

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the
Currency****12 CFR Part 28****[Docket No. 02-10]****RIN 1557-AC05****International Banking Activities:
Capital Equivalency Deposits****AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.**ACTION:** Final rule.

SUMMARY: The OCC is amending its regulation regarding the capital equivalency deposits (CED) that foreign banks with Federal branches or agencies must establish and maintain. The OCC is revising certain requirements regarding CED deposit arrangements to increase flexibility for, and reduce burden on, certain Federal branches and agencies, based on a supervisory assessment of the risks presented by the particular institution.

EFFECTIVE DATE: This rule is effective on June 19, 2002.

FOR FURTHER INFORMATION CONTACT: Martha Clarke, Acting Assistant Director, Legislative and Regulatory Activities Division, 202-874-5090; or Carlos Hernandez, Senior International Advisor, International Banking and Finance Division, 202-874-4730.

SUPPLEMENTARY INFORMATION: On January 30, 2002, the OCC requested comment on an interim rule amending part 28. 67 FR 4325. The interim rule revised certain requirements regarding CED deposit arrangements to increase flexibility and reduce burden by permitting the OCC to impose deposit requirements based on the same supervision by risk approach that it uses in its supervision of national banks. The interim rule revised 12 CFR 28.15(d) to clarify that the OCC may vary the terms of a CED Agreement (Agreement) based on the circumstances and supervisory risks present at a particular branch or agency. For example, an Agreement may permit a foreign bank to withdraw assets from its CED account, thereby reducing the net value of the assets held in the account without OCC approval, as long as the withdrawal does not reduce the value below the minimum CED level required for that institution. Moreover, it may not be necessary in all cases for a foreign bank to pledge its CED assets to the OCC or for the depository bank to be a signatory to the Agreement unless required by the OCC. The OCC stated that it will make these determinations on a case-by-case basis,

consistent with its supervisory assessment of the risks presented by the particular institution.

The interim rule became effective immediately, but the OCC invited public comment on any aspect of the interim rule.

Description of Comments Received and Final Rule

The OCC received two comments. One comment strongly supported the revisions reflected in the interim rule. The commenter stated that the interim rule should alleviate the administrative burden associated with calculating, monitoring, and managing the CED requirement. The commenter also supported the incorporation of the risk-based approaches to regulation and supervision of international banking institutions into the CED requirement.

The second commenter stated that to some readers the rule could raise a question of whether the rule means that some foreign institutions would not be required to maintain a CED in the statutory minimum amount of five percent of liabilities. The proposed rule stated that the CED “[m]ay not be reduced in value below the minimum required for that branch or agency without the prior approval of the OCC.” The final rule clarifies that in no event could the OCC approve a reduction that is less than the statutory minimum for the particular Federal branch or agency.

For these reasons, the OCC is adopting the interim rule in final form without change, except for this clarification.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the OCC certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule will affect few small entities. The principal effect of the rule is to remove several requirements with respect to deposit arrangements for the CED and reduce burden on qualifying foreign banks with Federal branches and agencies.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact

statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the rule will not result in expenditures by State, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866

The OCC has determined that this rule does not constitute a “significant regulatory action” for the purposes of Executive Order 12866.

Immediate Effective Date

The final rule is effective immediately. Pursuant to 5 U.S.C. 553, agencies may issue a rule without public notice and comment when the agency, for good cause, finds that such notice and public comment are impracticable, unnecessary, or contrary to the public interest. Section 553 also permits agencies to issue a rule without delaying its effectiveness if the agency finds good cause for the immediate effective date.

The OCC finds good cause to issue this rule without a delayed effective date. Like the interim rule, the final rule will enable the OCC to make determinations on a case-by-case basis, consistent with its supervisory assessment of the risks presented by a particular institution. These determinations will relate to whether a foreign bank should continue to be required to pledge its CED assets to the OCC or to obtain the OCC’s approval to reduce the aggregate value of the CED assets by withdrawal. These requirements may not be necessary for safety and soundness reasons for most highly rated foreign banks, and they, therefore, may impose unnecessary cost and burden. Elimination of needless resulting cost and burden warrants making this rule effective immediately so that qualifying foreign banks that do not pose safety or soundness issues may take advantage of its benefits immediately.

Subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

Like the interim rule, the final rule imposes no additional reporting, disclosure, or other new requirements on insured depository institutions. Instead it removes restrictions for qualifying foreign banks with Federal branches and agencies. For this reason, section 4802(b)(1) does not apply to this rulemaking.

Paperwork Reduction Act

The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in 12 CFR part 28 have been approved under OMB control number 1557-0102.

The information collection requirements contained in this rule are contained in section 28.15(d). Under this section as amended, capital equivalency deposits may not be reduced in value below the minimum required for that branch or agency without prior OCC approval, and Federal branches and agencies are required to maintain records.

Estimated number of respondents: 35.

Estimated number of responses: 35.

Estimated burden hours per response: 1 hour.

Estimated number of recordkeepers: 35.

Estimated number of recordkeeping burden hours: 35.

Estimated total burden hours: 35.

List of Subjects in 12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends part 28 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 28—INTERNATIONAL BANKING ACTIVITIES

1. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

2. In § 28.15, paragraphs (d)(1) and (d)(2) are revised to read as follows:

§ 28.15 Capital equivalency deposits.

* * * * *

(d) * * *

(1) May not be reduced in value below the minimum required for that branch or agency without the prior approval of the OCC, but in no event below the statutory minimum;

(2) Must be maintained pursuant to an agreement prescribed by the OCC that shall be a written agreement entered into with the OCC for purposes of section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818; and

* * * * *

Dated: June 12, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 02-15429 Filed 6-18-02; 8:45 am]

BILLING CODE 4810-33-P
