

RESCINDED

OCC 2003-23

Subject: International Activities of National Banks; U.S. Activities of Federal Branches and Agencies of Foreign Banks
Date: June 5, 2003

To: Chief Executive Officers and Compliance Officers of All National Banks and Federal Branches and Agencies, Department and Division Heads, and All Examining Personnel

Description: Notice of Proposed Rule Making—Rules, Policies, and Procedures for Corporate Activities; International Banking Activities

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comments to:

Internet address: regs.comments@occ.treas.gov [mailto:regs.comments@occ.treas.gov]
Fax number: (202) 874-4448

The proposed regulation amends 12 CFR parts 5 and 28 to streamline regulatory requirements, clarify regulatory definitions, and simplify approval procedures for foreign banks seeking to establish federal branches and agencies in the United States. Specifically, the proposed regulation: 1) eliminates the requirement to file an application with the OCC when a foreign bank downgrades its U.S. operations; 2) requires approval, but not a new license, for certain additional federal branches or agencies opened after the establishment of the initial branch office; and 3) clarifies that a foreign bank with federal branches and agencies in more than one state may consolidate its capital equivalency deposits in one deposit account in a depository bank that meets certain criteria. The proposal also makes conforming changes to the procedural provisions in part 5 of the OCC regulations, and amends part 5 to permit a federal branch to make certain noncontrolling equity investments on the same terms as national banks.

Questions about the proposed regulation may be directed to Lee Walzer, counsel, Legislative and Regulatory Activities Division at (202) 874-5090.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

Related Links

- [68 FR 19949](#)

Proposed Rules

Federal Register

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 28

[Docket No. 03-07]

RIN 1557-AC04

Rules, Policies, and Procedures for Corporate Activities; International Banking Activities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend its regulations pertaining to the foreign operations of national banks, and of Federal branches and agencies of foreign banks operating in the United States, in both cases generally to make regulatory requirements more streamlined and risk-based. The proposed rule would clarify certain regulatory definitions and simplify approval procedures for foreign banks seeking to establish Federal branches and agencies in the United States. These proposed changes will further conform the treatment of Federal branches and agencies of foreign banks to that of their domestic national bank counterparts consistent with the national treatment principles of the International Banking Act.

DATES: Comments must be received by June 23, 2003.

ADDRESSES: Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1-5, Washington, DC 20219, Attention: Docket No. 03-07; fax number (202) 874-4448; or Internet address: regs.comments@occ.treas.gov. Due to delays in paper mail delivery in the Washington area, we encourage the submission of comments by fax or e-mail whenever possible. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E

Street, SW., Washington, DC. You may make an appointment to inspect comments by calling (202) 874-5043.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, Legislative & Regulatory Activities Division, (202) 874-5090; Carlos Hernandez, Senior International Advisor, International Banking & Finance, (202) 874-4741; or R. Julie Olson, Director, Licensing Policy & Systems, (202) 874-5060.

SUPPLEMENTARY INFORMATION:

Background

The OCC is committed to continually reevaluating our rules to reduce unnecessary regulatory burden and simplify compliance, consistent with the safe and sound operation of the institutions we supervise. We have recently undertaken such a review of part 28 of our regulations, which governs the foreign operations of national banks and the U.S. operations of Federal branches and agencies of foreign banks. As a result, we are proposing to revise part 28 to incorporate changes that clarify, streamline, and simplify compliance with a number of its requirements. The most significant revisions to part 28 include: (1) Streamlining procedures for national banks' foreign operations through branches; (2) eliminating the requirement to file an application with the OCC in certain circumstances when a foreign bank downgrades its U.S. operations; (3) requiring approval, but not a new license, for additional Federal branches or agencies opened after the establishment of the initial branch office; and (4) clarifying that a foreign bank with Federal branches and agencies in more than one state may consolidate its capital equivalency deposits (CEDs) in one deposit account in a depository bank that satisfies certain criteria.

The proposal also makes conforming changes to the procedural provisions in part 5 of our regulations, and amends part 5 to permit a Federal branch to make certain non-controlling equity investments on the same terms as national banks. The proposed changes further conform the treatment of foreign banks to that of their domestic national bank counterparts and are, therefore, in keeping with the national treatment requirements of the International Banking Act (IBA).

Certain fundamental provisions of part 28 remain unchanged. For example, none of the proposed changes affects any legal requirements that are imposed by the Board of Governors of the Federal Reserve System (FRB) in the FRB's Regulation K¹ or by any other applicable law with respect to national banks' foreign activities or the operations of foreign banks in the United States. Moreover, operations of a Federal branch or agency continue to be subject to the "same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location." 12 CFR 28.13(a)(1). Accordingly, U.S. domestic laws apply to a Federal branch or agency to the same extent that they would apply to a national bank operating at the same location.

Section-by-Section Description of the Proposal

A. Changes to 12 CFR Part 5

1. Definitions (revised § 5.3)

The proposal amends § 5.3 to update references to the OCC units that should receive certain applications. In paragraph (c)(1), the term "Licensing Department" replaces the current "Bank Organization and Structure," reflecting a nomenclature change. Likewise, in paragraph (c)(4), "Northeastern District Office" would be substituted for "International Banking and Finance Department," to take into account changes in where Federal branches and agencies submit applications.

2. Permissible Equity Investments (revised § 5.36)

Section 5.36 of the OCC's rules permits a well-capitalized, well-managed national bank to make certain non-controlling investments in an enterprise, directly or through its operating subsidiary, by filing a written notice with the appropriate OCC district office no later than 10 days after making the investment.

The proposed rule adds a new paragraph (g) to § 5.36 to permit a well-capitalized and well-managed Federal branch to make non-controlling investments and use the after-the-fact notice procedure set forth in § 5.36 in

¹ 12 CFR part 211.

the same manner as a national bank. To do so, the Federal branch would be required to meet the qualifications set forth in 12 CFR 4.7(b)(1)(iii), which describes capital adequacy standards that the Federal branch must satisfy to be examined on an 18-month schedule, and the managerial standards in 12 CFR 5.34(d)(3)(ii), which are applicable to a Federal branch that wishes to acquire, establish, or maintain an operating subsidiary.

Extending § 5.36 to Federal branches is consistent with national treatment principles, which provide that Federal branches of foreign banks are generally subject to the same rights and privileges, and subject to the same duties, conditions, and limitations, as domestic national banks.

3. Federal Branches and Agencies (revised § 5.70)

The proposal amends § 5.70, which describes filing requirements for corporate activities and transactions involving Federal branches and agencies, to ensure consistency with proposed changes to 12 CFR part 28 described elsewhere in this proposal. In particular, the proposal deletes the definition of “change the status of an office” while the definition of “establish” a Federal branch or agency is revised to comport with proposed changes to those definitions in part 28, which are described below.

B. Changes to 12 CFR Part 28: Foreign Operations of a National Bank

1. Filing Requirements for Foreign Operations of a National Bank (revised § 28.3)

Currently, § 28.3 requires national banks to notify the OCC upon opening, closing, or relocating a foreign branch, whether or not a filing to the FRB is required under the FRB’s rules governing the foreign operations of member banks and other U.S. banking organizations.² The proposed rule amends § 28.3 to provide that no notice to the OCC is required if a national bank closes or relocates a foreign branch.

2. Filing of Notice (revised § 28.5)

Currently, § 28.5 requires national banks to file notices with the International Banking & Finance Division at OCC headquarters. The proposed rule amends § 28.5 to provide that notices should be filed with “the appropriate supervisory office.”

² See 12 CFR part 211, subpart A (FRB rules pertaining to foreign operations of domestic banking organizations).

C. Changes to 12 CFR Part 28: Operations of Federal Branches and Agencies of Foreign Banks

1. Definitions (revised § 28.11)

The IBA, which governs the operations of foreign banks in the United States through branches and agencies and other offices, sets standards for licensing the offices of foreign banks and requires the OCC to approve the “establishment” of Federal branches and agencies of foreign banks. Part 28 currently defines the term “establish” to mean initial entry of a foreign bank into the United States via a Federal branch or agency; the opening of additional branches and agencies, whether through intrastate or interstate branching; mergers and other consolidations; and “changes in status.” The term “changes in status” means both expansions (from a Federal agency to a Federal branch) and contractions in activities (from a Federal branch into a Federal agency).³

As revised, the definition of “establish a Federal branch or agency” includes the opening of a Federal branch or agency established by a foreign bank, whether directly, through interstate or intrastate branching, through a merger or acquisition, through a conversion from a state office to a Federal office, through an upgrade from a Federal agency to a Federal branch, or through a relocation. In addition, the revised definition includes some activities formerly covered by the definition of “changes in status,” including conversions from a state branch or agency, or commercial lending company, into a Federal branch, limited Federal branch, or Federal agency. The separate definition of “changes in status” is therefore removed as unnecessary. The proposed definition, however, excludes contractions in activities, e.g., conversion from a Federal branch to a Federal agency, that do not present the need for the same scope of regulatory review that expansions necessitate. The effect of these changes would be to eliminate the requirement for a filing with the OCC when a foreign bank contracts its activities. In addition, for eligible foreign banks, certain activities, including the opening of an additional Federal branch or agency on either an intrastate or interstate basis, conversions or mergers, would be subject to expedited regulatory processes discussed elsewhere in the regulation.

³ The definitions of “establish” and “changes in status” are similar to those adopted by the Board of Governors of the Federal Reserve System (FRB) in its Regulation K. See 12 CFR 211.21(f) (changes in status) and 211.21(l) (establish).

2. Approval and Licensing Requirements for a Federal Branch or Agency (revised § 28.12(a))

The proposed rule substantially revises current § 28.12, which governs approvals for the establishment of a Federal branch or agency. The OCC would continue to require an application and prior approval for foreign banks seeking to establish a Federal branch, Federal agency, or limited Federal branch in the United States. The licensing procedures would cover the initial branch or agency of a foreign bank. Subsequent offices resulting from acquisitions or interstate branching, for example, would require regulatory approval, but no additional license would be granted for those subsequent establishments unless the additional office would be an expansion of activities (*i.e.*, the additional office would be a full-service branch but the foreign bank’s only license is for a limited Federal branch or agency).

The proposed rule also streamlines the licensing procedures. Currently, foreign banks must receive a license to open and operate any initial or additional Federal branch or agency. The proposed rule in § 28.12(a)(2) provides that a foreign bank must continue to receive a license to open and operate its initial Federal office in the United States. After that, however, a new license would be necessary for additional branches or agencies only if the foreign bank is proposing to upgrade its activities from those authorized in its current license; for example, if the foreign bank currently has a license for a limited Federal branch and wants to open a new office as a full-service Federal branch or operate its limited Federal branch as a full service branch. This change in the licensing procedures would not affect the substance of the OCC’s regulatory and supervisory responsibilities. The OCC would continue to review and approve applications for additional offices in accordance with applicable law (*see* 12 U.S.C. 3102(h), 3103(a)(1) (OCC prior approval required for intrastate and interstate additional Federal branches and agencies)) and would continue to supervise these additional offices in the same manner as it does the initial branch or agency. This streamlining of the licensing requirements will enable the OCC to require less extensive information from a foreign bank for an additional establishment than for an initial Federal office.

This proposed change better promotes national treatment of foreign bank operations in the United States. Federal law and OCC regulations impose

requirements for the *de novo* chartering of a national bank that differ from those applicable to that bank's subsequent establishment of additional branches or offices. With respect to licensing procedures, the proposal treats the opening of additional Federal offices by foreign banks in a manner similar to the procedures followed by national banks when opening additional branches.

Moreover, OCC regulations already distinguish between initial and additional Federal branches or agencies of foreign banks. For example, part 28 requires that a "foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance." See 12 CFR 28.14(c). It also requires that a "foreign bank with more than one Federal branch or agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or agencies in that state." 12 CFR 28.18(c)(2). Requiring a license for the initial Federal branch or agency and treating subsequent establishments as expansions is consistent with these regulations, which already employ a "lead" Federal branch or agency approach to the supervision of foreign banks' U.S. operations. Finally, we note that the IBA has separate provisions in the law dealing with the initial establishment of a Federal branch or agency by a foreign bank, and subsequent establishments. See 12 U.S.C. 3102(a)(1) and (h).

The OCC invites comment on the proposed treatment of regulatory applications by foreign banks.

3. CCS Requirements (revised § 28.12(b)(5))

Under current § 28.12(b)(5), the OCC considers whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (CCS) in reviewing any application to establish a Federal branch or agency, including state-to-Federal conversions, upgrades, downgrades, and relocations, as well as establishing or acquiring a branch. In addition, the IBA requires the FRB to determine that a foreign bank seeking to establish a U.S. branch or agency is subject to CCS or that its home country supervisor is actively working to establish arrangements for CCS. 12 U.S.C. 3105(d). This proposal would reduce regulatory burden and conform to the OCC's risk-based practice by providing that the OCC generally will consider CCS only in certain cases and *may*, in its discretion, consider it in other cases as deemed appropriate.

As required by statute, the OCC will apply the standards of CCS when acting on applications for interstate establishments. See 12 U.S.C. 3103(a)(3)(A). In connection with other applications to establish a Federal branch or agency, the OCC *may* consider CCS if necessary based on the circumstances of a particular case. This change in the OCC's rule would have no effect on the FRB's statutory requirement to make a CCS determination in connection with any application by a foreign bank to establish a U.S. office, as that requirement is interpreted by the FRB.

The OCC believes that revising the circumstances under which the OCC will consider CCS is consistent with the supervision by risk approach. It may be appropriate to consider CCS when evaluating an application to establish an initial Federal branch or agency, in the same manner as an initial application to charter a national bank triggers a comprehensive regulatory review, but not when evaluating an application to open an additional Federal branch or agency. With respect to supervision of existing Federal branches and agencies, the OCC through the ongoing supervisory process, including information sharing with the FRB and foreign supervisors, monitors developments relating to a parent foreign bank and its home country. A CCS review involves these same types of determinations. Thus, absent specific supervisory concerns, in most cases we already would have the information about the quality of home country supervision to make a decision on the application. Moreover, in most cases, the FRB is required by statute to make a CCS determination and it may be unduly burdensome on the foreign bank for the OCC to be undertaking a duplicative CCS review, except in unusual circumstances or as expressly required by statute.

The proposed rule would not foreclose the OCC from considering CCS and undertaking a CCS review in any circumstance that it deems appropriate. The OCC invites comment on the proposed changes in the CCS requirement. In particular, are there certain transactions for which the OCC should regularly consider and conduct a CCS review other than for interstate branching applications as required by statute, *e.g.*, in the case of an application to establish an initial Federal branch or agency?

4. Expedited Approval Procedures (new § 28.12(e)(2) and (e)(3), revised § 28.12(e)(4), and new § 28.12(i))

Currently, part 28 requires that an application to establish a Federal branch or agency interstate is subject to the same review process that a foreign bank would undergo when it establishes its first Federal branch or agency in the United States. However, the rule provides that, for eligible foreign banks, an application to change the status of an office will be deemed approved on the 45th day after filing with the OCC. 12 CFR 28.12(e)(2). Under the current rule, a change in status includes contractions in operations as well as expansions. *Id.* See also 12 CFR 28.11(g) and 28.12(a).

The proposed rule provides for expedited review of additional types of applications to establish a Federal branch or agency. Under proposed new § 28.12(e)(2), a foreign bank may establish a new intrastate Federal branch or agency after providing written notice to the OCC 45 days in advance of the proposed establishment. The OCC would retain flexibility to waive the 45-day period in certain circumstances, as well as suspend the notice period or require an application if the notice raises significant policy or supervisory issues. Permitting the establishment of an intrastate Federal branch or agency through a notice procedure generally is consistent with procedures for domestic national banks (*see* 12 CFR 5.30(f)(5)) and the practices of other regulators (*see* 12 CFR 211.24(a)(2)).

In addition, under the proposed new § 28.12(e)(3), an eligible foreign bank's application to establish a Federal branch or agency interstate is conditionally approved as of the 45th day after the OCC receives the completed application, unless the OCC notifies the bank that the filing is not eligible for expedited review.

Under proposed § 28.12(e)(4), an application by an eligible foreign bank to convert state offices to Federal offices, or expand activities by converting a Federal agency or limited Federal branch to a Federal branch, would be deemed approved as of the 30th day after filing with the OCC, unless the OCC notifies the bank that the application was not eligible for expedited review.

As we have explained, the proposal deletes the current "change in status" definition in § 28.11(d). It also excludes contractions in activities conducted under a Federal license from the list of transactions that trigger the establishment of a Federal branch or agency. For contractions, new § 28.12(i) would provide that a foreign bank only

would be required to provide written notice to the OCC within 10 days after converting a full-service Federal branch into a limited Federal branch or Federal agency. Also, as discussed in connection with proposed § 28.12(a)(2), such a downgrade in operations would not require the foreign bank to obtain a new license.

5. Eligible Foreign Bank (revised § 28.12(f))

Under current part 28, foreign banks with Federal branches and agencies that all are rated “1” or “2” under the applicable interagency rating system are eligible for expedited processing for their applications and other filings. 12 CFR 28.12(e) and (f). The proposed rule would revise § 28.12(f) to provide that a foreign bank that has no Federal branches or agencies also is eligible if it is engaging in a state-to-Federal conversion and its state offices satisfy the eligibility criteria. This change would codify procedures that the OCC already has adopted in its Licensing Manual.

6. After-the-fact Notice for Certain Acquisitions (new § 28.12(h))

Under current part 28, if foreign bank A, which has a Federal branch, merges with foreign bank B, which does not have a Federal office, an application to establish the Federal branch would have to be submitted to the OCC if B were the surviving institution. Under current § 28.12(g), the two foreign banks may proceed with their merger without approval of B’s establishment of the branch if B provides reasonable advance notice of the transaction to the OCC. Prior to the merger, B must also apply to the OCC or commit to abide by the OCC’s decision on the application.

New § 28.12(h) would provide an expedited procedure for foreign bank B if B already has banking offices in the United States. The proposed rule would further decrease the regulatory burden on foreign banks, while maintaining safety and soundness standards. The OCC would retain the discretion to require prior approval to establish the Federal branch or agency if necessary for prudential reasons.

7. Exceptions to Usual Filing Procedures (revised § 28.12(j))

For national banks, § 5.2(b) of the OCC’s rules permits the OCC to use filing procedures other than those prescribed by part 5 in “exceptional circumstances,” including “unusual transactions.” The proposed rule revises § 28.12(j) (as redesignated in this proposal) to clarify that the OCC also reserves the right to adopt different

procedures with respect to a part 28 filing or class of filings.

8. Other Applications Accepted (new § 28.12(l))

The OCC’s Licensing Manual currently states that the OCC will accept copies of applications to other Federal agencies if they contain the information that we require for a particular OCC approval requirement. The proposed rule revises § 28.12(l) to codify this practice and provide that the OCC will accept copies of applications or notices to other regulators. The OCC may, however, request additional information from an applicant as deemed necessary should the application or notice contain less information than the OCC needs to reach a decision.

9. Capital Equivalency Deposits (revised § 28.15(a)(1) and new § 28.15(a)(3))

The IBA requires Federal branches and agencies to establish and maintain a CED. 12 U.S.C. 3102(g). On June 19, 2002, the OCC issued a final rule 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 institutions.⁴ The additional changes contained in this proposal would further reduce unnecessary burden and simplify compliance with the CED requirements.

The proposed rule amends § 28.15(a)(1) to clarify the types of assets eligible to be deposited in a CED. Currently, a CED must consist of bank-eligible securities; dollar deposits payable in the United States; certificates of deposit payable in the United States; and other assets permitted by the OCC. Under the proposed rule, the requirement that dollar deposits be payable in the United States would be amended to include dollar deposits payable in any G-10 country. It further adds repurchase agreements to the list of permissible CED assets. Finally, the proposal revises this paragraph to clarify that the OCC’s authority to permit other assets to qualify for the CED is limited to other assets that are similar to those expressly included in the statute.

The proposed rule adds a new § 28.15(a)(3) that would clarify that the OCC excludes liabilities of an international banking facility to third parties, and of a Federal branch to an international banking facility, when calculating the required amount of a CED. This is consistent with the OCC’s

current policy. Also, the proposed rule permits the OCC to exclude liabilities from repurchase agreements on a case-by-case basis. These provisions are consistent with the practice of some other regulators. See 3 NYCRR 322.1(a)(1) and (c) (exclusion of liabilities from repurchase agreements for purposes of calculating CED under New York state regulations).

10. CED Deposit Accounts (new § 28.15(e))

The statutory CED requirement specifies that “a foreign bank * * * shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph “Seventh” of section 24 of this title, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State bank.” 12 U.S.C. 3102(g)(1).

The IBA does not expressly address whether the CEDs of several Federal branches may be combined or whether a foreign bank with Federal branches and agencies in more than one state may keep CEDs in one account in a depository bank. Moreover, the IBA does not define the term “located” for purposes of determining where a depository bank is located or where the Federal branch or agency is located for purposes of the CED requirement. The proposed rule clarifies that a foreign bank with interstate offices has the discretion to consolidate all or some of its CEDs into one account. It further clarifies that, for purposes of the CED account, a foreign bank must deposit the CEDs in a depository bank that is located, *i.e.*, has its main office or a branch, in the parent foreign bank’s home state⁵ or in the state in which the Federal branch or agency is licensed.⁶

⁵ See 12 CFR 28.11(o)(definition of “home state”).

⁶ As described in the text, the IBA provides that a CED shall be “in accordance with such limitations and conditions as the Comptroller may prescribe. * * *” 12 U.S.C. 3102(g)(1). Moreover, the OCC has discretion in structuring the form and terms of the CED agreement. The IBA provides that “[t]he deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may prescribe.” 12 U.S.C. 3102(g)(3). More generally, the OCC has the authority to issue appropriate rules, regulations, and orders for the establishment and administration of Federal branches. See 12 U.S.C. 3102(b) and 3108(a).

These revisions will reduce regulatory burden by providing foreign banks with greater flexibility in complying with the CED requirements.

While the location of a national bank varies from statute to statute and may be different for different purposes, 12 U.S.C. 81 provides that the general business of each national banking association shall be transacted at its main office and its branch or branches. Under the proposal, the term "located" in the statutory language describing a CED depository bank is construed, consistently with § 81, to mean the state in which the depository bank has its main office or a branch. However, because a Federal branch or agency is not a separate corporate entity, it does not have a main office or branches. As a result and by analogy to 12 U.S.C. 81 and consistent with national treatment, the proposal provides that a Federal branch or agency is located in the state in which it is licensed and in the parent foreign bank's home state for purposes of maintaining a CED account.

If the change in the licensing procedures described above is adopted, all Federal branches and agencies of a foreign bank may, under certain conditions, be licensed in only one state, which may be different from the foreign bank's home state. In such a situation, the proposal would provide foreign banks with more flexibility in determining where to deposit the consolidated CED if the foreign bank elects to consolidate some or all of these deposits.

In providing for a consolidated CED account, the proposal is consistent with existing provisions of part 28. For example, § 28.15(a)(2) already permits a foreign bank to combine the CEDs of its federally licensed offices in the same state into one account at the depository bank. Part 28 further requires that a "foreign bank with more than one Federal branch or agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or agencies in that state." 12 CFR 28.18(c)(2). This proposal is also consistent with the national treatment purpose of the IBA and serves to reduce regulatory burden. Permitting a foreign bank to consolidate its CED accounts should provide foreign banks with more flexibility in structuring their U.S. operations and would reduce unnecessary costs in maintaining multiple accounts.

The aggregate amount of the CED for all of the foreign bank's Federal branches and agencies would not change under the proposal and, thus, there would be no diminution in the

foreign bank's combined amount of CED assets that it is required by law to maintain. Moreover, the OCC's authority to require an increase in the CED for a particular Federal branch or agency would not be affected.

To ensure that creditors are protected,⁷ a corresponding change would be made to § 28.18 (described below) to require that a foreign bank that consolidates its CEDs in accordance with this new paragraph § 28.12(d)(2) must designate a Federal branch or agency to maintain consolidated asset, liability, and capital equivalency account information for all of the Federal branches and agencies that are covered by the consolidated deposit. This is similar to the requirement in § 28.18(c)(2) that applies to consolidated CED accounts in one state. This approach also is consistent with other provisions in part 28 requiring a foreign bank to "designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance." See 12 CFR 28.14(c).

The OCC invites comment on the CED proposals and specifically seeks comments on possible ways for ensuring that a consolidated CED account contains sufficient assets to cover the operations of all participating Federal branches and agencies. Should the account contain segregated assets to cover specific offices, or would it be sufficient for the account to contain a consolidated amount large enough to cover the operations of all the individual offices?

The OCC invites comments on other ways in which the CED requirement could be modified to further reduce regulatory burden consistent with maintaining the safe and sound operations of Federal branches and agencies in the United States.

11. Deposit-taking by an Uninsured Federal Branch (revised § 28.16(b)(8))

The proposed rule makes a technical correction to paragraph (b)(8) to correct the citation to the FRB's Regulation K.

⁷ The legislative history of the IBA does not expressly explain the CED requirement, but it indicates that one reason for including such a provision was a concern about the availability of assets for local creditors in the event that a foreign bank became insolvent. See International Banking Act of 1978, Hearings on HR 10899 Before the Subcommittee on Financial Institutions Supervision of the Committee on Banking, Housing and Urban Affairs, 95th Cong., 1st Sess. 118-19 (1977) (statement of Hon. Stephen S. Garner, Vice Chairman, Board of Governors of the Federal Reserve System and Proposed Amendments to H.R. 7325, the International Banking Act of 1977).

12. Maintenance of Accounts, Books, and Records (new § 28.18(c)(3))

As described above, the proposed new § 28.18(c)(3) requires a foreign bank that has interstate Federal branches or agencies and combines its CEDs into one account to designate one of its Federal offices to maintain consolidated information about the Federal branches and agencies covered by the CEDs.

13. Maintenance of Assets (revised § 28.20(a)(2))

The OCC may impose asset maintenance requirements on a foreign bank to hold certain assets in the state in which its Federal branch or agency is located if necessary for prudential, supervisory, or enforcement reasons. 12 CFR 28.20(a)(1). These requirements are in addition to the CED requirements but, in determining compliance with any asset maintenance requirements imposed by the OCC, the OCC must give credit to the amount of assets held in the CED and other reserves or assets required under the IBA. 12 U.S.C. 3102(g)(4).

The proposed revision of § 28.20(a)(2) deletes the requirement that, if the OCC requires asset maintenance, the amount of assets held by the foreign bank cannot be less than 105% of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency. Under the proposed rule, the amount of assets would be prescribed by the OCC and there would be no set minimum. This change would give the OCC more discretion to apply its asset maintenance authority on a risk-based basis to ensure the safe and sound operations of Federal branches and agencies.

14. Voluntary Liquidation (revised § 28.22(a) and (b))

The voluntary liquidation provisions of part 28 currently cross-reference part 5 and the Comptroller's Licensing Manual and impose certain specific requirements. The proposed revisions to § 28.22 retain the current procedures and cross references (with specific reference to the Licensing Manual's qualifications and procedures for a voluntary expedited liquidation of an insured Federal branch) for voluntary liquidations if the Federal branches and agencies being liquidated are the foreign bank's only Federal branches and agencies in the United States. The proposal eliminates the additional unnecessary requirements currently in the regulation but retains the requirement that a foreign bank publish notice of the impending closure. The

proposal, however, replaces the current requirement for 30-days' notice with a requirement for 2 months' daily notice in order to conform with the statutory notice requirement that applies to national banks that are voluntarily closing.⁸

15. Procedures for Closing Some U.S. Offices (new § 28.23)

If a foreign bank operates more than one Federal branch or agency in the United States and is closing some but not all of its Federal offices, the proposed rule, at new § 28.23, treats the closing like the closing of a domestic national bank branch. Domestic national banks must satisfy the requirements of 12 U.S.C. 1831r-1 (90 days notice to the OCC and customers). This change would be consistent with the IBA's national treatment standard and safety and soundness.

16. After-the-fact Notice of Change in Control (new § 28.25)

Currently, part 28 is silent on what requirements exist and what filings are required for changes in control in a foreign bank that operates a Federal branch or agency. The OCC's Licensing Manual, however, requires the foreign bank to submit a copy of the change in control notice it files with the FRB to the OCC.

The proposed rule adds a new § 28.24. This new section applies to changes in control in which no other filing is required under part 28 and requires a foreign bank to submit a written notice to the OCC of a change in control of the foreign bank within 14 days after the foreign bank becomes aware of the change. The OCC reserves the right to require additional information. A foreign bank may provide its supervisory office with the copy of a notice submitted to another Federal regulator to satisfy the requirements of this section. *See* 12 CFR 28.3(b).

17. Loan Production Offices (new § 28.26)

Part 28 is also silent on the issue of whether a foreign bank may operate a loan production office (LPO) or other administrative office or regional administrative office as part of its license to operate a Federal branch in the United States. Consistent with the OCC's precedents on this issue and national treatment, the proposed rule specifically states that, like a national bank, a Federal branch may operate an LPO, or an administrative office or a regional administrative office that conducts other types of representational

activities, as part of a branch license. These activities would be subject to the same rights, privileges, requirements, and limitations that apply to LPOs and other administrative offices of national banks. Since national banks may conduct these activities and exercise these functions at non-branch locations as part of the business of banking, a Federal branch may also do so since, as a general rule, it operates with the same rights and duties of a national bank. 12 U.S.C. 3102(b). The OCC believes that these activities and functions are illustrative—and not exhaustive—of the types of non-branch offices that Federal branches may operate.

Request for Comments

The OCC invites comment on all aspects of the proposed regulation.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (November 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Specifically the proposed rule will reduce burden by: (1) Streamlining procedures for national banks' foreign operations through branches; (2) eliminating the requirement to file an application with the OCC in certain circumstances when a foreign bank downgrades its U.S. operations; (3) requiring approval, but not a new license, for additional Federal branches or agencies opened after the establishment of the initial branch office; and (4) clarifying that a foreign bank with Federal branches and agencies in more than one state may consolidate its capital equivalency deposits in one deposit account in a depository bank that satisfies certain criteria. These revisions will result in cost reductions for national banks and for the U.S. operations of Federal branches and agencies of foreign banks. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the 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 proposed rule will not result in expenditures by State, local, and tribal governments, or by the

⁸ 12 U.S.C. 182.

private sector, of \$100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 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 this notice of proposed rulemaking have been submitted to OMB for review and approval under OMB Control Number 1557-0014 (Comptroller's Licensing Manual) and OMB Control Number 1557-0102 (International Regulation—12 CFR 28).

The information collection requirements contained in this notice of proposed rulemaking that are covered under the Comptroller's Licensing Manual (Manual) information collection are found in 12 CFR 5.36, 28.12, 28.22, and 28.25.

The Manual embodies all required procedures, forms, and regulations regarding OCC corporate approvals. The Manual is needed to standardize OCC processing of corporate filings, to ensure consistency in the recordkeeping and decision making processes, and provide information to banks on corporate application filing procedures and regulatory requirements affecting corporate changes. The Manual is the primary procedural guide for OCC personnel.

The information collection requirements contained in this notice of proposed rulemaking that are covered under the information collection titled, "International Banking Regulation—12 CFR 28" are found in 12 CFR 28.3.

The information collection requirements are necessary to comply with the requirements of the International Banking Act of 1978, the Foreign Bank Supervision Enhancement Act of 1991, and to maintain the safety and soundness of national bank operations in the United States and abroad.

The information collection requirements are as follows:

12 CFR 5.36 permits a well-capitalized, well-managed national bank to make certain non-controlling investments in an enterprise, directly or through its operating subsidiary, by filing a written notice to the OCC. The proposed rule adds a new paragraph to permit a well-capitalized and well-managed Federal branch to make non-controlling investments by filing a after-

the-fact notice, in the same manner as a national bank.

The likely respondents are national banks.

Estimated number of respondents: 17.

Estimated number of responses: 17.

Average hours per response: 1 hour.

Estimated total burden hours: 17 hours.

12 CFR 28.3(a) requires a national bank to notify the OCC upon opening, closing, or relocating a foreign branch, whether or not a filing to the Board of Governors of the Federal Reserve System (FRB) is required under the FRB's rules governing the foreign operations of member banks and other U.S. banking organizations. The proposed rule amends § 28.3(a) to provide that no notice to the OCC is required if a national bank closes or relocates a foreign branch.

The likely respondents are national banks.

Estimated number of respondents: 45.

Estimated number of responses: 45.

Average hours per response: .5 hour.

Estimated total burden hours: 22.5 hours.

12 CFR 28.12(a)(1) requires a foreign bank to submit an application to, and obtain approval from, the OCC before it establishes a Federal branch or agency, or exercises fiduciary powers at a Federal branch.

The likely respondents are foreign banks.

Estimated number of respondents: 4.

Estimated number of responses: 4.

Average hours per response: 41 hours.

Estimated total burden hours: 164 hours.

New § 28.12(e)(2) requires a foreign bank to provide written notice to the OCC in cases where a foreign bank seeks to establish intrastate an additional Federal branch or agency.

The likely respondents are foreign banks.

Estimated number of respondents: 1.

Estimated number of responses: 1.

Average hours per response: 1 hour.

Estimated total burden hours: 1 hour.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be sent to:

Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: 1557-0014 & 1557-0102, 250 E Street, SW., Mailstop 8-4, Washington, DC 20219. Comments may also be sent by fax to (202) 874-4889 or by e-mail to jessie.dunaway@occ.treas.gov.

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557-0014 & 1557-0102, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to jlackeyj@omb.eop.gov.

Executive Order 13132

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has "substantial direct effects 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." In the case of a regulation that has Federalism implications and that preempts state law, the Order imposes certain consultation requirements with state and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted by state and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation.

The OCC does not believe that the proposed rule has such Federalism implications.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, parts 5 and 28 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

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

2. In § 5.3, paragraphs (c)(1) and (c)(4) are revised:

§ 5.3 Definitions.

* * * * *

(c) * * *

(1) The Licensing Department for all national bank subsidiaries of certain holding companies assigned to the Washington, DC, licensing unit;

(2) * * *

(3) * * *

(4) The licensing unit in the Northeastern District Office for Federal branches and agencies of foreign banks.

* * * * *

3. In § 5.36, a new paragraph (g) is added to read as follows:

§ 5.36 Other equity investments.

* * * * *

(g) *Non-controlling investments by Federal branches.* A Federal branch that satisfies the well capitalized and well managed standards in § 4.7(b)(1)(iii) and § 5.34(d)(3)(ii) may make a non-controlling investment in accordance with paragraph (e) of this section in the same manner, and subject to the same conditions and requirements as a national bank.⁹

4. In § 5.70:

a. Paragraph (c)(1) is removed;

b. Paragraphs (c)(2)(i) through (v) are redesignated as paragraphs (c)(1)(i) through (v);

c. Newly redesignated paragraphs (c)(1)(i), (iv), and (v) are revised;

d. New paragraph (c)(1)(vi) is added; and

e. New paragraph (c)(2) is added to read as follows:

§ 5.70 Federal branches and agencies.

* * * * *

(c) * * *

(1) * * *

(i) Open and conduct business through an initial or additional Federal branch or agency;

(ii) * * *

(iii) * * *

(iv) Convert a state branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch or Federal agency;

(v) Relocate a Federal branch or agency within a state or from one state to another; or

(vi) Convert a Federal agency or a limited Federal branch into a Federal branch.

(2) Any reference to a Federal branch includes a limited Federal branch unless provided otherwise.

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

5. 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.*

6. In § 28.3, paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

§ 28.3 Filing requirements for foreign operations of a national bank:

(a) * * *

(1) * * *

(i) Establish or open a foreign branch;

(ii) * * *

(2) Opens a foreign branch, and no application or notice is required by the FRB for such transaction.

* * * * *

1. In § 28.5, paragraphs (a) and (b) are revised as follows:

§ 28.5 Filing of notice.

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the appropriate supervisory office of the OCC.

(b) *Availability of forms.* Individual forms and instructions for filings are available from the appropriate supervisory office of the OCC.

8. In § 28.11:

a. Paragraph (d) is removed;

b. Paragraphs (e)–(z) are redesignated as paragraphs (d)–(y);

c. Newly redesignated paragraphs (f)(1), (4), and (5) are revised;

d. New paragraph (f)(6) is added; and

e. Newly redesignated paragraph (h) is revised to add a new sentence at the end to read as follows:

§ 28.11 Definitions.

* * * * *

(f) *Establish a Federal branch or agency* means to:

(1) Open and conduct business through an initial or additional Federal branch or agency;

(2) * * *

(3) * * *

(4) Convert a state branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch or agency;

(5) Relocate a Federal branch or agency within a state or from one state to another; or

(6) Convert a Federal agency or a limited Federal branch into a Federal branch.

* * * * *

(h) * * * Unless otherwise provided, the references in this subpart B of part 28 to a Federal branch include a limited Federal branch.

* * * * *

9. In § 28.12:

a. Paragraphs (a) and (b)(5) are revised;

b. Paragraphs (e)(2) through (4) are redesignated as paragraphs (e)(4) through (6);

c. New paragraphs (e)(2) and (3) is added;

d. Newly redesignated paragraph (e)(4) is revised;

e. Paragraph (f) introductory text is revised;

f. Paragraphs (h) through (i) are redesignated as paragraphs (j) through (k);

g. New paragraphs (h) and (i) is added;

h. Newly redesignated paragraph (j) is revised; and

i. New paragraph (l) is added to read as follows:

§ 28.12 Approval of a Federal branch or agency.

(a) *Approval and licensing requirements*—(1) *General.* Except as otherwise provided in this section, a foreign bank shall submit an application to, and obtain prior approval from, the OCC before it:

(i) Establishes a Federal branch or agency; or

(ii) Exercises fiduciary powers at a Federal branch. (A foreign bank may submit an application to exercise fiduciary powers at the time of filing an application for a Federal branch or at any subsequent date.)

(2) *Licensing.* A foreign bank must receive a license from the OCC to open and operate its initial Federal office in the United States. A foreign bank that has a license to operate and is operating a full-service Federal branch will not be required to obtain a new license for any additional Federal offices, or to upgrade or downgrade its operations in an existing Federal office. A foreign bank that only has a license to operate and is operating a limited Federal branch or

⁹ Federal branches also may be subject to requirements contained in the Board of Governors of the Federal Reserve System's Regulation K, 12 CFR part 211.

Federal agency will not be required to obtain a new license for any additional limited branches or agencies, or to convert a limited branch into an agency or an agency into a limited branch.

(b) * * *

(5) With respect to an application to establish an interstate branch or agency under 12 CFR 28.11(f)(1), whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor. The OCC, in its discretion, also may consider whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor in the case of any other application to establish a branch or agency.

* * * * *

(e) * * *

(1) * * *

(2) *Written notice for additional intrastate branches or agencies.* (i) In cases where a foreign bank seeks to establish intrastate an additional Federal branch or agency, the foreign bank shall provide written notice 45 days in advance of the establishment of the intrastate branch or agency.

(ii) The OCC may waive the 45-day period if immediate action is required by the circumstances of the intrastate branching. The OCC also may suspend the notice period or require an application if the notification raises significant policy or supervisory concerns.

(3) *Expedited approval procedures for interstate branches or agencies.* An application submitted by an eligible foreign bank to establish and operate a *de novo* Federal branch or agency in any state outside the home state of the foreign bank is deemed conditionally approved by the OCC as of the 45th day after the OCC receives the filing, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review. In the event that the FRB has approved the application prior to the expiration of the period, then the OCC's approval shall be deemed a final approval.

(4) *Conversions.* An application submitted by an eligible foreign bank under 12 CFR 28.11(f)(4) or (f)(6) is deemed approved by the OCC as of the 30th day after the OCC receives the filing, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

* * * * *

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch or agency of the foreign bank or,

if the foreign bank has no Federal branches or agencies and is engaging in a conversion under 12 CFR 28.11(f)(4), each state branch or agency:

* * * * *

(h) *After-the-fact notice for eligible foreign banks:* Unless otherwise provided by the OCC, a foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an existing bank subsidiary, branch, or agency, may proceed with the transaction and provide after-the-fact notice to the OCC within 14 days of the transaction if:

(1) the resulting bank is an "eligible foreign bank" within the meaning of § 28.12(f); and

(2) no Federal branch established by the transaction is insured.

(i) *Contraction of operations.* A foreign bank shall provide written notice to the OCC within 10 days after converting a Federal branch into a limited Federal branch or Federal agency.

(j) *Procedures for approval.* A foreign bank shall file an application for approval pursuant to this section in accordance with 12 CFR part 5 and the Manual. The OCC reserves the right to adopt materially different procedures for a particular filing, or class of filings, pursuant to 12 CFR 5.2(b).

* * * * *

(k) * * *

(l) *Other applications accepted.* As provided in § 5.4(c), the OCC may accept an application or other filing submitted to another Federal agency that covers the proposed activity or transaction and contains substantially the same information as required by the OCC.

10. In § 28.15:

- a. Paragraph (a)(1)(ii) is revised;
- b. Paragraph (a)(1)(iv) is redesignated as (a)(1)(v);
- c. New paragraph (a)(1)(iv) is added;
- d. Newly redesignated (a)(1)(v) is revised;
- e. New paragraph (a)(3) is added;
- f. Paragraph (e) is redesignated as (f);
- g. New paragraph (e) is added to read as follows:

§ 28.15 Capital equivalency deposits.

(a) * * *

(1) * * *

(i) * * *

(ii) United States dollar deposits payable in the United States or payable in any other G-10 country;

(iii) * * *

(iv) Repurchase agreements; or

(v) Other similar assets permitted by the OCC to qualify for the CED.

(2) * * *

(3) *Exceptions.* In determining the amount of the CED, the OCC excludes liabilities of an international banking facility (IBF) to third parties and of a branch of a foreign bank to an IBF. The OCC may exclude liabilities from repurchase agreements on a case-by-case basis.

* * * * *

(e) *Deposit and Consolidation of CED accounts.* A foreign bank with a Federal branch or agency shall deposit its CED into an account in a depository bank that is located, *i.e.*, has its main office or a branch, in the state in which the Federal branch or agency is licensed or in the state that is the parent bank's home state. A foreign bank with Federal branches or agencies in more than one state may consolidate some or all of its CEDs into one such account.

* * * * *

11. In § 28.16, paragraph (b)(8) is revised to read as follows:

§ 28.16 Deposit-taking by an uninsured Federal branch.

* * * * *

(b) * * *

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.6, including persons engaged in certain international business activities; and

* * * * *

12. In § 28.18, a new paragraph (c)(3) is added to read as follows:

§ 28.18 Recordkeeping and reporting.

* * * * *

(c) * * *

(3) A foreign bank with a Federal branch or agency in more than one state that combines its CEDs into one account in accordance with 12 CFR 28.15(e) shall designate a participating Federal branch or agency to maintain consolidated asset, liability, and capital equivalency account information for all Federal branches and agencies covered by the consolidated deposit.

13. In § 28.20, the first sentence of paragraph (a)(2) is revised to read as follows:

§ 28.20 Maintenance of assets.

(a) * * *

(1) * * *

(2) If the OCC requires asset maintenance, the amount of assets held by a foreign bank shall be prescribed by the OCC after consideration of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency.

* * * * *

* * * * *

14. In § 28.22, paragraphs (a) and (b) are revised:

§ 28.22 Voluntary liquidation.

(a) *Procedures to close all Federal branches and agencies.* Unless otherwise provided, in cases in which a foreign bank proposes to close all of its Federal branches or agencies, the foreign bank shall comply with applicable requirements in 12 CFR 5.48 and the Manual, including requirements that apply to an expedited liquidation of an insured Federal branch.

(b) *Notice to customers and creditors.* A foreign bank shall publish notice of the impending closure of each Federal branch or agency for a period of two months in every issue of a local newspaper where the Federal branch or agency is located. If only weekly publication is available, the notice must be published for nine consecutive weeks.

* * * * *

15. Section 28.23 is redesignated as § 28.24 and a new § 28.23 is added to read as follows:

§ 28.23 Procedures for closing of some U.S. offices.

In cases where § 28.22 does not apply, and a foreign bank is closing one or more, but not all, of its Federal branches and/or agencies, it shall follow the procedures set forth in 12 U.S.C. 1831r-1(a) and (b) (branch closings).

* * * * *

16. A new § 28.25 is added to read as follows:

§ 28.25 Change in control.

(a) *After-the-fact notice.* In cases in which no other filing is required under subpart B of part 28, a foreign bank that operates a Federal branch or agency shall inform the OCC in writing of the direct or indirect acquisition of control of the foreign bank by any person or entity, or group of persons or entities acting in concert, within 14 calendar days after the foreign bank becomes aware of a change in control.

(b) *Additional information.* The foreign bank shall furnish the OCC with any additional information the OCC may require in connection with the acquisition of control.

17. A new § 28.26 is added to read as follows:

§ 28.26 Loan production offices.

As an integral part of its license to operate a Federal branch, a foreign bank may establish lending offices, make credit decisions, and engage in other representational activity at a place other than its branch office, subject to the same rights, privileges, requirements

and limitations as apply to national banks under 12 CFR 7.1003–1005.

Dated: April 11, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–9733 Filed 4–22–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM248; Special Conditions No. 25–03–03–SC]

Special Conditions: Embraer Model ERJ–170 Series Airplanes; Electronic Flight Control Systems; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Embraer Model ERJ–170 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with electronic flight control systems and Automatic Takeoff Thrust Control Systems (ATTCS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of Embraer Model 170 series airplanes.

DATES: Comments must be received on or before May 23, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM248, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM248. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149; e-mail tom.groves@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model ERJ–170 airplane. Two basic versions of the Model ERJ–170 are included in the application. The ERJ–170–100 airplane is a 69–78 passenger, twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The ERJ–170–200 is a derivative with a lengthened fuselage. Passenger capacity for the ERJ–170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the Model ERJ–