Proposed Rules

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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 20 and 28

[Docket No. 95–13]

RIN 1557–AB26

International Banking

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulations governing the international operations of national banks and the operation of foreign banks through Federal branches and Federal agencies in the United States. The proposal is part of the OCC's Regulation Review Program, which seeks to simplify OCC regulations and reduce compliance costs, consistent with maintaining safety and soundness. The proposal streamlines and consolidates into one CFR part substantially all provisions relating to international banking that were previously included in 12 CFR parts 20 and 28, and clarifies and simplifies their various requirements.

The proposal also updates the rules to implement provisions of the Foreign Bank Supervisory Enhancement Act of 1991 (FBSEA) and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) relating to Federal branches and agencies.

DATES: Comments must be received by September 5, 1995.

ADDRESSES: Comments should be directed to: Communications Division, 250 E Street SW, Washington, DC 20219, Attention: Docket No. 95–13. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Raija Bettauer, Counselor for International Activities, (202) 874–0680; Manpreet Singh, Attorney, International Activities, (202) 874–0680; Timothy M. Sullivan, Director, International Banking and Finance, (202) 874–4730.

SUPPLEMENTARY INFORMATION:

Background

The OCC is proposing comprehensive revisions to its international regulations (12 CFR parts 20 and 28) as part of its Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and to eliminate provisions that impose unnecessary regulatory burdens and do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another goal is to improve clarity and to better communicate the standards that the rules intend to convey. The proposed revisions also update the OCC's rules to implement provisions in the FBSEA (Pub. L. 102–242, title II, 105 Stat. 2286) and Interstate Act (Pub. L. 103–328, 108 Stat. 2338) relating to Federal branches and Federal agencies of foreign banks, and add a mechanism for the OCC to obtain information on foreign banking organizations to improve the OCC's safety and soundness oversight of Federal branches and agencies.

The proposal reduces regulatory burden on national banks and Federal branches and agencies by eliminating regulatory requirements that are not essential to maintaining the safety and soundness of their operations. The proposal also reduces the complexity of the existing statutory framework for international banking by referencing and dovetailing with, as much as possible, provisions in the regulations of the Board of Governors of the Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC).

Discussion

By updating the OCC's international banking regulations, the proposal makes the regulations more useful in providing guidance on issues arising in today's international banking context. The proposal furthers the goals of the OCC's Regulation Review Program by simplifying and clarifying applicable requirements, and by reducing regulatory duplication and complexity by promoting interagency regulatory uniformity.

The proposal consolidates into a single comprehensive international regulation the substantive requirements governing international banking operations supervised by the OCC. Currently, the OCC's international regulations appear in three different CFR parts: part 28 for Federal branches and Federal agencies; part 20 for international operations of national banks and international lending supervision; and part 5 for provisions specifically addressing corporate applications of Federal branches and Federal agencies. The proposal consolidates all substantive international banking provisions into part 28, including the provisions currently located in part 20 relating to foreign operations of national banks.

The OCC welcomes comments on the advisability of reorganizing its international banking regulations into part 28, and solicits suggestions regarding alternative organizational approaches that would be easier to use.

Because subpart B of part 20, regarding international lending supervision, was originally promulgated as an interagency rulemaking, no substantive changes are proposed to be made to the subpart at this time. The OCC will coordinate with the other agencies before making any changes to subpart B. In the interim, current subpart B of part 20 is relocated and incorporated as subpart C of part 28. Commenters may still comment on the subpart, however, in order to bring particular issues to the OCC's attention at this time.

The procedural requirements of part 5 continue to apply to Federal branches and Federal agencies, unless otherwise provided, and part 28 cross-references the procedural requirements in part 5, as appropriate. The revision of the Comptroller's Corporate Manual will also provide an opportunity to provide additional and more comprehensive guidance on the application of the general corporate regulations to the foreign bank context.

The OCC invites comment on the best means and extent of guidance needed regarding corporate applications by Federal branches and Federal agencies.

The discussion below identifies and explains significant proposed changes to the current requirements in parts 20 and 28. A derivation table comparing the sections of proposed part 28 to those of

the current parts 20 and 28 follows this section of the preamble.

The OCC requests general comments on all aspects of the proposed regulation as well as comments on specific changes in the rules.

Subpart A—Foreign Operations of National Banks

Authority, Purpose, and Scope (Section 28.1)

The proposal relocates and consolidates the current § 20.1, ''Authority and policy'', into part 28. The provisions of subpart A apply to all national banks that engage in international operations through a foreign branch, or acquire an interest in an Edge corporation, Agreement corporation, foreign bank, or certain other foreign organizations.

Definitions (Section 28.2)

The proposal updates and revises definitions applicable to foreign operations of national banks to reflect the OCC's current practice, and to be consistent with the definitions adopted by the FRB in 12 CFR part 211, subpart A (International Operations of United States Banking Organizations) (Regulation K). The proposal adds the definitions of ''foreign branch'' and ''foreign country'', and updates the definition of ''foreign bank.''

Foreign Bank (Section 28.2(c))

The proposal defines ''foreign bank'' as an organization that is organized under the laws of a foreign country, engages in the business of banking, is recognized as a bank by the home country supervisor, receives deposits, and has the power to accept demand deposits. This is modelled on the definition in Regulation K.

Foreign Branch (Section 28.2(d))

The proposal includes a new definition to define the term ''foreign branch'' as it is used in proposed § 20.3, ''Filing requirements for foreign operations of national banks.'' The proposal defines ''foreign branch'' as an office of a national bank that is located outside the United States at which banking or financial business is conducted. This definition is modelled on the definition in Regulation K.

Foreign Country (Section 28.2(e))

The definition of the term ''foreign country'' is also new. The proposal defines ''foreign country'' as one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and Puerto Rico. This definition is similar to the definition in Regulation K.

Filing Requirements for Foreign Operations of National Banks (Section 28.3)

The proposal requires a national bank to notify the OCC when it opens, relocates, or closes a foreign branch. This is necessary and desirable in order for the OCC to supervise consolidated national bank operations. The national bank may satisfy this requirement by providing the OCC with a copy of the appropriate filing made with the FRB. Thus, while the proposal may require notification in some instances where it is not currently required, it does not require a bank to fill out new reports. The proposal also removes the requirement for two separate filings that national banks must make currently when they establish a foreign branch or acquire certain foreign investments.

The proposal removes the requirement for reports on certain foreign exchange activities, currently found at § 20.5. The FRB's current reporting requirements for member banks requires comparable information and the reports described in current § 20.5 are not, therefore, necessary for OCC's bank supervisory purposes, since the OCC may obtain the reports from the FRB.

Permissible Activities (Section 28.4)

The proposal clarifies that a national bank may engage abroad in any activity that is available to it domestically and that is usual in connection with the banking business at the foreign location where the national bank transacts business. The proposal also notes that under Regulation K, a national bank may engage in other activities approved by the FRB. Pursuant to section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 604a), the FRB also may authorize foreign branches of member banks to exercise powers that are consistent with the charter of the bank and are usual in the banking business at the location where the branch operates. The OCC's examination and supervision of national banks currently includes these overseas branches and activities.

The proposal also restates the provision previously found at 12 CFR 7.7012 regarding the permissibility of national bank guarantees of liabilities of its Edge corporations and other foreign operations. In connection with revising 12 CFR part 7, the OCC determined that this provision would be more logically placed in the international regulation.

Liability of National Banks for Foreign Branch Deposits

Section 326 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) (12 U.S.C. 633), limits a United States bank's liability for deposits in its foreign branches in case of a sovereign action by the foreign country in question, or in cases of war, insurrection, or civil strife. This provision was included in the CDRI Act because the issue of liability for foreign branch accounts in the past has been a subject of protracted litigation. The CDRI Act permits the OCC and FRB to prescribe regulations as they deem necessary to implement this section.

The OCC invites comment on whether regulatory guidance or clarification is needed to implement the statutory provision. The comments should set forth in detail the subject areas or terms, such as ''inability to repay'' and ''due to'', for which guidance and clarification may be needed and recommendations for that guidance and clarification.

Subpart B—Federal Branches and Agencies of Foreign Banks

Authority, Purpose, and Scope (Section 28.10)

The proposal updates current § 28.1, ''Scope'', to include and clarify the authority and purpose of this subpart. The proposal clarifies that this subpart implements and clarifies the International Banking Act of 1978 (IBA) (12 U.S.C. 3101 *et seq.*), pertaining to the licensing, supervision, and operations of Federal branches and agencies of foreign banks in the United States.

Definitions (Section 28.11)

The proposal revises this section to add several definitions and update others. The changes assist in the implementation of new statutory requirements and make the OCC's regulations more consistent with FRB and FDIC regulations. By promoting uniformity among bank regulatory agencies, these changes reduce the burden of compliance with different sets of applicable regulations. The proposal adds or updates the following key definitions:

Change the Status (Section 28.11(b)) and Establish (Section 28.11(d))

These are new definitions describing the corporate activities for which OCC approval is required. The proposal defines ''change the status'' of an office to include conversion from a state branch or state agency to a Federal

branch, Federal agency, or limited Federal branch, and from a Federal branch, Federal agency, or limited Federal branch to another Federal office (branch, limited branch, or agency).

The proposal defines ''establish'' as opening and engaging in business at a new Federal branch or Federal agency. It also includes the acquisition of a Federal branch or agency through a merger, consolidation, or similar transaction with another foreign bank or a foreign bank subsidiary, and various conversions and relocations within a state, or from one state to another.

Federal Agency (Section 28.11(e))

The proposal makes this definition consistent with the definition in Regulation K and the IBA by clarifying that a Federal agency may maintain credit balances, cash checks, and lend money, but generally may not accept deposits from citizens or residents of the United States. Usage of the term ''credit balances'' is also consistent with Regulation K.

Federal Branch (Section 28.11(f))

The proposal makes this definition consistent with the definition in Regulation K and the IBA by clarifying that a Federal branch is an office licensed by the OCC that is not a Federal agency as defined in proposed § 28.11(e).

Foreign Bank (Section 28.11(g))

The proposal makes this definition consistent with the definition in Regulation K and the IBA by clarifying that a foreign bank is an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and that engages directly in the business of banking outside the United States.

Foreign Business (Section 28.11(h))

This new definition clarifies the term ''foreign business'' as it is used in proposed § 28.16, ''Deposit-taking by uninsured Federal branches'', which permits uninsured Federal branches to accept initial deposits of less than $100,000 from a ''foreign business''. The proposed definition attempts to balance Congress' concern that foreign banks not receive an unfair advantage over United States banks by engaging in retail deposit-taking through uninsured branches and the importance of maintaining credit availability to all sectors of the United States economy, including international trade finance.

The proposal defines ''foreign business'' to mean any entity, including a corporation, partnership, sole proprietorship, association, or trust that is organized under the laws of a foreign country, or any United States entity that is controlled by a foreign entity or foreign national. A foreign entity or foreign national shall be deemed to control a United States entity if the foreign entity or individual directly controls, or has the power to vote 25 percent or more of any class of voting securities of, the United States entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

This definition accommodates businesses owned by foreign nationals who are residents of the United States and concerned about credit availability to their businesses. These businesses may prefer to do business with a branch of a foreign bank from their home country regardless of whether the branch is FDIC insured.

The OCC specifically invites commenters to address the scope of this definition.

Foreign Country (Section 28.11(i))

This new definition clarifies the term ''foreign country'' as used in this subpart to mean one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

Home Country (Section 28.11(j))

This new definition clarifies the term ''home country'' as used in proposed § 28.12, and is similar to the definition in Regulation K. The proposal defines ''home country'' as the country in which the foreign bank is chartered or incorporated.

Home Country Supervisor (Section 28.11(k))

This new definition clarifies the term ''home country supervisor'' as it is used in proposed § 28.12, and is similar to the definition in Regulation K. The proposal defines ''home country supervisor'' as the governmental entity or entities in the foreign bank's home country with responsibility for supervising and regulating the foreign bank.

Home State (Section 28.11(l))

This new definition of ''home state'', as it is used in proposed § 28.17, is consistent with the description of ''home state'' in section 104(d) of the Interstate Act amending section 5(c) of the IBA, 12 U.S.C. 3103(c). The proposal defines ''home state'' to mean the state in which the foreign bank has an office. If a foreign bank has an office in more than one state, the home state of the foreign bank is one state of those states that is selected to be the home state by the foreign bank or, in default of such selection, by the FRB. The FRB's Regulation K, 12 CFR 211.22(b), also permits a foreign bank to change its home state designation once by providing 30 days prior notice to the FRB.

Initial Deposit (Section 28.11(m))

This new definition clarifies the term ''initial deposit'' as used in proposed § 28.16, and is similar to the definition found in the comparable FDIC regulation, 12 CFR 346.1(k). The proposal defines ''initial deposit'' to mean the first deposit transaction between a depositor and the branch made on or after the effective date of this regulation. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings, or time accounts. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purpose of determining the dollar amount of the initial deposit.

International Banking Facility (Section 28.11(n))

This new definition clarifies the term ''International banking facility'' as it is used in proposed § 28.20, and incorporates the definition found in 12 CFR 204.8. The proposal defines ''international banking facility'' to mean a set of asset and liability accounts segregated on the books and records of a bank, a United States branch or agency of a foreign bank, or an Edge or Agreement Corporation, that includes only international banking facility time deposits and extensions of credit.

Large United States Business (Section 28.11(o))

This new definition clarifies an exception to the general prohibition of deposit taking by Federal branches in proposed § 28.16, which permits uninsured Federal branches to accept initial deposits of less than $100,000 from ''large United States businesses''. The proposal attempts to balance Congress' concern that foreign banks not receive an unfair competitive advantage over United States banks by engaging in retail deposit-taking through uninsured branches and the importance of maintaining credit availability to all sectors of the United States economy. There does not appear to be a commonly-accepted or standard definition for a ''large business''. Therefore, the proposal describes

alternative criteria for determining whether a business is a ''large United States business'' for purposes of proposed § 28.16.

The proposal defines ''large United States business'' to mean any business entity that is organized under the laws of the United States, and (1) the securities of which are registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; *or* (2) has more than $1.0 million in annual revenues for the fiscal year preceding the year of the initial deposit. The OCC believes that this definition meets the Congress' concern without having a negative impact on the competitive position of foreign and United States banks and the availability of credit to all sectors of the United States economy.

Commenters are requested to provide detailed comments on this definition, including the appropriateness of the criteria, or alternative criteria.

Managed or Controlled (Section 28.11(q))

This new definition clarifies the term ''managed or controlled'' as used in proposed § 28.13. The definition is consistent with the definition used for the purposes of determining which entities must file the Supplement (FFIEC 002S) to the Report of Assets and Liabilities of United States Branches and Agencies of Foreign Banks (FFIEC 002). The proposal defines ''managed or controlled'' to mean that a majority of the responsibility for business decisions, including decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-United States office, resides at the United States branch or agency.

The OCC invites comment on whether to adopt this definition or some other definition of ''managed or controlled''.

Parent Foreign Bank Senior Management (Section 28.11(s))

This new definition clarifies the term ''parent foreign bank senior management'' as that term is used in proposed § 28.13(c). The proposal defines ''parent foreign bank senior management'' to mean individuals at the executive level of the parent foreign bank who are responsible for supervising and authorizing activities at the Federal branch or Federal agency.

Approval of Federal Branches and Federal Agencies (Section 28.12)

The proposal updates and clarifies the applicable criteria for OCC approval of the establishment of a Federal branch, Federal agency, or a limited Federal branch. In reviewing an application by a foreign bank to establish a Federal branch or Federal agency, the OCC will consider the criteria listed in sections 4(c) and 7(d) of the IBA, 12 U.S.C. 3102(c) and 3105(d). These criteria include the financial and managerial resources and future prospects of the applicant foreign bank and the Federal branch or Federal agency, information necessary to process the application, assurances regarding the prospective availability of information necessary for supervisory purposes, compliance with applicable United States law, competitive effects, the home country supervisor's consent to the proposed establishment of the Federal branch or Federal agency, and the extent of consolidated and comprehensive supervision and regulation by the home country supervisor of the applicant foreign bank.

In 1991, the FBSEA added section 7(d) to the IBA, 12 U.S.C. 3105(d), listing mandatory and discretionary criteria that the FRB was to apply in approving applications by foreign banking organizations. Many of the discretionary criteria, such as the financial and managerial resources, consent of the home country supervisor, prospective availability of information, and compliance with law are consistent with factors already considered by the OCC as a matter of practice and supervisory discretion. The proposal clarifies that the OCC continues to consider these criteria in the approval process. The FBSEA's mandatory requirement at 12 U.S.C. 3105(d) for the FRB regarding the consolidated and comprehensive supervision of the applicant bank by its home country supervisor generally is consistent with, although more stringent than, the Minimum Standards for the Supervision of International Banking Groups recommended by the Basle Committee on Banking Supervision. The proposal notes that the OCC considers, as part of its approval criteria, the extent to which the applicant foreign bank is subject to comprehensive and consolidated supervision and regulation by its home country.

The proposal also streamlines procedures for certain intrastate relocation, conversion, and fiduciary activities applications by eligible foreign banks for Federal branches and Federal agencies. An application by an eligible foreign bank to convert its Federal agency, Federal branch, or limited Federal branch to another Federal office (branch, limited branch, or agency) is deemed approved 45 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited approval. An application by an eligible foreign bank to exercise fiduciary powers at an established Federal branch shall be deemed approved 30 days after filing, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited approval. Expedited processing is not available if the OCC concludes that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues.

For purposes of this section, a foreign bank is an ''eligible foreign bank'' if each Federal branch and Federal agency of the foreign bank in the United States: (1) has a composite rating of 1 or 2 under the rating system for United States branches and agencies of foreign banking organizations; (2) is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (*see* 12 CFR part 6) or, if subject to such order, agreement, or directive, is informed in writing by the OCC that the parent foreign bank may be treated as an ''eligible foreign bank'' for purposes of this section; and (3) has, if applicable, a Community Reinvestment Act (CRA), 12 U.S.C. 2906, rating of ''Outstanding'' or ''Satisfactory''.

Twelve CFR part 5 contains procedural provisions applicable to Federal branches and Federal agencies. The proposal cross-references part 5 and also refers applicants to the Comptroller's Corporate Manual for additional clarification.

Permissible Activities (Section 28.13)

The proposal restates the current provision regarding the applicability of domestic law to Federal branches and Federal agencies. The OCC believes that it is not practical to provide more detailed guidance on this aspect in a regulation, and will instead use other vehicles to provide necessary clarification about the applicability of various statutes, regulations, and supervisory policies to Federal branches and Federal agencies.

The OCC specifically invites comment on forms of supplemental guidance that would be most useful.

The proposal also clarifies the OCC's current policy that the senior management of the parent bank generally must approve a decision where an applicable statute requires approval by the board of directors of a national bank.

The proposal adds a new provision to implement the provisions of the Interstate Act regarding the ability of a

United States branch or agency of a foreign bank to manage the foreign bank's offshore office activities. The Interstate Act amended the IBA, 12 U.S.C. 3105(k), to limit a branch or agency of a foreign bank to managing only those types of activities at its offshore offices that a United States bank is permitted to manage at its offshore branch or subsidiary. This prohibition applies only to those offshore offices that are ''managed or controlled'' by a foreign bank's United States branches or agencies, and the proposal defines this phrase, as discussed in the definitions section (§ 28.11(p)). Accordingly, the proposed restrictions only apply to those offshore offices for which a United States branch or agency has substantial responsibility with regard to assets or liabilities or recordkeeping.

The OCC believes that a determination that the restrictions apply should be made based on where substantive decision making authority or responsibility lies. For example, a United States branch or agency would be deemed to manage or control an offshore office if: (1) the manager for both the United States branch or agency and the offshore office are the same person or there is other significant overlap in personnel; (2) substantial responsibility for decisions regarding either assets or liabilities of the offshore office resides with staff in the United States office; or (3) recordkeeping systems for either assets or liabilities of the offshore office are maintained in the United States office. The proposed restrictions generally would not apply with respect to offshore offices that are operating facilities managed and controlled by staff located at the offshore office or at locations other than the United States.

The types of activities that United States branches or agencies of foreign banks may manage through a controlled offshore office are the same types of activities that a United States bank may manage at its foreign branch or subsidiary. These include activities permissible under the bank's charter and applicable regulations. In addition, foreign branches and subsidiaries of national banks may, to the extent permissible in the relevant offshore location, engage in activities and make investments under sections 25 and 25(a) of the FRA, 12 U.S.C. 601 through 604a and 12 U.S.C. 611 through 631, respectively.

The OCC invites comment on this new provision, including whether the procedural or quantitative supervisory requirements that may apply to an activity by a United States bank at its foreign branches or subsidiaries should also apply to the United States branch or agency of the foreign bank in this context.

Finally, the proposal adds a new provision regarding the application of section 7(h) of the IBA, 12 U.S.C. 3105(h). The FBSEA amended section 7 to provide that, unless the appropriate Federal banking agencies determine otherwise, a state branch or state agency may not engage in any type of activity that is not permissible for a Federal branch. The proposal clarifies that the OCC may issue opinions, interpretations, or rulings regarding the types of activities permissible for Federal branches. Thus, the OCC may respond to relevant inquiries by providing the OCC position in instances where there is no explicit statutory provision, current regulation, or precedent regarding permissible activities for Federal branches, in order to assist in determining whether those activities are permissible for state branches and state agencies pursuant to section 7(h).

Limitations Based on Capital of Foreign Banks (Section 28.14)

The proposal clarifies that a foreign bank's capital must be calculated in a manner similar to a national bank's capital, i.e., consistent with 12 CFR part 3. However, foreign banks' financial statements may not readily lend themselves to a calculation that results in determining its ''part 3 capital'', particularly since the Basle risk-based capital standards have not been adopted globally. Therefore, the OCC expects that this provision often will require case-by-case application, and it will exercise discretion in implementing this provision.

The proposal also requires that the business transacted by all Federal branches and Federal agencies be aggregated with business transacted by all state branches and state agencies in determining the foreign bank's compliance with limitations based upon the capital of the foreign bank. This approach parallels the requirements applicable to state-licensed branches and agencies.

The OCC invites comments on this aspect of the proposal.

Capital Equivalency Deposits (CED) (Section 28.15)

The proposal restates the current provision that eligible CED instruments for Federal branches and Federal agencies include dollar deposits or investment securities that are permissible investments for a national bank. The proposal also permits high-grade commercial paper and bankers' acceptances, as functional equivalents of deposits. In the past, the OCC has noted that the quality of bank certificates of deposit offered as CED has occasionally been questionable or difficult to ascertain. Also, the securities used as CED may be very volatile or difficult to price at market value. Therefore, the proposal requires that the CED securities be marketable and, if not priced in a published source (such as the Wall Street Journal or the Financial Times), be priced by an independent pricing service at least quarterly. The proposal also authorizes the OCC to disallow, on a case-by-case basis, specific certificates of deposit or securities. As a general rule, the proposal parallels in many respects asset pledge requirements that apply to state branches and agencies, such as those operating in New York.

Deposit-Taking by Uninsured Federal Branches (Section 28.16)

The proposal implements amendments to section 6 of the IBA regarding deposit-taking by uninsured Federal branches, 12 U.S.C. 3104. First, section 214 of the FBSEA, as amended by section 302(a) of the Defense Production Act Amendments of 1992 (Pub. L. 102–558, 106 Stat. 4198), amended section 6 of the IBA in 1991 to generally prohibit a foreign bank from establishing any new branches that take domestic retail deposits of less than $100,000. Subsequently, section 107(b) of the Interstate Act amended the IBA to require the OCC and the FDIC, after consultation with the other Federal banking agencies, to revise their regulations regarding deposit-taking by uninsured branches. The objective of this amendment was to ensure that foreign banks do not enjoy an unfair competitive advantage over United States banks through their remaining ability to accept certain types of deposits. At the same time, the Congress was concerned about, and required the bank regulatory agencies to consider, any negative impact that further restrictions in this regard might have on maintaining and improving the credit availability to all sectors of the United States economy, including trade finance.

Section 107(b) of the Interstate Act requires the OCC and the FDIC, in reviewing their regulations, to consider whether to permit an uninsured branch of a foreign bank to accept initial deposits of less $100,000 only from the six types of customers specified in the statute. The OCC notes that the Interstate Act does not require the OCC to implement the six exemptions

described in the Interstate Act verbatim, or only just those six. Rather, the statute specifically provides that the OCC ''shall consider whether to permit'' uninsured branches to accept initial deposits of less than $100,000 from the enumerated exemptions, and also consider the importance of maintaining and improving credit availability to all sectors of the United States economy, including international trade finance. By inviting the agencies to consider the enumerated exemptions, Congress intended the agencies to utilize their expertise in implementing this provision.

The Interstate Act also provides that the agencies must reduce, from the current 5 percent of average branch deposits, to no more than 1 percent, the exemption that allows uninsured branches to accept initial deposits of less than $100,000 from any party on a de minimis basis. The agencies also are allowed to establish reasonable transition rules to facilitate termination of any deposit taking activity that previously was permissible.

The OCC has carefully considered Congress' concern that foreign banking organizations not receive an unfair competitive advantage over United States banking organizations. An OCC study conducted in 1994, entitled ''Are Foreign Banks Out-Competing U.S. Banks in the U.S. Market?'' (OCC Study), found that although the market share of foreign-owned banks (subsidiaries, branches, and agencies) in the United States grew during the 1980s and early 1990s, foreign-owned banks in the United States, including Federal branches and agencies, persistently underperformed United States banks as measured by profitability, efficiency, and, recently, credit quality. In addition, the OCC has reviewed data that updates available figures on the deposit taking activities of uninsured United States branches of foreign banks. As of year-end 1994, these offices of foreign banks held $386 billion of total deposits, which funded just over half of the total United States assets of these offices. All available data relating to these deposits suggest that, as a group, uninsured United States offices of foreign banks do not compete for retail deposits. Of the total deposits accepted by these offices, 78 percent were accepted from other banks or non-United States entities. The data also suggests that these uninsured offices obtain less than 2 percent of their total funding from small deposits.

The proposal states the OCC policy to interpret and implement the relevant statutory provisions in view of the Congressional concerns that prompted the IBA amendment, such as ensuring equal competitive opportunities among United States and foreign banks and credit availability to all sectors of the economy, including trade finance. The proposal provides that an uninsured Federal branch may accept initial deposits of less than $100,000 from the six types of customers specified in the Interstate Act. The proposal also includes certain other relationships within the exemptions, where those relationships appear to be consistent with the purposes of the Act. Proposed § 28.16(b)(3) permits an uninsured branch to accept deposits from persons with whom the branch or foreign bank has a written agreement to extend credit or provide nondeposit banking services within 12 months after the date of the initial deposit. This approach recognizes that in a banking relationship, a deposit may, in some cases, precede the extension of credit or providing of other nondeposit banking services by the branch or foreign bank. Proposed § 28.16(b)(6) also permits an uninsured branch to accept deposits from Federal and state governmental units. The data described earlier suggests that the ability of uninsured branches of foreign banks to accept deposits from Federal and state governments does not confer an unfair competitive advantage to uninsured branches of foreign banks compared to domestic banking organizations. Proposed § 28.16(b)(8) permits an uninsured branch to accept deposits from persons that may deposit funds with an Edge corporation pursuant to Regulation K, 12 CFR 211.4 (generally including foreign persons, foreign governments, and other persons engaged in international business activity). This exemption is consistent with the Congressional concern not to impair international trade or trade finance.

The OCC invites comment on the proposed categories of exemptions. If additional exemptions are suggested, the commenters are requested to specify why the additional exemption is needed and its impact on the United States and foreign banks' competitive opportunities, as well as on improving credit availability in the United States.

In addition, the proposal includes the 1 percent *de minimis* exemption, and provides for criteria and procedure for requesting additional exemptions. Currently, the *de minimis* amount is based on the average daily deposits of the branch for the last thirty days of the previous calendar quarter. The OCC solicits comment on streamlining and simplifying the method for calculating the *de minimis* amount, such as basing the *de minimis* amount on the branch's average deposits calculated using the branch's deposits at the end of each month for the previous calendar quarter. The commenters are requested to address whether that alternative approach, or any other, would reduce regulatory burden while still providing a reliable indicator of compliance with the *de minimis* amount.

The OCC also is considering extending the exemption in § 28.16(b)(3) to permit uninsured Federal branches to accept deposits from persons, *and their affiliates*, to whom the branch, foreign bank, *or any financial institution affiliate* thereof has extended credit or provided other non-deposit banking services within the past 12 months, or with whom the branch, bank, *or financial institution affiliate* has a written agreement to extend credit or provide such services. The term ''affiliate'' might be defined to mean any entity (including an individual) that controls, is controlled by, or is under common control with, another entity. An entity would be deemed to control another entity if the entity directly controls or has the power to vote 25 percent or more of any class of voting securities of the other entity, or controls in any manner the election of a majority of the directors or trustees of the other entity. The term ''financial institution'' could be defined to mean any depository institution, depository institution holding company, or foreign bank as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, any broker or dealer, or futures commission merchant as defined in 12 U.S.C. 4402, and any investment advisor.

These additional exemptions may be warranted by the close connection among the foreign entity's various components. For instance, affiliates of the foreign bank and its depositors may prefer to do business with a branch of the foreign bank with which they have a direct or indirect relationship. This deposit relationship may, in some cases, precede the extension of credit or providing of other nondeposit banking services by the branch, foreign bank, or financial institution affiliate.

The OCC is also considering adding a new exemption, not specified in the Interstate Act, that permits uninsured branches, as a matter of convenience to its customers, to accept deposits from immediate family members of individuals that may qualify for an exemption under § 28.16(b)(1) through (b)(7).

The OCC requests comment on extending the proposed exemption in the above manner. Commenters are requested to specify the effect on competitive opportunities among

United States and foreign banks and credit availability to all sectors of the economy as a result of the extension.

The Interstate Act permits the OCC to establish reasonable transition rules to facilitate termination of any deposit-taking activity that previously was permissible. The proposal provides for a five-year transition period for existing transaction accounts. The transition period for a time deposit is proposed to be until the maturity of the deposit. Thus, an uninsured branch may not retain deposits accepted before the effective date of this section for longer than five years or, in the case of time deposits, until maturity of the deposit, unless the deposit falls within a new exemption under paragraph (b) or is granted an exception by the OCC under paragraph (c).

Deposits received after the effective date of the regulation would be regarded as initial deposits that must qualify under one of the new exemptions, or be accepted under the new 1 percent *de minimis* exemption. With regard to the *de minimis* exemption, uninsured Federal branches will start with a clean slate, i.e. the new 1 percent limit will apply prospectively. It will exclude deposits in the existing 5 percent *de minimis* account that are phased out, as described above.

The OCC invites comment on this transition rule. If an alternate approach is recommended, commenters are requested to detail whether the alternate imposes a recordkeeping burden on uninsured branches and the extent of the burden, particularly in comparison to the approach contained in the proposal.

Changes in Activities and Operations (Section 28.17)

The proposal adds a new provision to clarify the OCC's current policy regarding certain changes in activities and operations. The proposal requires a Federal branch or Federal agency simply to provide a notice to the OCC when it changes its corporate title or mailing address, converts to a state branch, state agency, or a representative office, or when its parent foreign bank changes its home state designation.

Recordkeeping and Reporting. (Section 28.18)

The proposal reorganizes and clarifies the recordkeeping and reporting requirements in current § 28.10 for Federal branches and Federal agencies. The proposal restates current OCC policy and practice that the OCC may require a parent foreign bank to provide the OCC with the information regarding its affairs. The proposal also adds a specific requirement that a foreign bank operating a Federal branch or Federal agency in the United States provide the OCC with a copy of regulatory reports designated by the OCC that are filed with other Federal regulatory agencies. These reports may be necessary for the OCC to effectively supervise Federal branches and agencies. The OCC believes that asking only for copies of information that is already prepared to satisfy existing requirements for other United States regulators would preclude the need, in most cases, to impose new report-preparation requirements on Federal branches and agencies.

The proposal also clarifies the current requirement that a Federal branch or Federal agency maintain a set of accounts and records in English reflecting all transactions on a daily basis. To eliminate unnecessary burden and translation costs, the proposal does not require that all records be maintained in English; however, a Federal branch or Federal agency must maintain sufficient records in English to permit examiners to perform their responsibilities.

Enforcement (Section 28.19)

The proposal clarifies the OCC's enforcement authority, pursuant to 12 U.S.C. 3108(b), to bring actions under 12 U.S.C. 1818 for violations of the IBA in addition to any other remedies provided by the IBA or any other law.

Maintenance of Assets (Section 28.20)

The proposal amplifies and clarifies the current asset maintenance requirement for Federal branches and Federal agencies contained in the IBA and current § 28.9. The proposal contains provisions regarding the minimum amount of required assets, valuation of assets, and eligibility of assets for asset maintenance purposes. The proposal is in most respects identical to the FDIC's asset maintenance requirements for insured branches 12 CFR 346.20. The proposed provision is also similar to the comparable provisions in the New York state banking law and regulations.

In the past, the OCC has imposed asset maintenance requirements in a few cases as a condition of licensing and has exercised this authority in connection with certain enforcement actions. In the future, the asset maintenance requirement may increase in importance as a tool that the OCC uses in its overall supervision of foreign banks. Therefore, the OCC believes that the proposal will be helpful in clarifying aspects of the asset maintenance requirement.

The OCC invites comment on whether the detail provided by the proposal is helpful in clarifying the use and scope of the provision to the industry.

Also, the OCC invites comment on whether to exclude any classified asset entirely, as the provided in proposed § 28.20(c)(2)(ii), or whether to include certain classified assets (e.g. ''substandard'') in eligible assets in full or in part based on different risk weights and percentages.

Voluntary Liquidation (Section 28.22)

Currently, the OCC's regulations do not provide guidance on the procedures and standards applicable to a voluntary liquidation or termination of a Federal branch or Federal agency. In the past, the OCC has applied and modified the standards applicable in a national bank liquidation pursuant to 12 U.S.C. 181. The proposal clarifies the voluntary liquidation process for Federal branches and Federal agencies by referencing the applicable provisions in 12 CFR part 5. It also adds requirements that are specific to a Federal branch or Federal agency, such as notice to customers and creditors, and return of examination reports and the branch certificate.

Termination of Federal Branches and Agencies (Section 28.23)

The proposal clarifies the OCC's authority to terminate Federal branches and Federal agencies. The termination grounds include those stated in section 4(i) of the IBA, 12 U.S.C. 3102(i), the grounds for national bank termination referred to in 12 U.S.C. 191 and 12 U.S.C. 1821(c)(5), including unsafe and unsound practices, insufficiency or dissipation of assets, concealment of books and records, a money laundering offense, or a recommendation from the FRB to terminate a Federal branch or Federal agency pursuant to section 7(e)(5) of the IBA, 12 U.S.C. 3105(e)(5).

Derivation Table

Only substantive modifications, additions, and changes are indicated.

Revised provision	Original provision	Comments
§ 28.2	§ 20.2	Modified.
§ 28.3	§§ 20.3, 20.4	Significant change.
§ 28.4		Added.

Revised provision	Original provision	Comments
	§ 20.5	Removed.
§ 28.11	§ 28.2	Significant change.
§ 28.12	§ 28.3	Significant change.
§ 28.13	§ 28.4	Significant change.
§ 28.14	§ 28.5	Modified.
§ 28.15	§ 28.6	Significant change.
§ 28.16	§ 28.8	Significant change.
§ 28.17		Added.
§ 28.18	§ 28.10	Significant change.
§ 28.19		Added.
§ 28.20	§ 28.9	Significant change.
§ 28.22		Added.
§ 28.23		Added.
Subpart C	Subpart B of part 20	No change.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks and Federal branches and Federal agencies of foreign banks, regardless of size, by simplifying and clarifying existing regulations.

Executive Order 12866

The OCC has determined that this proposed rule is not a significant regulatory action.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes 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. Because the OCC has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rule has the effect of reducing burden.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to Legislative and Regulatory Activities Division, Attention: 1557–0102, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–0102), Washington, D.C. 20503.

The collections of information in this proposed regulation are in 12 CFR §§ 28.3, 28.13, 28.14, 28.15, 28.16, 28.17, 28.18, 28.20, 28.52, 28.53, and 28.54.

Much of this information is required by statute. Other items of information are needed by the OCC to maintain the safety and soundness of Federal branches and agencies and of national bank operations in the United States and abroad. This information will be used by the OCC to evaluate national banks with international operations and Federal branches and agencies for supervisory, prudential, and legal purposes and for statistical and examination purposes.

The likely respondents/recordkeepers are for-profit institutions.

The estimated annual burden per respondent varies from 9 hours to 64 or more hours, depending on individual circumstances, with an estimated average of 36.3 hours.

Estimated number of respondents: 185

Estimated annual frequency of responses: One per year.

List of Subjects

12 CFR Part 20

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 28

Federal agencies, Federal branches, Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 20—[REMOVED]

1. Part 20 is removed.

2. Part 28 is revised to read as follows:

PART 28—INTERNATIONAL BANKING ACTIVITIES

Subpart A—Foreign Operations of National Banks

Subpart B—Federal Branches and Agencies of Foreign Banks

Subpart C—International Lending Supervision

Authority: 12 U.S.C. 1 *et seq.*, 93a, 161, 602, 1818, 3102, 3108, and 3901 *et seq.*

Subpart A—Foreign Operations of National Banks

§ 28.1 Authority, purpose, and scope.

(a) *Authority*. This subpart is issued pursuant to 12 U.S.C. 1 et seq., 24(Seventh), 93a, and 602.

(b) *Purpose*. This subpart sets forth filing requirements for national banks that engage in international operations and clarifies permissible foreign activities of national banks.

(c) *Scope*. This subpart applies to all national banks that engage in international operations through a foreign branch, or acquire an interest in an Edge corporation, Agreement corporation, foreign bank, or certain other foreign organizations.

§ 28.2 Definitions.

For purposes of this subpart:

(a) *Agreement corporation* means a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System (FRB) under section 25 of the Federal Reserve Act (FRA), 12 U.S.C. 601 through 604a.

(b) *Edge corporation* means a corporation that is organized under section 25(a) of the FRA, 12 U.S.C. 611 through 631.

(c) *Foreign bank* means an organization that:

(1) Is organized under the laws of a foreign country;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;

(4) Receives deposits to a substantial extent in the regular course of its business; and

(5) Has the power to accept demand deposits.

(d) *Foreign branch* means an office of a national bank (other than a representative office) that is located outside the United States at which a banking or financing business is conducted.

(e) *Foreign country* means one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

§ 28.3 Filing requirements for foreign operations of national banks.

(a) *Notice requirement.* A national bank shall notify the OCC when it:

(1) Establishes, opens, closes, or relocates a foreign branch; or

(2) Files an application, notice, or report with the FRB regarding the acquisition or divestment of an interest in, or closing of, an Edge corporation, Agreement corporation, foreign bank, or other foreign organization.

(b) *Other applications and notices accepted*. The OCC accepts a copy of an application form, notice, or report submitted to another Federal agency that covers the proposed action and contains substantially the same information required by the OCC.

(c) *Additional information.* A national bank shall furnish the OCC with any additional information as the OCC may require in connection with the national bank's foreign operations.

§ 28.4 Permissible activities.

(a) *Generally.* Subject to the applicable approval process, if any, a national bank may engage in activities in a foreign country that are:

(1) Permissible for a national bank in the United States; and

(2) Usual in connection with the business of banking in the country where it transacts business.

(b) *Additional activities.* In addition to its general banking powers, a national bank may engage in any activities in a foreign country that are permissible under the FRB's Regulation K, 12 CFR part 211.

(c) *Foreign operations guarantees.* A national bank may guarantee the deposits and other liabilities of its Edge and Agreement corporations and of its corporate instrumentalities in foreign countries.

§ 28.5 Filing of notice.

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the Office of the Comptroller of the Currency, International Banking and Finance, 250 E Street SW, Washington, DC 20219.

(b) *Availability of forms.* Individual forms and instructions for filings are available from International Banking and Finance.

Subpart B—Federal Branches and Agencies of Foreign Banks

§ 28.10 Authority, purpose, and scope.

(a) *Authority*. This subpart is issued pursuant to the authority in the International Banking Act of 1978 (IBA), 12 U.S.C. 3101 et seq., and 12 U.S.C. 93a.

(b) *Purpose and scope.* This subpart implements and clarifies the IBA pertaining to the licensing, supervision, and operations of Federal branches and Federal agencies in the United States.

§ 28.11 Definitions.

For purposes of this subpart:

(a) *Agreement corporation* means a corporation having an agreement or undertaking with the FRB under section 25 of the FRA, 12 U.S.C. 601 through 604a.

(b) *Change the status* of an office means conversion of a:

(1) State branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch, limited Federal branch, or Federal agency;

(2) Federal agency into a Federal branch or limited Federal branch;

(3) Federal branch into a limited Federal branch or Federal agency; or

(4) Limited Federal branch into a Federal branch or Federal agency.

(c) *Edge corporation* means a corporation that is organized under section 25(a) of the FRA, 12 U.S.C. 611 through 631.

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

(1) Open and conduct business through a Federal branch or Federal agency;

(2) Acquire directly, through merger, consolidation, or similar transaction with another foreign bank, the operations of a Federal branch or Federal agency that is open and conducting business;

(3) Acquire a Federal branch or Federal agency through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

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

(e) *Federal agency* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including maintaining credit balances, cashing checks, and lending money, but may not accept deposits from citizens or residents of the United States. Obligations may not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(f) *Federal branch* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including accepting deposits, that is not a Federal agency as defined in paragraph (e) of this section.

(g) *Foreign bank* means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and that engages directly in the business of banking outside the United States.

(h) *Foreign business* means any entity, including a corporation, partnership, sole proprietorship, association, or trust that is organized under the laws of a foreign country, or any United States entity that is controlled by a foreign entity or foreign national. A foreign entity or foreign national shall be deemed to control a United States entity if the foreign entity or individual directly controls, or has the power to vote 25 percent or more of any class of voting securities of, the United States entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(i) *Foreign country* means one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(j) *Home country* means the country in which the foreign bank is chartered or incorporated.

(k) *Home country supervisor* means the governmental entity or entities in the foreign bank's home country responsible for supervising and regulating the foreign bank.

(l) *Home state* of a foreign bank means the state in which the foreign bank has a branch, agency, subsidiary commercial lending company, or subsidiary bank. If a foreign bank has an office in more than one state, the home state of the foreign bank is the state that is selected to be the home state by the foreign bank or, in default of the foreign bank's selection, by the FRB.

(m) *Initial deposit* means the first deposit transaction between a depositor and the Federal branch made on or after [effective date of the final regulation]. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings, or time accounts. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purpose of determining the dollar amount of the initial deposit.

(n) *International banking facility* means a set of asset and liability accounts segregated on the books and records of a depository institution, a United States branch or agency of a foreign bank, or an Edge corporation or Agreement corporation, that includes only international banking facility time deposits and extensions of credit.

(o) *Large United States business* means any business entity including a corporation, partnership, sole proprietorship, association, or trust that engages in commercial activity for profit, is organized under the laws of the United States or any state, and:

(1) The securities of which are registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or

(2) Has more than $1.0 million in annual revenues for the fiscal year preceding the year of the initial deposit.

(p) *Limited Federal branch* means a Federal branch that, pursuant to an agreement between the parent foreign bank and the FRB, may receive only those deposits that would be permissible for an Edge corporation to receive.

(q) *Managed or controlled* by a Federal branch or agency means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending, asset management, funding, or liability management, or the responsibility for recordkeeping of assets or liabilities for a non-United States office, resides at the Federal branch or Federal agency.

(r) *Manual* means the Comptroller's Corporate Manual (12 CFR 5.2(c)).

(s) *Parent foreign bank senior management* means individuals at the executive level of the parent foreign bank who are responsible for supervising and authorizing activities of the Federal branch or Federal agency.

(t) *Person* means an individual or a corporation, government, partnership, association, or any other entity.

(u) *State* means any state of the United States or the District of Columbia.

(v) *United States bank* means a bank organized under the laws of the United States or any state of the United States.

§ 28.12 Approval of Federal branches and Federal agencies.

(a) *Approval requirements.* A foreign bank shall submit an application to and obtain prior approval from the OCC before it:

(1) Establishes a Federal branch, Federal agency, or limited Federal branch; or

(2) 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.

(b) *Standards for approval.* In reviewing an application by a foreign bank to establish a Federal branch or Federal agency, the OCC shall consider:

(1) The financial and managerial resources and future prospects of the applicant foreign bank and the Federal branch or Federal agency;

(2) Whether the foreign bank has furnished to the OCC the information the OCC requires to assess the application adequately, and provided the OCC with adequate assurances that information will be made available to the OCC on the operations or activities of the foreign bank or any of its affiliates that the OCC deems necessary to determine and enforce compliance with the IBA and other applicable Federal banking statutes;

(3) Whether the foreign bank and its United States affiliates are in compliance with applicable United States law;

(4) The convenience and needs of the community to be served and the effects of the proposal on competition in the domestic and foreign commerce of the United States;

(5) Whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(6) Whether the home country supervisor has consented to the proposed establishment of the Federal branch or Federal agency.

(c) *Comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the OCC reviews various factors, including whether the foreign bank is supervised or regulated in a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank to assess the foreign bank's overall financial condition and compliance with laws and regulations as specified in the FRB's Regulation K, 12 CFR 211.24.

(d) *Conditions on approval.* The OCC may impose any conditions on its

approval that it deems necessary, including a condition permitting future termination of any activities based on the inability of the foreign bank to provide information on its activities or those of its affiliates, that the OCC deems necessary to determine and enforce compliance with United States banking laws.

(e) *Expedited approval.* Unless the OCC concludes that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues, the OCC shall process the following filings by an eligible foreign bank under expedited approval procedures:

(1) *Intrastate relocations.* An application submitted by an eligible foreign bank to relocate a Federal branch or agency within a state is deemed approved by the OCC as of the seventh day after the close of the applicable public comment period in 12 CFR part 5, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited approval.

(2) *Conversions.* An application submitted by an eligible foreign bank to convert a Federal agency to a Federal branch or limited Federal branch, a Federal branch to a Federal agency or limited Federal branch, or a limited Federal branch to a Federal branch or a Federal agency is deemed approved by the OCC 45 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited approval.

(3) *Fiduciary powers.* An application submitted by an eligible foreign bank to exercise fiduciary powers at an established Federal branch is deemed approved by the OCC 30 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited approval.

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

(1) Has a composite rating of 1 or 2 under the rating system for United States branches and agencies of foreign banking organizations;

(2) Is not subject to a cease and desist order, consent order, formal written agreement, Prompt Corrective Action directive (*see* 12 CFR part 6) or, if subject to such order, agreement, or directive, is informed in writing by the OCC that the Federal branch or Federal agency may be treated as an ''eligible foreign bank'' for purposes of this section; and

(3) Has, if applicable, a Community Reinvestment Act (CRA), 12 U.S.C. 2906, rating of ''Outstanding'' or ''Satisfactory''.

(g) *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.

(h) *Additional requirements.* Nothing in this section relieves a foreign bank from obtaining the required approval of the FRB to establish a Federal branch or Federal agency in accordance with the FRB's Regulation K, 12 CFR part 211.

§ 28.13 Permissible activities.

(a) *Applicability of laws.*—(1) *General.* Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or Federal agency shall be conducted with the same rights and privileges and shall be subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or Federal agency were a national bank operating at the same location.

(2) *Parent foreign bank senior management approval.* Unless otherwise provided by the OCC, any provision in law, regulation, policy, or procedure that requires a national bank to obtain the approval of its board of directors will be deemed to require a Federal branch or Federal agency to obtain the approval of parent foreign bank senior management.

(b) *Offshore activities.*—(1) *Federal branches and Federal agencies.* A Federal branch or Federal agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Federal branch or Federal agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States.

(2) *Activities managed in foreign branches or subsidiaries of United States banks.* Activities that a United States bank may manage at its branch or subsidiary abroad include those activities that the bank may engage in abroad. A United States bank may engage abroad in activities permitted by the United States bank's state or Federal charter, regulations issued by the chartering authority, and other United States banking laws.

(c) *Additional guidance regarding permissible activities.* For purposes of section 7(h) of the IBA, 12 U.S.C. 3105(h), the OCC may issue opinions, interpretations, or rulings regarding permissible activities of Federal branches.

§ 28.14 Limitations based upon capital of foreign banks.

(a) *General.* Any limitation or restriction based upon the capital of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank.

(b) *Calculation.* Unless otherwise provided by the Comptroller, a foreign bank's capital must be calculated in a manner consistent with 12 CFR part 3 of this chapter.

(c) *Aggregation.* The business transacted by all Federal branches and Federal agencies shall be aggregated with the business transacted by all state branches and state agencies in determining the foreign bank's compliance with limitations based upon the capital of the foreign bank. The foreign bank shall designate one Federal branch or Federal agency office in the United States to maintain consolidated information so that compliance can be monitored.

§ 28.15 Capital equivalency deposits.

(a) *Capital equivalency deposits.* (1) For purposes of section 4(g) of the IBA, 12 U.S.C. 3102(g), unless otherwise provided by the OCC, a foreign bank's capital equivalency deposits shall consist of dollar deposits, including certificates of deposit and other instruments evidencing a deposit, investment securities of the type that may be held by national banks, high-grade commercial paper, bankers' acceptances, and other assets that the OCC permits for this purpose.

(2) The agreement with the depository bank to hold the capital equivalency deposit and the amount of the deposit must comply with the requirements in section 4(g) of the IBA, including the qualifying components and required minimum amount of the capital equivalency deposit. If a foreign bank has more than one Federal branch or Federal agency in a state, it shall determine the capital equivalency deposits and the amount of liabilities requiring capital equivalency coverage on an aggregate basis for all the foreign bank's Federal branches or Federal agencies.

(b) *Value of assets.* The obligations referred to in paragraph (a) of this section must be valued at principal amount or market value, whichever is lower. If no market value is available from a published source, they must be priced by an independent pricing service at least once every calendar quarter.

(c) *Increase in capital equivalency deposits.* For prudential or supervisory reasons, the OCC may require, in individual cases or otherwise, that a foreign bank increase its capital equivalency deposit above the minimum amount.

(d) *Deposit arrangements.* A depository bank shall segregate a foreign bank's capital equivalency deposit on its books and records. The funds deposited and obligations referred to in paragraph (a) of this section that are placed in safekeeping at a depository bank to satisfy a foreign bank's capital equivalency deposit requirement:

(1) May not be reduced in aggregate value by withdrawal without the prior approval of the OCC;

(2) Must be pledged and maintained pursuant to an agreement prescribed by the OCC; and

(3) Must be free from any lien, charge, right of setoff, credit or preference in connection with any claim of the depository bank against the foreign bank.

(e) *Maintenance of capital equivalency ledger account.* Each Federal branch or Federal agency shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the OCC.

§ 28.16 Deposit-taking by uninsured Federal branches.

(a) *Policy.* In carrying out this section, the OCC shall consider the importance of according foreign banks competitive opportunities equal to those of United States banks and the availability of credit to all sectors of the United States economy, including international trade finance.

(b) *General.* An uninsured Federal branch may accept initial deposits of less than $100,000 only from:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who are:

(i) Not citizens of the United States;

(ii) Residents of the United States; and

(iii) Employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons to whom the branch or foreign bank has extended credit or provided other nondeposit banking services within the past 12 months, or with whom the branch or bank has a written agreement to extend credit or provide such services within 12 months after the date of the initial deposit;

(4) Foreign businesses and large United States businesses;

(5) Foreign governmental units and recognized international organizations;

(6) Federal and state governmental units, including any political subdivision or agency thereof;

(7) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for transmission of funds, or transmission of funds by any electronic means;

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.4, including persons engaged in certain international business activities; and

(9) Any other depositor if:

(i) The amount of deposits under paragraph (b)(9) of this section does not exceed on an average daily basis 1 percent of the average of the branch's deposits for the last 30 days of the most recent calendar quarter, excluding deposits of other offices, branches, agencies, or wholly owned subsidiaries of the foreign bank; and

(ii) The branch does not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public.

(c) *Application for an exemption.* A foreign bank may apply to the OCC for an exemption to permit an uninsured Federal branch to accept or maintain deposit accounts that are not listed in paragraph (b) of this section. The request should describe:

(1) The types, sources, and estimated amounts of such deposits and explain why the OCC should grant an exemption; and

(2) How the exemption improves and maintains the availability of credit to all sectors of the United States economy, including the international trade finance sector.

(d) *Aggregation of deposits.* For purposes of paragraph (b)(9) of this section only, a foreign bank that has more than one Federal branch in the same state may aggregate deposits in all the Federal branches in that state, but excluding deposits of other branches, agencies or wholly owned subsidiaries of the bank. The average amount must be computed by using the sum of deposits as of the close of business of the last 30 calendar days ending with and including the last day of the calendar quarter divided by 30. The Federal branch shall maintain records of the calculation until its next examination by the OCC.

(e) *Notification to depositors.* A Federal branch that accepts deposits pursuant to this section shall provide notice to depositors pursuant to 12 CFR 346.7, which generally requires that the Federal branch conspicuously display a sign at the branch and include a statement on each signature card, passbook, and instrument evidencing a deposit that the deposit is not insured by the FDIC.

(f) *Transition period.* An uninsured Federal branch may maintain a deposit lawfully accepted prior to [the effective date of the final regulation]:

(1) If the deposit qualifies under paragraph (b) or paragraph (c) of this section; or

(2) No later than until:

(i) The maturity of a time deposit; or

(ii) Five years after [the effective date of the final regulation] for all other deposits.

(g) *Insured banks in United States territories.* For purposes of this section, the term ''foreign bank'' does not include any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands whose deposits are insured by the FDIC pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq.

§ 28.17 Changes in activities and operations.

(a) *Notification.* A Federal branch or Federal agency shall notify the OCC if:

(1) It changes its corporate title;

(2) It changes its mailing address;

(3) It converts to a state branch, state agency, or representative office; or

(4) The parent foreign bank changes the designation of its home state.

(b) *Where to file.* A Federal branch or agency shall file any notice under this section with the Office of the Comptroller of the Currency, International Banking and Finance, 250 E Street SW, Washington, DC 20219.

(c) *Other notices accepted.* The OCC accepts a copy of an application form, notice, or report submitted to another Federal regulatory agency that covers the proposed action and contains substantially the same information as would be required by the OCC.

§ 28.18 Recordkeeping and reporting.

(a) *General.* A Federal branch or agency shall comply with applicable recordkeeping and reporting requirements that apply to national banks and with any additional requirements that may be prescribed by the OCC. A Federal branch or Federal agency, and the parent foreign bank, shall furnish information relating to the affairs of the parent foreign bank and its affiliates that the OCC may from time to time request.

(b) *Regulatory reports filed with other agencies.* A foreign bank operating a Federal branch or Federal agency in the United States shall provide the OCC with a copy of reports filed with other Federal regulatory agencies that are

designated in guidance issued by the OCC.

(c) *Maintenance of accounts, books, and records.* (1) Each Federal branch or Federal agency shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch or agency. The Federal branch or Federal agency shall keep a set of accounts and records in English sufficient to permit the OCC to examine the condition of the Federal branch or Federal agency and its compliance with applicable laws and regulations. The branch or agency shall promptly provide any additional records requested by the OCC for examination or supervisory purposes.

(2) A foreign bank with more than one Federal branch or Federal agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or Federal agencies in that state.

§ 28.19 Enforcement.

As provided by section 13 of the IBA, 12 U.S.C. 3108(b), the OCC may enforce compliance with the requirements of the IBA, other applicable banking laws, and regulations or orders of the OCC under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, in addition to any other remedies otherwise provided by the IBA or any other law.

§ 28.20 Maintenance of assets.

(a) *General rule.* (1) For prudential, supervisory, or enforcement reasons, the OCC may require a foreign bank to hold certain assets in the state in which its Federal branch or Federal agency is licensed. Those assets shall consist of currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of indebtedness including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds or, with the approval of the OCC, funds freely convertible into United States funds in an amount prescribed by the OCC.

(2) If asset maintenance is required, the amount of assets may not be less than 105 percent of the aggregate amount of liabilities of the Federal branch or Federal agency, payable at or through the branch or agency in the state where it is licensed. To determine the aggregate amount of liabilities for purposes of this section, the foreign bank shall include bankers' acceptances, but exclude accrued expenses, and amounts due and other liabilities to the head office and any other branches, offices, agencies, subsidiaries, and affiliates of the foreign bank.

(b) *Value of assets.* For the purposes of this section, marketable securities must be valued at principal amount or market value, whichever is lower.

(c) *Eligible assets.* (1) In determining compliance with the asset maintenance requirements, the Federal branch or Federal agency will be given credit for:

(i) Capital equivalency deposits maintained pursuant to § 28.15;

(ii) Reserves required to be maintained by the Federal branch or Federal agency pursuant to the FRB's authority under 12 U.S.C. 3105(a); and

(iii) Assets pledged, and surety bonds payable, to the FDIC to secure the payment of domestic deposits.

(2) In determining eligible assets for purposes of this section, the Federal branch or Federal agency shall exclude, at a minimum:

(i) All amounts due from the head office or any other branch, office, agency, subsidiary, or affiliate of the foreign bank;

(ii) Any classified asset;

(iii) Any asset that, in the determination of the OCC, is not supported by sufficient credit information;

(iv) Any deposit with a bank in the United States, unless that bank has executed a valid waiver of offset agreement;

(v) Any asset not in the Federal branch's actual possession unless the branch holds title to the asset and maintains records sufficient to enable independent verification of the branch's ownership of the asset, as determined at the most recent examination; and

(vi) Any other particular asset or class of assets as provided by the OCC, based on a case-by-case assessment of the risks associated with the asset.

(d) *International banking facility.* Unless specifically exempted by the OCC, the assets and liabilities of any international banking facility operated through the Federal branch or Federal agency must be included in the computation of eligible assets and liabilities for purposes of this section.

§ 28.21 Service of process.

A foreign bank operating at any Federal branch or Federal agency is subject to service of process at the location of the Federal branch or Federal agency.

§ 28.22 Voluntary liquidation.

(a) *Procedures.* Unless otherwise provided, a Federal branch or Federal agency that proposes to close its operations shall comply with the requirements in 12 CFR 5.48 and the Manual.

(b) *Notice to customers and creditors.* A foreign bank shall provide any customers and known creditors, not otherwise notified in writing, with written notice of the impending closure of the Federal branch or Federal agency at least 30 days prior to its closure.

(c) *Report of Condition.* The Federal branch or Federal agency shall submit a Report of Assets and Liabilities of United States Branches and Agencies of Foreign Banks as of the close of the last business day prior to the start of liquidation of the Federal branch or Federal agency. This report must include a certified maturity schedule of all remaining liabilities, if any.

(d) *Return of reports and certificate.* The Federal branch or Federal agency shall return to the OCC all Reports of Examination and the Federal branch or Federal agency license certificate within 30 days of closure to the public.

§ 28.23 Termination of Federal branches and Federal agencies.

(a) *Grounds for termination.* The OCC may revoke the authority of a foreign bank to operate a Federal branch or Federal agency if:

(1) The OCC determines that there is reasonable cause to believe that the foreign bank has violated or failed to comply with any of the provisions of the IBA, other applicable Federal laws or regulations, or orders of the OCC;

(2) A conservator is appointed for the foreign bank or a similar proceeding is initiated in the foreign bank's home country;

(3) One or more of the grounds for termination, including unsafe and unsound practices, insufficiency or dissipation of assets, concealment of books and records, a money laundering conviction, or other grounds as specified in 12 U.S.C. 191, exists;

(4) The OCC receives a recommendation from the FRB, pursuant to 12 U.S.C. 3105(e)(5), that the license of a Federal branch or Federal agency be terminated.

(b) *Procedures.*—(1) *Notice and hearing.* Except as otherwise provided in this section, an order by the OCC to terminate the license of a Federal branch or Federal agency shall be issued after notice to the Federal branch or Federal agency and after an opportunity for a hearing.

(2) *Procedures for hearing.* A hearing under this section shall be conducted pursuant to subpart A of the OCC's Rules of Practice and Procedure in 12 CFR part 19.

(3) *Expedited procedure.* The OCC may act without providing a hearing if the OCC determines that expeditious action is necessary in order to protect

the public interest. When the OCC finds that it is necessary to act without providing an opportunity for a hearing, the OCC in its sole discretion, may:

(i) Provide the Federal branch or Federal agency with notice of the intended termination order;

(ii) Grant the Federal branch or Federal agency an opportunity to present a written submission opposing issuance of the order; or

(iii) Take any other action designed to provide the Federal branch or Federal agency with notice and an opportunity to present its views concerning the termination order.

Subpart C—International Lending Supervision

§ 28.50 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to 12 U.S.C. 1 et seq., 93a, 161, and 1818; and the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX, 97 Stat. 1153, 12 U.S.C. 3901 et seq.).

(b) *Purpose.* This subpart implements the requirements of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq.).

(c) *Scope.* This subpart requires national banks and District of Columbia banks to establish reserves against the risks presented in certain international assets and sets forth the accounting for various fees received by the banks when making international loans.

§ 28.51 Definitions.

For the purposes of this subpart:

(a) *Banking institution* means a national banking association or a District of Columbia bank.

(b) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the OCC, and the Federal Deposit Insurance Corporation.

(c) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC No. 009).

(d) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) *International syndicated loan* means a loan characterized by the formation of a group of *managing* banking institutions and, in the usual case, assumption by them of underwriting commitments, and participation in the loan by other banking institutions.

(f) *Loan agreement* means the document signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(h) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

§ 28.52 Allocated transfer risk reserve.

(a) *Establishment of Allocated Transfer Risk Reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the OCC in accordance with this section.

(b) *Procedures and Standards*—(1) *Joint agency determination.* At least annually, the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR*—(i) *Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(*1*) Such obligors have failed to make full interest payments on external indebtedness;

(*2*) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(*3*) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.* (A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(*1*) The length of time the quality of the asset has been impaired;

(*2*) Recent actions taken to restore debt service capability;

(*3*) Prospects for restored asset quality; and

(*4*) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the OCC shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR to be established for specified assets may be reduced.

(c) *Accounting treatment of ATRR*—(1) *Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Possible Loan Losses, and shall deduct the ATRR from ''gross loans and leases'' to arrive at ''net loans and leases.'' The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. Consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC Nos.

031, 032, 033 and 034). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the ''Instructions to the Bank Holding Company Financial Supplement to Report F.R. Y–6'' (Form F.R. Y–9). Edge and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge and Agreement Corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Possible Loan Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the Allowance for Possible Loan Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the OCC or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 28.53 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring, or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: Legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan Commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an intentional syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

§ 28.54 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (title IX, Pub. L. 98–181, 97 Stat. 1153, 12 U.S.C. 3906) (the Act) a banking institution shall submit to the OCC, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of the Act (12 U.S.C. 3906), a banking institution shall submit to the OCC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the OCC on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the agencies may include changes to existing reporting forms (such as the Country Exposure Report, form FFIEC No. 009) or such other requirements as the agencies deem appropriate. The agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the agencies' judgment, have de minimis holdings of international assets.

(c) *Reservation of Authority.* Nothing contained in this rule shall preclude the OCC from requiring from a banking institution such additional or more frequent information on the institution's holdings of international assets as the office may consider necessary.

Dated: June 26, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–16201 Filed 7–3–95; 8:45 am]

BILLING CODE 4810–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1507

Multiple Tube Mine and Shell Fireworks Devices

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend its fireworks regulations to require that multiple tube mine and shell devices that have any tube with an inner diameter of 1.5 inches (3.8 cm) or greater pass a performance test for stability. Specifically, these devices would be required to have a minimum tip angle above 60 degrees. Requirements currently enforced by the Commission do not adequately address the risk of injury posed by the potential tipover of these fireworks devices, and labeling would not adequately reduce the risk. Although a voluntary standard exists, the Commission does not believe that it would adequately reduce the risk of tipover or that compliance would be adequate. The Commission is issuing this proposed rule under the authority of the Federal Hazardous Substances Act. The Commission is not proposing any action on multiple tube devices having an inner diameter of less than 1.5 inches.

DATES: Written comments in response to this notice must be received by the Commission no later than September 18, 1995.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–6800.

FOR FURTHER INFORMATION CONTACT: Michael A. Babich, Ph.D, Project Manager, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, DC 20207–001; telephone (301) 504–0994, ext. 1383.

SUPPLEMENTARY INFORMATION:

A. Background

Multiple tube mine and shell fireworks devices (also called ''display racks'' and referred to in this notice as ''multiple tube devices'') are classified by the Department of Transportation (''DOT'') as 1.4G explosive devices (formerly Class C common fireworks devices) which are suitable for use by consumers. Multiple tube devices are non-reloadable devices that fire multiple aerial shells and/or comets into the air while producing visual or audible effects. These devices consist of several vertical tubes with a common fuse, either with or without a horizontal base.

Because it is designed to fire sequentially, there is a danger that after the first shot or few shots, the device may become unstable and tip over. The other shots may then fire horizontally or at an angle and hit the operator or spectators. The Commission is aware of two deaths to spectators involving multiple tube devices that occurred in this manner. Both of these incidents involved devices with tubes larger than 1.5 inches in diameter.

The Commission regulates fireworks devices pursuant to the provisions of the Federal Hazardous Substances Act (''FHSA''). 15 U.S.C. 1261 *et seq.* Under current regulations, the Commission has declared certain specified fireworks devices to be ''banned hazardous substances.'' 16 CFR 1500.17(a)(3), (8) and (9). Additional regulations prescribe the requirements that fireworks devices not specifically listed as banned must meet to avoid being classified as banned hazardous substances. 16 CFR part 1507. These include a requirement that fuses burn for 3 to 6 seconds, resist side ignition, and remain securely attached to the device; a requirement that the minimum horizontal dimension or diameter of the base of a device must be at least one third of the height of the device; and a requirement to prevent blowout of the tube. Finally, additional Commission regulations prescribe specific warnings required on various legal fireworks devices, 16 CFR 1500.14(b)(7), and designate the size and location of these warnings. 16 CFR 1500.121.

On July 1, 1994, the Commission issued an advance notice of proposed rulemaking (''ANPR'') discussing the hazard presented by multiple tube devices of all sizes, but noted the more severe incidents with large devices. 59 FR 33928. The ANPR used 1 inch (2.54 cm) as the cutoff between small and large devices. The ANPR explained that the Commission was considering several regulatory alternatives: (1) Ban all multiple tube devices; (2) ban multiple tube devices with an inside tube diameter of greater than 1 inch; (3) require additional labeling on all multiple tube devices; (4) establish performance or design criteria to modify these devices; (5) pursue individual product recalls; and (6) take no mandatory action, but encourage development of a voluntary standard.

The Commission is proposing a performance standard for multiple tube devices with any inner tube diameter of 1.5 inches or more. As explained below, the Commission believes that 1.5 inches is a more appropriate measure for distinguishing between large and small devices. The Commission is not proposing any further regulatory action on small devices.

B. Statutory Authority

This proceeding is conducted under provisions of the FHSA. 15 U.S.C. 1261 *et seq.* Fireworks are ''hazardous substances'' within the meaning of section 2(f)(1)(A) of the FHSA because they are flammable or combustible substances, or generate pressure through decomposition, heat, or other means, and ''may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use * * *'' 15 U.S.C. 1261(f)(1)(A).

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a ''banned hazardous substance'' any hazardous substance intended for household use which, notwithstanding the precautionary labeling required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate means to protect the public health and safety. *Id.* 1261(q)(1)(B). A proceeding to classify a substance as a banned hazardous substance under section 2(q)(1) of the FHSA is governed by the requirements set forth in section 3(f) of the FHSA, and by section 701(e) of the Federal Food, Drug, and Cosmetic Act (''FDCA'') (21 U.S.C. 371(e)). *See* 15 U.S.C. 1261(q)(2).

The July 1, 1994, ANPR was the first step necessary to declare the specified multiple tube devices banned hazardous substances under section 2(q)(1). *See* 15 U.S.C. 1262(f). This proposed regulation continues the regulatory process in accordance with the requirements of 15 U.S.C. 1262(h). Under the proposed rule, multiple tube devices with tubes measuring 1.5 inches or larger in diameter would be considered banned hazardous substances unless they comply with the tip angle test explained below.