Comments Received

NCUA received eight comment letters; four from state leagues, three from credit unions, and one from a national trade association. Seven of the eight commenters supported the proposal. The commenter that objected to the proposal thought the changes were unnecessary. A few commenters, while supporting the proposal, requested guidance or suggested changes as discussed later in this preamble. Most of the provisions in the proposal received either no comments or favorable comments. Accordingly, NCUA has adopted, with minor modifications, the changes to the interlocks rules that were set forth in the proposal.

Authority, Purpose, and Scope

This section in NCUA's final rule identifies the Interlocks Act as the statutory authority for the management interlocks regulation. It also states that the purpose of the rules governing management interlocks is to foster competition between unaffiliated institutions.

One commenter asked NCUA to include a statement that ''this part does not apply to interlocking arrangements between credit unions.'' Language to that effect is provided in section 711.1(c).

Definitions

Anticompetitive Effect

The final rule defines the term ''anticompetitive effect'' to mean ''a monopoly or substantial lessening of competition,'' a definition derived from the Bank Merger Act (12 U.S.C. 1828(c)). The term ''anticompetitive effect'' is used in the Regulatory Standards exemption. Under the Regulatory Standards exemption, NCUA may approve a request for an exemption to the Interlocks Act if, among other things, the agency finds that continuation of service by the management official does not produce an anticompetitive effect with respect to the affected institution.

The statute does not define the term ''anticompetitive effect,'' nor does the legislative history to the CDRI Act point to a particular definition. The context of the Regulatory Standards exemption suggests that NCUA should apply the term ''anticompetitive effect'' in a manner that permits interlocks that present no substantial lessening of competition. By prohibiting an interlock that would result in a monopoly or substantial lessening of competition, the definition preserves the free flow of credit and other financial services that the Interlocks Act is designed to protect.

Since the term anticompetitive effect is not used by the credit union industry, NCUA requested comments on whether another definition would be more appropriate. One commenter suggested that NCUA define monopoly and substantial lessening of competition by using percentages. The Board believes a percentage system would be arbitrary and has not made the suggested change.

Two commenters asked NCUA to clarify what the agency would consider an anticompetitive effect. The Board anticipates that it will make this determination on a case-by-case basis. Nevertheless, NCUA will follow Justice Department guidelines and precedents established by the financial institution regulators where appropriate.[1]

Area Median Income

The final rule defines ''area median income'' as the median family income for the metropolitan statistical area (MSA) in which an institution is located or the statewide nonmetropolitan median family income if an institution is located outside an MSA. The term ''area median income'' is used in the definition of ''low- and moderate-income areas,'' which in turn is used in

[1] *See e.g.*, the Office of the Comptroller of the Currency's (OCC) Bank Merger Competitive Analysis Screen (OCC Advisory Letter 95–4, July 18, 1995); Department of Justice Merger Guidelines (49 FR 26823, June 29, 1984) (applied by the Federal Reserve Board (FRB)); and Federal Deposit Insurance Corporation (FDIC) Statement of Policy: Bank Merger Transactions (54 FR 39045, Sept. 22, 1989).

the implementation of the Management Consignment exemption.

Critical

The final rule defines ''critical'' as being ''important to restoring or maintaining a depository organization's safe and sound operations.'' The term ''critical'' is used in the Regulatory Standards exemption. Under that exemption, NCUA must find that a proposed management official is critical to the safe and sound operations of the affected institution. 12 U.S.C. 3207(b)(2)(A).

Neither the statute nor its legislative history defines ''critical.'' NCUA is concerned that a narrow interpretation of this term would nullify the Regulatory Standards exemption. If someone were ''critical'' to the safe and sound operations of an institution only if the institution would fail but for the service of the person in question, the exemption would have little relevance, because the standard would be impossible to meet. Given that Congress clearly intended for the Regulatory Standards exemption to permit interlocks under some circumstances, the question thus becomes how to define those circumstances.

The Board believes that the definition of critical adopted in this final rule is consistent with the legislative intent by insuring that only persons of demonstrated expertise and importance to the institution's safe and sound operations may serve pursuant to a Regulatory Standards exemption.

One commenter supported the definition as proposed. Two commenters, however, asked NCUA to clarify when the agency would consider a management official critical. As discussed below, the Board has established presumptions to determine when a person is critical to an institution, therefore, it does not believe further clarification is necessary.

Depository Institution

The final rule makes no substantive change to the definition of ''depository institution.''

Low- and Moderate-Income Areas

The final rule defines this term as a census tract (or, if an area is not in a census tract, a block numbering area delineated by the United States Bureau of the Census) in which the median family income is less than 100 percent of the area median income. This term is used in the Management Consignment exemption that permits an otherwise impermissible interlock if the interlock would improve the provision of credit to a low- and moderate-income area. The final rule clarifies that NCUA will evaluate whether an area is low- or moderate-income by comparing the median family income for the census tract to be helped (or, if there is no census tract, the block numbering area delineated by the United States Bureau of the Census) with the area median income. Income data will be derived from the most recent decennial census.

Management Official

The final rule defines ''management official'' to include a senior executive officer, a director, a branch manager, a trustee of an organization under the control of trustees, or any person who has a representative or nominee serving in such capacity. The definition excludes (1) a person whose management functions relate either exclusively to the business of retail merchandising or manufacturing or principally to business outside the United States of a foreign commercial bank and (2) a person excluded by section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)).

The final rule removes the phrase ''an employee or officer with management functions,'' which appeared in the former rule. In its place, NCUA has used the term ''senior executive officer'' as defined by each agency in its regulation pertaining to the prior notice of changes in senior executive officers, which implement section 212 of the Federal Credit Union Act (FCU Act) (12 U.S.C. 1790a) as added by section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. No. 101–73, 103 Stat. 183). NCUA has made this change to eliminate the uncertainty and attendant compliance burden created by the ambiguous term ''management functions.'' The final rule incorporates specific illustrative examples already found in NCUA's regulations of positions at depository organizations that will be treated as senior executive officers. *See* 12 CFR § 701.14. The Board believes that this definition will allow depository organizations to identify impermissible interlocks with greater certainty and thus will enhance compliance.

One commenter asked NCUA to place the text of the definition of senior executive officer already found in section 701.14 in section 711.2. Another commenter asked NCUA to specifically exclude compliance officers from the definition of management official.

NCUA has not adopted either suggested change. First, NCUA does not believe adding the text of section 701.14 to section 711.2 is necessary. References to other sections are common and do not increase regulatory burden. Second, while NCUA believes that in most instances a compliance officer will not be considered a management official, that determination should be made after the individual's duties and responsibilities have been evaluated.

Relevant Metropolitan Statistical Area

The final rule, like its predecessor, defines ''RMSA'' as an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs. However, the final rule clarifies that this definition will be used to the extent that the Office of Management and Budget (OMB) defines and applies the terms MSA, primary MSA, and consolidated MSA. This change reflects the fact that OMB defines ''consolidated MSA'' to include two or more primary MSAs. Given that a consolidated MSA, by OMB's definition, is comprised of primary MSAs, the reference to a consolidated MSA in the Interlocks Act and NCUA's regulations is inappropriate. The final rule enables NCUA to implement the statute in a way that complies with both the spirit and the letter of the Interlocks Act.

Representative or Nominee

The final rule defines ''representative or nominee'' as someone who serves as a management official and has an obligation to act on behalf of someone else. The final rule removes the rest of the definition that appeared in the former rule, however, and inserts a statement that NCUA will find that someone has an obligation to act on behalf of someone else *only* if there is an agreement (express or implied) to do so. This change clarifies that the determination of whether someone serves a representative or nominee will depend on whether there is a basis to conclude that an agreement exists to act on someone's behalf.

Prohibitions

The former rule prohibited interlocks under three circumstances. First, no two unaffiliated depository organizations may have an interlock if they (or their depository institution affiliates) have depository institution offices in the same *community*. Second, a depository organization may not have an interlock with any unaffiliated depository organization if either depository organization has assets of $20 million or more and the depository organizations (or depository institution affiliates of either) have depository institution

offices in the same RMSA.[2] Third, if a depository organization has total assets exceeding $1 billion, it (and its affiliates) may not have an interlock with any depository organization with total assets exceeding $500 million (or affiliate thereof), regardless of location.

The final rule amends the restriction applicable to institutions with assets equal to or exceeding $20 million to better conform to the purposes of the Interlocks Act. Whereas the prior rule prohibited interlocks in an RMSA if *one* of the organizations had total assets of $20 million or more, the final rule applies the RMSA-wide prohibition only if *both* organizations have total assets of $20 million or more. Interlocks within a *community* involving unaffiliated depository organizations will continue to be prohibited, regardless of the size of the organizations.

The Board believes that this change is consistent with both the language and the intent of the Interlocks Act. While the statute uses the plural ''depository institutions'' in section 203(1) of the Interlocks Act (12 U.S.C. 3202(1)), the wording in context is ambiguous and neither the statute nor its legislative history compels the conclusion that the interlock must involve two institutions with less than $20 million in assets before the less restrictive prohibition applies.

The Interlocks Act seeks to prohibit interlocks that could enable two institutions to engage in anticompetitive behavior. However, an institution with total assets of less than $20 million is likely to derive most of its business from the community in which it is located and is unlikely to compete with institutions that do not have offices in that community. Therefore, an interlock involving one institution with assets under $20 million and another institution with assets of at least $20 million not in the same community is not likely to lead to the anticompetitive conduct that the Interlocks Act is designed to prohibit.

The Board believes that this change will promote rather than inhibit competition. Expanding the pool of managerial talent for institutions with assets under $20 million could enhance the ability of smaller institutions to compete by improving the management of these institutions.

One commenter objected to the proposed change asserting that it was unnecessary. For the reasons stated above, NCUA disagrees with the commenter and has included the changes in the final rule.

Interlocking Relationships Expressly Permitted by Statute

The final rule states the exemptions found in 12 U.S.C. 3204 (1)–(8). The final rule reorders the exemptions set forth in the current regulation in order to conform the list of exemptions to the list set forth in the Interlocks Act.

Regulatory Standards Exemption

The final rule sets forth the requirements that a depository organization must satisfy in order to obtain a Regulatory Standards exemption. The rule implements the requirement regarding certification by allowing a depository organization's board of directors (or the organizers of a depository organization that is being formed) to certify to NCUA that no other qualified candidate has been found after undertaking reasonable efforts to locate qualified candidates who are not prohibited from service under the Interlocks Act. If read narrowly, the Interlocks Act could require a depository organization to evaluate every person in a given locale that might be qualified and interested. This would create a requirement that, in practice, would be impossible to satisfy. Given that Congress would not have included an exemption that would have no practical application, NCUA believes that the ''reasonable efforts'' standard is consistent with the legislative intent.

The final rule also sets forth a presumption that NCUA will apply when reviewing an application for a Regulatory Standards exemption.[3] NCUA will presume that a person is critical to an institution's safe and sound operations if NCUA also approved that individual under section 914 of FIRREA and the institution in question either was a newly chartered institution, failed to meet minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in the reviewing agency's section 914 regulation at the time the section 914 filing was approved.

The final rule also addresses the duration of an interlock permitted under the Regulatory Standards exemption. The statute does not require that these interlocks terminate. In light of this open-ended grant of authority, NCUA has not adopted a specific term for a permitted exemption. Instead, NCUA may require an institution to terminate the interlock if NCUA determines that the management official in question either no longer is critical to the safe and sound operations of the affected organization or that continued service will produce an anticompetitive effect. NCUA will provide affected organizations an opportunity to submit information before they make a final determination to require termination of an interlock.

Grandfathered Interlocking Relationships—Removed

Section 338(a) of the CDRI Act authorizes NCUA to extend a grandfathered interlock for an additional five years if the management official in question satisfies the statutory criteria for obtaining an extension.

The final rule removes the sections addressing the grandfather exemption because they are unnecessary and redundant in light of the statute. NCUA did not receive any requests to extend a grandfathered interlock, and individuals who wished to extend the grandfather period had until March 23, 1995 to apply for an exemption.

Management Consignment Exemption

The final rule implements the Management Consignment exemption, set forth in section 209(c) of the Interlocks Act (12 U.S.C. 3207(c)), by restating the statutory criteria with three clarifications. First, the final rule states that NCUA considers a ''newly chartered institution'' to be an institution that has been chartered for less than two years at the time it files an application for exemption. This standard is consistent with NCUA's threshold for determining when an institution is considered newly chartered.

Second, the final rule clarifies that the exemption available for ''minority- and women-owned institutions'' is available for an institution that is owned *either* by minorities *or* women. In analyzing the exemptions to the Interlocks Act that the federal banking agencies have approved, the House Conference Report to the CDRI Act (H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 181 (1994)) (Conference Report) states that the types of institutions that have received

[2] A ''community'' as that term is defined in the rule is smaller than an RMSA. There may be several communities in one RMSA.

[3] OCC, FRB, FDIC and the Office of Thrift Supervision also will presume that an interlock will not have an anticompetitive effect if it involves institutions that, if merged, would not trigger a challenge from agencies on competitive grounds. Generally, the agencies will not object to a merger on competitive grounds if the post-merger Herfindahl-Hirschman Index (HHI) for the market is less than 1800 and the merger increases the HHI by 200 points or less. NCUA will not implement this presumption because there is no statutory authority for credit unions to merge with other types of depository institutions, and the typical HHI analysis does not reflect the shares/deposits held by credit unions, therefore, any HHI analysis involving credit unions would be meaningless.

exemptions include those that are ''owned by women or minorities.'' These exemptions ultimately were codified in the Interlocks Act. Accordingly, NCUA has concluded that Congress intended the Management Consignment exemption to assist institutions owned by women and/or by minorities, but did not intend to require the institution to be owned by both.

Third, the final rule permits an interlock if the interlock would strengthen the management of *either* a newly chartered institution *or* an institution that is in an unsafe or unsound condition. Section 209(c)(1)(C) of the Interlocks Act (12 U.S.C. 3207(c)(1)(C)) permits an exemption if the interlock would ''strengthen the management of newly chartered institutions that are in an unsafe or unsound condition.'' However, this provision contains what appears on its face to be an error, given that an exemption limited to situations involving newly chartered institutions that also are in an unsafe and unsound condition would have no practical utility. NCUA will not approve an application for a credit union charter unless the applicant seeking a charter can demonstrate that the proposed new financial institution will operate in a safe and sound manner for the foreseeable future. While there may be an extraordinary instance where a newly chartered institution immediately experiences unforeseen problems so severe that they threaten the safety and soundness of that institution, there is nothing in the legislative history to suggest that Congress intended to limit the Management Consignment exemption to such rare instances.

Moreover, the legislative history of the CDRI Act suggests that NCUA is to apply the Management Consignment exemption in cases involving either newly chartered institutions or institutions that are in an unsafe or unsound condition. The Conference Report notes that the federal financial institution regulatory agencies have used their exemptive authority to grant exemptions in limited cases where institutions ''are particularly in need of management guidance and expertise to operate in a safe and sound manner.'' *Id*. The Conference Report goes on to state that ''Examples of exceptions permissible under an agency management official consignment program include improving the provision of credit to low- and moderate-income areas, increasing the competitive position of minority- and women-owned institutions, and strengthening he [sic] management of newly chartered institutions *or* institutions that are in an unsafe or unsound condition.'' *Id*. at 182 (emphasis added).

Finally, Congress used the exemptions in NCUA's current rules as the model for the Management Consignment exemption. *See id*. at 181–182. These exemptions distinguish newly chartered institutions from institutions that are in an unsafe or unsound condition. The reference in the CDRI Act's legislative history to the current regulatory exemptions suggests that Congress intended to codify these exemptions.

For these reasons, NCUA will permit Management Consignment exemptions if the management official will strengthen either a newly chartered institution or an institution that is in an unsafe or unsound condition.

The final rule sets forth two presumptions that NCUA will apply in connection with an application for an exemption under the Management Consignment exemption. First, NCUA will presume that an individual is capable of strengthening the management of an institution that has been chartered for less than two years if NCUA approved the individual to serve as a management official of that institution pursuant to section 914 of FIRREA. Second, NCUA will presume that an individual is capable of strengthening the management of an institution that is in an unsafe or unsound condition if NCUA approved the individual to serve under section 914 as a management official of that institution at a time when the institution was in a ''troubled condition.''

NCUA believes that presumptions of suitability are less valid when applied to the other Management Consignment exemptions because there is no reason to conclude that a management official approved under section 914 necessarily will improve the flow of credit to low- and moderate-income areas or increase the competitive position of minority- or women-owned institutions. Moreover, the final rule does not contain a presumption regarding effects on competition, given that this is not a factor to be considered by NCUA when reviewing an application for a Management Consignment exemption.

The final rule sets forth the limits on the duration of a Management Consignment exemption. The Interlocks Act limits a Management Consignment exemption to two years, with a possible extension for up to an additional two years if the applicant satisfies at least one of the criteria for obtaining a Management Consignment exemption. The final rule implements this limitation by requiring interested parties to submit an application for an extension at least 30 days before the expiration of the initial term of the exemption and by clarifying that the presumptions that apply to initial applications also apply to extension applications.

Change in Circumstances

The final rule provides a 15-month grace period for nongrandfathered interlocks that become impermissible due to a change in circumstances. This period may be shortened by NCUA under appropriate circumstances.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

This final rule, like the current 12 CFR part 711 it would replace, will apply to all Federally insured credit unions. The Board, pursuant to Executive Order 12612, has determined, however, that this final rule will not have a 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 various levels of government. Further, this final rule will not preempt provisions of State law or regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a succinct statement explaining the reasons for such certification in the Federal Register along with its final rule.

Pursuant to section 605(b) of the RFA, the Board hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Board expects that this rule will not (1) Have significant secondary or incidental effects on a substantial number of small entities or (2) create any additional burden on small entities. The changes to the exemptions are required by the Interlocks Act. The Board has added presumptions that will streamline and simplify the application procedures for obtaining an exemption from the Interlocks Act prohibitions, and have defined key terms used in the

provisions implementing these exemptions in a way that is intended to eliminate any unnecessary burden. As noted in the preamble discussion of the changes made by the final rule, the Board has made substantive changes that will permit more flexibility to institutions with total assets of less than $20 million, clarified the circumstances under which someone will be deemed to be a ''representative or nominee,'' and amended the definition of ''senior management official'' so as to provide greater clarity and to conform this definition with definitions of similar terms used in other regulations.

The impact of these changes will be to minimize, to the extent possible, the costs of complying with this final rule.

List of Subjects in 12 CFR Part 711

Antitrust, Credit unions, Holding companies.

By the National Credit Union Administration Board on September 18, 1996.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, NCUA revises part 711 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

PART 711—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

Authority: 12 U.S.C. 1757 and 3201–3208.

§ 711.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq*).

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope.* This part applies to management officials of federally insured credit unions. Section 711.4(c) exempts a management official of a credit union from the prohibitions of the Interlocks Act when the individual serves as a management official of another credit union. Therefore, the Interlocks Act prohibitions contained in this part only apply to a management official of a credit union when that individual also serves as a management official of another type of depository organization (usually a bank or thrift).

§ 711.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. ''Immediate family'' means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving a depository institution based on common ownership does not exist if the appropriate federal supervisory agency determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the appropriate Federal supervisory agency considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(d) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical* means important to restoring or maintaining a depository organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *District bank* means any State bank operating under the Code of Law of the District of Columbia.

(l) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(m) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 701.14(b)(2), or a person holding an equivalent position regardless of title;

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (m)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the

business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisions of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(n) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(o) *Person* means a natural person, corporation, or other business entity.

(p) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(q) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. NCUA will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. NCUA will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(r) *Total assets.* (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(s) *United States* includes any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 711.3 Prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of $20 million or more.

(c) *Major assets.* A management official of a depository organization with total assets exceeding $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 711.4 Interlocking relationships permitted by statute.

The prohibitions of § 711.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The NCUA Board or its designee may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by NCUA.

(3) The NCUA Board or its designee may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 711.5 Regulatory Standards exemption.

(a) *Criteria.* NCUA may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 711.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to NCUA certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) NCUA, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* NCUA applies the following presumptions when reviewing any application for a Regulatory Standards exemption. A proposed management official is critical to the safe and sound operations of a depository institution if:

(1) That official is approved by NCUA to serve as a director or senior executive officer of that institution pursuant to 12 CFR 701.14 or pursuant to conditions imposed on a newly chartered credit union; and

(2) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in 12 CFR 701.14 at the time the service under 12 CFR 701.14 was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until NCUA notifies the affected depository organizations otherwise. NCUA may require a credit union to terminate any interlock permitted under this section if NCUA concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. NCUA may shorten this period under appropriate circumstances.

§ 711.6 Management Consignment exemption.

(a) *Criteria.* NCUA may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 711.3 if NCUA, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by NCUA on a case-by-case basis.

(b) *Presumptions.* NCUA applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by NCUA to serve as a director or senior executive officer of that institution pursuant to 12 CFR 701.14 or pursuant to conditions imposed on a newly chartered credit union and the institution had operated for less than two years at the time the service under 12 CFR 701.14 was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by NCUA to serve as a director or senior executive officer of that institution pursuant to 12 CFR 701.14 and the institution was in a ''troubled condition'' as defined under 12 CFR 701.14 at the time service under that section was approved.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. NCUA may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 711.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. NCUA may shorten this period under appropriate circumstances.

§ 711.8 Enforcement.

Except as provided in this section, NCUA administers and enforces the Interlocks Act with respect to federally insured credit unions, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 868, 870, 872, 876, 880, 882, 884, 888, and 890

[Docket No. 95N–0084]

RIN 0910–AA31

Medical Devices; Effective Date of Requirement for Premarket Approval for Class III Preamendments Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for 41 class III medical devices. The agency has summarized its findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices.

EFFECTIVE DATE: September 27, 1996.

FOR FURTHER INFORMATION CONTACT: Melpomeni K. Jeffries, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy document set forth FDA's plans for implementing the provisions of section 515(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(i)) for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided the devices into three groups as referenced in the May 6, 1994, notice.