This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on October 27, 2003 (68 FR 61146). Copies of the proposed rule were also mailed or sent via facsimile to all tomato handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending November 26, 2003, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2003–04 crop tomatoes from growers. The 2003–04 fiscal period began on August 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.025 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: December 15, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31265 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 28

[Docket No. 03–26]

RIN 1557–AC04

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

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is finalizing the proposed rule published on April 23, 2003 amending our regulations pertaining to the foreign operations of national banks, and Federal branches and agencies of foreign banks operating in the United States. The final rule generally makes regulatory requirements more streamlined and risk-focused. It clarifies certain regulatory definitions and simplifies approval procedures for foreign banks seeking to establish Federal branches and agencies in the United States. These changes will further conform the treatment of Federal branches and agencies of foreign banks to that of their domestic national bank counterparts consistent with the national treatment principles of the International Banking Act of 1978.

EFFECTIVE DATE: This rule is effective on January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, Legislative & Regulatory Activities Division, (202) 874–5090; Carlos Hernandez, Senior International Advisor, International Banking & Finance, (202) 874–4730; or Crystal Maddox, Senior Licensing Analyst, Licensing Policy & Systems, (202) 874–5060.

SUPPLEMENTARY INFORMATION:

I. Introduction and Overview of Comments Received

As part of our ongoing effort to streamline regulatory requirements to reduce unnecessary regulatory burdens, the OCC published a notice of proposed rulemaking (NPRM) to amend 12 CFR parts 5 and 28 in the **Federal Register** on April 23, 2003 (68 FR 19949). In the NPRM, we proposed streamlining certain application processes for Federal branches and agencies and updating the types of activities in which they may engage in light of developments in Federal banking law and in furtherance of the principle of national treatment. The proposal was also designed to reduce regulatory burden on national banks conducting foreign activities and on Federal branches and agencies supervised by the OCC by eliminating outdated requirements and replacing them with more streamlined procedures.

The OCC received eight comments on the NPRM. The commenters included several Members of Congress, Federal and state banking agencies, a bank trade association, and an association of state banking officials. Four of the commenters generally supported the OCC's efforts to streamline our regulatory processes and reduce regulatory burden, but offered suggestions to modify various portions of the proposal. Two commenters did not favor the proposal, asserting that the NPRM exceeds the OCC's statutory authority and is inconsistent with congressional intent. These commenters requested that the OCC withdraw the proposal until Congress provides the necessary authority. One of the commenters focused exclusively on a narrow legal question involving interstate branching. Another commenter focused only on the impact on pending legislation if the OCC were to apply certain definitions used in the NPRM to define those same terms in pending legislation if it were to be enacted by the U.S. Congress.

As we explain in the discussion that follows, the OCC has concluded that there is ample authority supporting the revisions to our regulations that we proposed. We also explain why the concerns raised by certain commenters are not, in fact, raised by this proposal. Accordingly, we decline to withdraw the proposal. However, the final rule includes modifications to the proposal intended to address certain of the

suggestions made by the commenters and clarify points about which there may have been misunderstandings. The following discussion highlights those modifications.

II. Discussion

A. Changes to 12 CFR Part 5

1. Definitions (Revised § 5.3)

The proposal revised § 5.3 to update references to the OCC units that should receive certain applications. The OCC received no comments on this technical amendment and adopts it as proposed.

2. Permissible Non-Controlling Equity Investments (Revised § 5.36)

The proposal stated that a well-capitalized, well-managed Federal branch may make non-controlling investments and use the after-the-fact notice procedure set forth in 12 CFR 5.36 in the same manner as a national bank.

Three commenters addressed this amendment. One commenter supported the proposed change, stating that it is consistent with national treatment principles. The second was also supportive, indicating that it would have no objection to the proposed regulatory change as long as any investment made by the branch is a permissible investment under the Bank Holding Company Act and the foreign bank obtains any necessary authorizations from the Board of Governors of the Federal Reserve System (FRB). The commenter requested that OCC clarify that these conditions apply to these investments. As discussed below, to address this point, we are adding language to the final regulation in 12 CFR 28.10(c) clarifying that nothing in the OCC's rules relieves a foreign bank from complying with requirements imposed by the FRB in accordance with applicable law.

A third commenter opposed allowing Federal branches to make non-controlling equity investments, stating that there is ''no statutory authorization [in the International Banking Act of 1978] for the investments referred to [in] the new proposed section, which relies solely on the principle of national treatment.'' This commenter disagreed with the OCC's interpretation of national treatment under the International Banking Act of 1978 (IBA), asserting that the IBA's national treatment scheme does not treat Federal branches as national banks but rather treats Federal branches as *branches* of national banks.

The OCC disagrees. The commenter's interpretation is not supported by the plain language of the statute or its legislative history, court cases that have interpreted the statute, or the Congressional intent of the IBA.

The plain language of section 4(b) of the IBA [1] states:

> Except as otherwise specifically provided in this Act or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a *national bank* at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a *national bank* doing business at the same location. * * * (emphasis added).

After carefully examining legislative history and Congressional intent, a U.S. Court of Appeals interpreted the national treatment language in the IBA and concluded that the IBA is intended to ''treat federally-chartered foreign and *domestic banks* as similarly as possible under the [IBA] (emphasis added).'' [2] The court expressly addressed the issue of whether establishing a Federally chartered office of a foreign bank parallels the opening of a national bank's principal office or the opening of a branch of a national bank. The court addressed this issue in the context of upholding the OCC's authority to license a foreign bank's Federal interstate branch or agency in a state that permits foreign banks to establish state-chartered interstate branches or agencies. The court concluded that, subject to the requirements of the IBA, Congress intended that the opening of a foreign bank's initial Federal home-state office is analogous to the opening of a domestic national bank's principal office, and the opening of additional intrastate and interstate Federal offices by the foreign bank under the IBA would be comparable to the opening of branches of a national bank.[3] Thus, the court found that a Federal branch can be treated as a national bank *or* branch thereof depending on the context. The OCC's regulations and this final rule are consistent with this interpretation.

The legislative history of the IBA indicates that the national treatment language in the IBA was not intended to be an inflexible standard for applying national bank laws to Federal branches and agencies. Congress recognized that, because Federal branches and agencies are offices of foreign banks and not separately incorporated entities, certain adjustments in the strict application of the national bank laws may be necessary in order to observe this legal and operational reality. Congress charged the OCC with the primary responsibility to administer this comprehensive framework for Federal offices of foreign banks.[4]

The commenter further argues that the IBA does not give Federal branches and agencies the authority to engage in activities permitted for national banks under the National Bank Act (NBA) unless the authority is also found in the IBA. This interpretation also is not consistent with the plain language of the statute or its legislative history.

The legislative history of the IBA describes the language in section 4(b) quoted above to provide that, ''[w]ith certain exceptions, statutory or regulatory, the *activities* of a Federal branch or agency shall be conducted in the same manner as a *national bank* (emphasis added).'' [5] Moreover, a court found that, in light of the overriding national treatment objective of the IBA, the IBA should be construed in such a way as to minimize the extent to which a Federal branch or agency is treated differently from a national bank.[6] As a result, a Federal branch operating in a state has the same rights and privileges as, and is subject to the same restrictions, penalties, and conditions that apply to, a national bank operating in that same state unless the IBA or the Comptroller provides otherwise. While the IBa does not specifically mention the NBA as the source of authority for a Federal branch's ''rights and privileges'' to engage in activities, it incorporates all of the laws that provide authority to national banks, including the NBA, subject to any applicable statutory or regulatory exceptions.

For all of these reasons, the OCC adopts § 5.36 as proposed.

3. Federal Branches and Agencies (Revised § 5.70)

The proposal amended § 5.70, which describes filing requirements for corporate activities and transactions involving Federal branches and agencies, to ensure consistency with proposed changes to 12 CFR part 28 described elsewhere in this proposal. The proposal deleted the definition of

[1] 12 U.S.C. 3102(b).

[2] *CSBS* v. *Conover,* 715 F.2d 604, 616 (D.C. Cir. 1983), *cert denied*, 466 U.S. 927 (1984).

[3] *Id.* at 616–617. *See also* 12 U.S.C. 3103(a) (providing that a foreign bank may establish an Federal branch or agency outside of its home state if such establishment would be permitted for a national bank establishing an interstate branch office and subject to certain other criteria (enacted in 1994 in the Riegle-Neal Interstate Banking and Branching Efficiency Act)).

[4] *See* S. Rep. No. 95–1073, 95th Cong., 2d Sess. 7 (1978), *reprinted in* 1978 U.S.C.C.A.N. at 1427.

[5] *Id.* at 21, *reprinted in* 1978 U.S.C.C.A.N. at 1441.

[6] *See CSBS* v. *Conover,* 715 F.2d at 617.

''change the status of an office'' while the definition of ''establish'' a Federal branch or agency was revised to comport with other proposed changes to those definitions in part 28. No comments were received on this provision and, thus, the OCC is adopting it as proposed with only a minor, technical change.

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

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

The proposed rule amended § 28.3 to provide that no notice to the OCC is required if a national bank closes or relocates a foreign branch. No comments were received on this proposed change and we are adopting it as proposed.

2. Filing of Notice (Revised § 28.5)

The proposed rule made a technical change to § 28.5 with respect to identifying the appropriate OCC office to receive certain notices. We did not receive any comments on this change and we, thus, are adopting it as proposed.

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

1. Authority, Purpose, and Scope (Revised § 28.10(b) and New § 28.10(c))

The proposal did not include revisions to § 28.10, which sets out the authority, purpose, and scope for subpart B of part 28, which pertains to Federal branches and agencies of foreign banks. One commenter thought that we should clarify that other legal requirements, in addition to those contained in the OCC's rules, may apply to certain transactions involving Federal branches and agencies. This clarification is simply an express statement of current law and 12 CFR 28.12(i) already has a limited statement of this principle with respect to the approval requirements for a Federal branch or agency.[7] However, we agree that it is helpful to include a broader statement in the regulatory text. Accordingly, we have added a sentence, at § 28.10(c), saying that nothing in any of the OCC's rules relieves a foreign bank of requirements that may be imposed under other provisions of applicable law. We also made a conforming technical amendment to the heading in § 28.10(b) and deleted current § 28.12(i).

These changes clarify that none of the revisions adopted in the final rule supersedes any legal requirements that are imposed by the FRB in the FRB's Regulation K[8] or are imposed under any other applicable law. For example, Federal law provides that, subject to certain exceptions, the operations of a Federal branch or agency are subject to the ''same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location.'' 12 CFR 28.13(a)(1). Accordingly, U.S. domestic laws also may apply to a Federal branch or agency to the same extent that they would apply to a national bank operating at the same location.

2. Definitions (Revised § 28.11)

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

The NPRM deleted the separate definition of ''changes in status'' from part 28 and incorporated certain elements of that definition in a revised definition of the term ''establish a Federal branch or agency''. These amendments result in contractions in activities, *e.g.*, conversion from a Federal branch to a Federal agency, being deleted from the type of transactions that would require a filing with the OCC. Most commenters generally supported the OCC's efforts to reduce regulatory burden such as this change to § 28.11 and one commenter specifically supported eliminating the requirement that a foreign bank must give prior notice to the OCC when contracting the level of its U.S. activities by converting from a Federal branch to a Federal agency. Accordingly, we are adopting this amendment as proposed.

In addition, we are making one clarifying and technical change to the definitions in § 28.11 that was not proposed in the NPRM. The definition of ''manual'' in § 28.11(u) (as redesignated herein) means the Comptroller's Corporate Manual as defined in 12 CFR 5.2(c). In an interim rule effective April 14, 2003 (68 FR 17890), the OCC amended § 5.2(c) to reflect that the Comptroller's Corporate Manual has been replaced with the Comptroller's Licensing Manual. We are, thus, making a conforming change to § 28.11(u) to clarify that the term ''manual'' has the same meaning as in § 5.2(c).

3. Approval and Licensing Requirements for a Federal Branch or Agency (Revised § 28.12(a))

The proposed rule provided that, consistent with national treatment, and analogous to the national bank chartering process, the OCC would *license* a foreign bank's initial Federal branch or agency. However, while subsequent offices would require regulatory *approval* in accordance with applicable law, no additional license would be required for those subsequent establishments unless the additional office constitutes an expansion of activities in the U.S. (*e.g.*, the foreign bank's license is for a limited Federal branch or an agency and the additional office would be a full-service branch).

One commenter praised this provision in the NPRM because it would reduce the burdens associated with the licensing process when a foreign bank is establishing additional Federal branches and agencies. Another commenter, however, thought that ''[i]t may be possible to issue a single license to a foreign bank with branches and agencies in multiple states'' but opposed the change on the basis of the same national treatment arguments as presented in connection with the change to 12 CFR 5.36. The commenter also was concerned about the OCC using the single licensing procedure to change substantive legal requirements.

We disagree with the national treatment arguments raised for the same reasons that we explained above when discussing the comments on our proposed change to 12 CFR 5.36.

Most important, however, is that the substantive legal requirements applicable to Federal branches and agencies are unaffected by permitting those entities to operate under a single license. As explained in the NPRM, ''[t]his change in licensing procedures would not affect the substance of the OCC's regulatory and supervisory responsibilities. The OCC would

[7] Prior to the changes made by this final rule, 12 CFR 28.12(i) provided that nothing in § 28.12 relieved a foreign bank from the requirement to obtain any approval that may be necessary under the FRB's Regulation K, 12 CFR part 211.

[8] 12 CFR part 211.

continue to review and approve applications for additional offices in accordance with applicable law * * * and would continue to supervise these additional offices in the same manner as it [currently] does. * * *'' 68 FR 19950 (April 23, 2003).

Therefore, the single licensing proposal is adopted without substantive modification but with one technical change. The final rule clarifies that the single license will be the method of licensing Federal branches and agencies after the effective date of the final rule. Foreign banks already operating in the United States with multiple Federal branches or agencies will have the option of converting to a single license or continuing to maintain multiple licenses for their offices, however.

4. CCS Requirements (Revised § 28.12(b)(5))

The proposal provided that the OCC generally would consider whether a foreign bank applicant is subject to comprehensive supervision on a consolidated basis by its home country supervisor (CCS) only in certain cases and *may,* in its discretion, consider it in other cases as deemed appropriate. Under the proposal, as required by statute, the OCC would apply the standards of CCS when acting on applications for interstate establishments. *See* 12 U.S.C. 3103(a)(3)(A). In connection with other applications to establish a Federal branch or agency, the OCC *may* consider CCS if necessary based on the circumstances of a particular case. This change in the OCC's rule would have no effect on the statutory requirement that the FRB make a CCS determination in connection with any application by a foreign bank to establish a U.S. office, as that requirement is interpreted by the FRB.

One commenter specifically supported this amendment to streamline the OCC's application procedures. No commenter opposed the change. Thus, the OCC is adopting this amendment as proposed.

5. Expedited Approval Procedures (New § 28.12(e)(2) and (e)(3), Revised § 28.12(e)(4), and New § 28.12(i))

The proposal provided for expedited review of additional types of applications to establish a Federal branch or agency. Under proposed new § 28.12(e)(2), a foreign bank could establish a new intrastate Federal branch or agency after providing written notice to the OCC 45 days in advance of the proposed establishment. The OCC may waive the 45-day period in certain circumstances, as well as suspend the notice period or require an application if the notice raises significant policy or supervisory issues.

In addition, under proposed new § 28.12(e)(3), an eligible foreign bank's [9] application to establish a Federal branch or agency interstate would be conditionally approved as of the 45th day after the OCC receives the completed application, unless the OCC notified the bank that the filing was not eligible for expedited review. The proposal also revised § 28.12(e)(4) to provide for expedited approval of certain other applications submitted by an eligible foreign bank. In addition, because a contraction in U.S. activities (*i.e.*, converting an existing Federal branch into a limited Federal branch or into a Federal agency) will no longer be considered as an establishment, proposed new § 28.12(i) would provide that such contractions in operations would require only a written notice to the OCC within 10 days after the conversion.

One commenter supported the proposed streamlined approval procedures and urged the OCC to shorten the period for processing notices for intrastate expansions and *de novo* interstate branching applications submitted by eligible foreign banks. Shortening the time period to 30 days, the commenter said, would enable such notices to be processed in the same timeframe as applications by foreign banks to convert state offices to Federal offices. When processing applications for such conversions, the OCC may have no prior experience with the foreign bank parent. Thus, according to the commenter, the processing period should not be longer for notices for intrastate and interstate expansions than for state-to-Federal conversions because, in the case of the expansions, the OCC already is familiar with the foreign bank since it has an existing federally licensed office.

The OCC agrees with this commenter and has changed the final rule to reduce the prior approval period from 45 days to 30 days in the case of intrastate expansions by foreign banks and interstate expansions by eligible foreign banks. The OCC believes that 30 days is sufficient time for the OCC to review the notice or application and advise the foreign bank that the proposed expansion is disapproved, or that additional time is needed to evaluate the notice or application.

Another commenter argued that the OCC's proposed notice and application procedures for certain foreign banks to expand through intrastate and interstate offices does not satisfy the IBA's prior approval requirements.

The OCC disagrees. It is crucial to recognize that the proposal did not alter the statutory prior approval requirements. The proposal established streamlined procedures permitting certain foreign banks to seek approval through a notice or application procedure to be filed prior to establishing an additional intrastate branch or agency or an interstate branch or agency, respectively. In particular, under the proposal, the OCC is deemed to have given its prior approval under these streamlined procedures if we do not advise the foreign bank that the proposed expansion is disapproved within a specified time period. Our regulations contain similar procedures to provide for streamlined and expedited review for qualifying national banks in other situations where OCC approval is required by law. *See, e.g.*, 12 CFR 5.39(i) (approval to acquire or commence activities in a financial subsidiary), 12 CFR 5.30(f)(5) (approval for establishment or relocation of a branch).

Five commenters argued that the OCC's interstate branching procedures for eligible foreign banks may be interpreted as providing substantive authority for foreign banks to branch interstate in violation of law. Two comment letters sought clarification in the final rule regarding whether a foreign bank may establish a *de novo* branch within a state that does not permit *de novo* branching, contending that the NPRM left the matter ambiguous. The commenter said that section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103–328,[10] authorizes interstate branching for foreign banks with Federal branches and agencies to the same extent as national banks. However, section 103 of that Act [11] requires that, in the case of an application by a national bank to establish a *de novo* branch in a state that is not the bank's home state, the

[9] The term ''eligible foreign bank'' is defined in § 28.12(f) and generally includes a foreign bank that (1) has Federal branches and agencies that have a composite rating of ''1'' or ''2'' under the interagency rating system for U.S. branches and agencies of foreign banks, (2) is not subject to an enforcement action (but, if subject to such an action, the OCC can waive this requirement), and, (3) if applicable, has an ''outstanding'' or ''satisfactory'' rating under the Community Reinvestment Act. The NPRM amends this definition in § 28.12(f) to permit foreign banks that have no Federal branches or agencies to be considered ''eligible foreign banks'' when engaging in certain transactions. As described herein, the OCC is adopting this amendment to § 28.12(f) as proposed.

[10] 12 U.S.C. 1831u.

[11] 12 U.S.C. 36(g).

Comptroller may approve an application if the host state has in effect a non-discriminatory law that expressly permits all out-of-state banks to establish *de novo* branches in the state. The commenters in those letters said that Florida has not passed such authorizing legislation and has, in fact, passed a statute prohibiting interstate *de novo* branching. The commenters concluded by requesting that the OCC clarify in the final rule that foreign banks will not be able to branch interstate in a manner prohibited to domestic national banks.

The procedural changes we proposed do not permit this result. As we said in the NPRM, none of the proposed changes affects any legal requirements that are otherwise applicable under law with respect to a national bank's foreign activities *''or the operations of foreign banks in the United States.''* As a commenter pointed out, the IBA contains provisions that expressly apply to branching by Federal branches and agencies. *See* 12 U.S.C. 3102(h)(A), 3103. Section 3103(a)(1) generally references domestic national banking law to determine the interstate branching authority of Federal branches and agencies. It permits a foreign bank to establish a Federal branch or agency outside of its home state ''to the extent that the establishment and operation of such branch would be permitted under section 5155(g) of the Revised Statutes (12 U.S.C. 36(g)) or section 44 of the Federal Deposit Insurance Act (12 U.S.C. 1831u) if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank.'' 12 U.S.C. 3103(a)(1). Moreover, the statute directs the OCC to apply not only the requirements of the IBA with respect to the establishment of a Federal branch or agency but also capital and merger requirements under domestic banking law. 12 U.S.C. 3103(a)(3). The legislative history likewise states that ''a foreign bank would be permitted to establish or acquire [F]ederal branches in states other than its home state to the same extent that a national bank from the foreign bank's home state may engage in interstate branching.'' H. Rep. 103–448, 103d Cong., 2d Sess., 18 (1994).

The IBA, however, also authorizes branches and agencies of foreign banks to branch interstate and to upgrade interstate offices under circumstances that may be different from those permitted for domestic banks. *See* 12 U.S.C. 3103(a)(7). Notwithstanding the domestic bank parity provisions, a foreign bank may establish a branch or agency in a state other than its home state if the host state permits the establishment and operation of the branch or agency and any such branch accepts only deposits permissible for Edge Act corporations.[12] Also, notwithstanding the domestic bank parity provisions, foreign banks may upgrade interstate offices subject to certain conditions.

We proposed to establish expedited procedures for eligible foreign banks to obtain OCC approval of applications to open a Federal branch or agency on an interstate basis. The proposal did not provide a new source of authority for a foreign bank to establish such an interstate office. Nor did it make any substantive changes in the legal requirements for interstate branching under the IBA.

For these reasons, we have not changed the final rule in the manner suggested by these commenters. In addition, we do not believe that it is appropriate to include a provision in the regulation clarifying that the OCC will not approve an application of a foreign bank to establish a *de novo* branch in a state in which *de novo* banking is not permitted for domestic institutions. As explained above, the statement is unnecessary. The regulation provides only for expedited approval procedures for such applications and does not address any of the substantive legal requirements for interstate branching.

Thus, the changes discussed above to shorten the period for processing notices for intrastate expansions by foreign banks and *de novo* interstate branching applications submitted by eligible foreign banks are the only changes that are made in the final rule that apply to the expedited approval procedures proposed in the NPRM.

6. Eligible Foreign Bank (Revised § 28.12(f))

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

No comments were received on this proposal and the OCC is adopting it as proposed.

[12] *See* 12 CFR 211.6.

7. After-the-Fact Notice for Certain Acquisitions (New § 28.12(h))

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

Proposed new § 28.12(h) provided an expedited procedure for foreign bank B if B already has banking offices in the United States. However, we would retain the discretion to require prior approval to establish the Federal branch or agency if necessary for prudential reasons.

One commenter supported streamlining this procedure in the manner proposed by the OCC. The OCC is, thus, adopting this provision without change.

8. Exceptions to Usual Filing Procedures (Revised § 28.12(j))

This technical change revised § 28.12(j) (as redesignated in this proposal) to clarify that the OCC also reserves the right to adopt different procedures with respect to a part 28 filing or class of filings.

No comments were received on this provision and we are adopting it without change.

9. Other Applications Accepted (New § 28.12(k) (Designated as § 28.12(l) in the NPRM))

This technical amendment added § 28.12(k) to codify the current OCC practice of accepting applications or notices filed with other Federal agencies that contain the necessary information required by the OCC to approve an application or act on a particular request. Under the proposal, we retained the discretion to request additional information from an applicant as deemed necessary. This amendment is adopted without change.

10. Capital Equivalency Deposits (Revised § 28.15(a)(1) and New § 28.15(a)(3))

The IBA requires Federal branches and agencies to establish and maintain a CED. 12 U.S.C. 3102(g). In 2002, the OCC issued a final rule revising certain requirements regarding CED deposit arrangements based on a supervisory

assessment of the risks presented by the particular institutions.[13] The additional changes proposed in the NPRM further reduce unnecessary burden and simplify compliance with the CED requirements.

The proposal amended § 28.15(a)(1) to clarify the types of assets eligible to be deposited in a CED. Currently, a CED must consist of bank-eligible securities, dollar deposits payable in the United States, certificates of deposit payable in the United States, and other assets permitted by the OCC. The proposal included dollar deposits payable in any Group of Ten (G–10) country and added repurchase agreements to the list of permissible CED assets. The proposal also clarified that the OCC's authority to permit other assets to qualify for the CED is limited to other assets that are ''similar'' to those expressly included in the statute.

In addition, the proposal clarified the OCC's current policy to exclude liabilities of an international banking facility to third parties, and of a Federal branch to an international banking facility, when calculating the required amount of a CED. Also, the proposed rule permitted the OCC, like some other regulators, to exclude liabilities from repurchase agreements on a case-by-case basis.

One commenter generally supported the OCC's efforts to alleviate burden associated with the CED requirements and specifically supported these changes to part 28. Consequently, the OCC is adopting this amendment as proposed.

11. Capital Equivalency Deposits (Revised § 28.15(e))

In the NPRM, we proposed to clarify the meaning of the term ''located'' in the context of the location of a depository bank that holds a CED deposit, relative to a Federal branch or agency subject to the CED requirement. Under the IBA, for purposes of the CED requirement, a *depository bank* must be *located* in the state where the branch or agency is *located.* 12 U.S.C. 3102(g)(1). The proposal provided that a depository bank is ''located'' in the state where it has its main office or a branch and a Federal branch or agency is ''located'' in the state in which it is licensed or in the state that is its parent foreign bank's home state. The proposal further clarified that a foreign bank with interstate offices has the discretion to consolidate all or some of its CEDs into one depository bank. We specifically requested comments on whether such a consolidated account should provide for segregated assets for specific offices or whether it would be sufficient for the account to contain a consolidated amount large enough to cover the CEDs of all of the individual offices.

One commenter supported the proposed changes in the NPRM with respect to CEDs, particularly the proposal to allow multiple Federal branches and agencies to maintain a single consolidated CED at a U.S. depository bank. The commenter expressed its view that it would not be necessary for the consolidated CED account to contain segregated assets to cover specific offices; instead, the commenter said that maintaining a consolidated account large enough to cover the operations of all of the individual offices would be sufficient.

Another commenter opposed the proposed changes, contending first that the NPRM should have stated that a Federal branch or agency is located in each state in which it maintains an office under the plain meaning of the term ''located.'' Second, the commenter stated that the legislative history of the CED requirement ''demonstrates Congressional concern that assets be available to local creditors in the event that a foreign bank becomes insolvent.'' The commenter added that segregated accounts promote efficient liquidations by minimizing the need for local creditors to pursue remedies in other states. Segregated accounts, according to the commenter, would better protect local creditors in situations where the foreign bank operated both Federal and state branches or agencies.[14]

The OCC agrees that in order to be eligible to hold a foreign bank's CED for its Federal branches and agencies, a depository bank's main office or a branch must be located in the state in which the Federal branch or agency's foreign bank parent has its home office or in any state in which a Federal branch or agency office is maintained. In the latter case, the state may not necessarily be the state in which the Federal branch or agency is licensed under the single-licensing approach described above but may be any state in which the foreign bank has a Federal branch or agency office.

This interpretation of the term ''located'' is reasonable and consistent with national treatment and the intent of the IBA. As one commenter agrees, the CED statute does not define the term ''located.'' Thus, by analogy to national banking law,[15] the OCC has determined that a U.S. depository bank holding a foreign bank's CED is located in the state in which the depository bank has its main office or a branch and the final rule clarifies this interpretation.

Under the IBA, the OCC has the authority to establish limitations and conditions for the CED and its administration. 12 U.S.C. 3102(g)(1). Section 3102(g)(3) further extends this authority, stating that ''[t]he deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may provide.'' This very specific authority is enhanced by the IBA's general grant of authority to the OCC to issue rules, regulations, and orders pertaining to the establishment and administration of Federal branches. 12 U.S.C. 3102(b). Moreover, the legislative history of the IBA recognized that, while the objective of Federal regulation under the IBA is to achieve equal treatment between foreign and domestic banks, some discretion was necessary to develop a regulatory framework that is appropriate to the actual operations of foreign banking institutions.[16]

With regard to requiring foreign banks to segregate assets in a consolidated CED account, we have considered the comments received and have decided that foreign banks with multiple branches and/or agencies that consolidate their CED deposits should maintain book entry segregation of assets for each office. We are clarifying new § 28.18(c)(3) to add such a requirement. This will help to promote orderly liquidations and will help to ensure that local creditors of each office of a foreign bank are protected. In addition, we are revising new § 28.15(e) to clarify that the total amount of the CED will continue to be calculated on an office-by-office basis to ensure that there are sufficient assets available for each individual office.

[13] 67 FR 41619 (June 19, 2002)

[14] Three commenters criticized the proposed definition of where a Federal branch or agency is ''located'' on the basis that the proposed definition would be inconsistent with Congressional intent and would ''administratively overturn'' language included in pending legislation in the House of Representatives in the 108th Congress—section 107 of H.R. 1375, the proposed ''Financial Services Regulatory Relief Act of 2003.''

As explained above, our proposed definition of ''located'' is an interpretation of current law *for purposes of determining which depository banks are eligible to hold a foreign bank's CED deposit for its Federal branch or agency.* It does not affect the *amount* of the CED that is required, or the determination of where a branch or agency is located, for purposes of any future standard that keys a CED requirement to the requirements of the state in which a branch or agency is ''located.''

[15] *See* 12 U.S.C. 81.

[16] *See supra* note 4 (and accompanying text).

12. Deposit-Taking by an Uninsured Federal Branch (Revised § 28.16(b)(8))

As proposed, the final rule makes a technical correction to § 28.16(b)(8) to correct the citation to the FRB's Regulation K (12 CFR 211.6).

13. Maintenance of Accounts, Books, and Records (New § 28.18(c)(3))

Proposed new § 28.18(c)(3) required a foreign bank that has interstate Federal branches or agencies and combines its CEDs into one account to designate one of its Federal offices to maintain consolidated information about the Federal branches and agencies covered by the CEDs. The final rule includes this provision without change. In addition, the final rule includes the provision described above that will require consolidated CED deposits to reflect book entry segregation of assets for each Federal branch or agency office.

14. Maintenance of Assets (Revised § 28.20(a)(2))

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

The proposal revised § 28.20(a)(2) to delete the requirement that the amount of assets held by the foreign bank cannot be less than 105% of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency. Under the proposal, we would prescribe the amount of assets on a case-by-case basis and there would be no set minimum. This change is adopted in the final rule.

15. Voluntary Liquidation (Revised § 28.22(a) and (b))

The proposal made certain changes in the voluntary liquidation procedures for Federal branches and agencies. We received no comments on this provision and we are adopting it as proposed.

16. Procedures for Closing Some (But Not All) of a Foreign Bank's Federal Branches and/or Agencies (New § 28.23)

To be consistent with the IBA's national treatment standard, the proposal treated a foreign bank that is closing some but not all of its Federal branches and/or agencies like a national bank that is closing a branch office. We received no comments on this change and we are adopting it as proposed.

17. After-the-Fact Notice of Change in Control (New § 28.25)

The proposal added a new section to part 28 to require a foreign bank to submit a written notice to the OCC when there is a change in control of the foreign bank. The notice would be submitted within 14 days after the foreign bank became aware of the change if no other filing is required under part 28. A foreign bank could provide its supervisory office with the copy of a notice submitted to another Federal regulator to satisfy the requirements of this section. *See* 12 CFR 28.12(k).

No comments were received on this provision and it is adopted as proposed.

18. Loan Production Offices (New § 28.26)

In the NPRM, the OCC provided that a Federal branch may operate a loan production office (LPO), an administrative office, or a regional administrative office that conducts other types of representational activities, as part of a branch license. The OCC noted that, since national banks may operate such offices, allowing Federal branches to do so is consistent with national treatment.

Two commenters addressed this proposal. One noted that it would view loan production offices as representative offices and their activities would be limited as such and noted that such offices would need to be approved by the FRB in accordance with applicable law. The commenter requested that the final rule refer to these requirements.

The second commenter stated that the IBA does not permit the establishment of such offices and that, if Congress wished to authorize them, it would have expressly done so. This commenter added that offices that are not branches or agencies are treated under Regulation K as representative offices. Since there is no basis for chartering federal representative offices, the IBA does not permit the establishment of loan production offices and other types of non-branch offices, according to the commenter.

With respect to the first comment, as discussed above, we are adding a statement to § 28.10(c) to clarify that nothing in our regulations relieves a foreign bank of any requirement that is imposed by the FRB under applicable law.

We believe that the second commenter is wrong as a matter of law. The fact that certain non-branch offices may be subject to other regulatory requirements does not diminish the ability of the OCC to permit Federal branches to establish such offices. The OCC's authority to allow a Federal branch to establish LPOs or other administrative offices or regional administrative offices as part of its Federal branch license is derived from separate authority. *See* 12 U.S.C. 3102. In addition, as discussed above, the OCC disagrees that the IBA does not provide the authority for a Federal branch to engage in the same activities as a national bank subject to certain statutory and regulatory exemptions.

For these reasons, we have adopted § 28.26 substantially as proposed.

Regulatory Flexibility Act

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

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

Executive Order 12866

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

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L.

104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final 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. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB)) control number.

The information collection requirements contained in the NPRM have been reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 under OMB control number 1557–0102.

However, the paperwork burden for these requirements likely will be transferred to OMB control number 1557–0014. OMB control number 1557–0014 covers the Comptroller's Licensing Manual (Manual). The Manual explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks. The Manual includes sample documents to assist the respondent in understanding the types of information the OCC needs to process a filing. The documents are samples only. An applicant may use any format that provides sufficient information for the OCC to act on a particular filing.

The NPRM and this final rule generally eased regulatory requirements and reduced paperwork burden somewhat. The OMB approved burden attributable to the NPRM and this final rule is as follows:

The burden for 12 CFR part 5 is as follows:

12 CFR 5.36:

17 respondents × 1 response per year = 17 responses

17 responses × 1 hour per response = 17 burden hours

The burden for 12 CFR part 28 is as follows:

12 CFR 28.3(a):

45 respondents × 1 response = 45 responses

45 responses × .5 hour per response = 23 burden hours

12 CFR 28.12(a):

4 respondents × 1 response per year = 4 responses

4 responses × 41 hours per response = 164 burden hours

12 CFR 28.12(e)(2):

1 respondent × 1 response per year = 1 response

1 response × 1 hour per response = 1 burden hour

12 CFR 28.12(h):

2 respondents × 1 response per year = 2 responses

2 responses x 1 hour per response = 2 burden hours.

12 CFR 28.12(i):

1 respondent × 1 response per year = 1 response

1 response × 1 hour per response = 1 burden hour.

Executive Order 13132

The Comptroller of the Currency has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects

12 CFR Part 5

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

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

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

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

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

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

■ 2. In § 5.3, revise paragraphs (c)(1) and (c)(4) to read as follows:

§ 5.3 Definitions.

* * * * *

(c) * * *

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

* * * * *

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

* * * * *

■ 3. In § 5.36, redesignate paragraph (f) as paragraph (g) and add a new paragraph (f) to read as follows:

§ 5.36 Other equity investments.

* * * * *

(f) *Non-controlling investments by Federal branches.* A Federal branch that satisfies the well capitalized and well managed standards in 12 CFR 4.7(b)(1)(iii) and § 5.34(d)(3)(ii) may make a non-controlling investment in accordance with paragraph (e) of this section in the same manner and subject to the same conditions and requirements as a national bank, and subject to any additional requirements that may apply under 12 CFR 28.10(c).

* * * * *

■ 4. In § 5.70:

■ a. remove paragraph (c)(1);

■ b. redesignate paragraphs (c)(2)(i) through (v) as paragraphs (c)(1)(i) through (v);

■ c. revise newly redesignated paragraphs (c)(1)(i), (iv), and (v);

■ d. add a new paragraph (c)(1)(vi);

■ e. add a new paragraph (c)(2); and

■ f. revise paragraph (d)(2)(i) to read as follows:

§ 5.70 Federal branches and agencies.

* * * * *

(c) * * *

(1) * * *

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

* * * * *

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

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

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

(2) *Federal branch* includes a limited Federal branch unless otherwise provided.

(d) * * *

* * * * *

(2) * * *

(i) Establishes a Federal branch or agency; or

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

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

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

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

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

(a) * * *

(1) * * *

(i) Establish or open a foreign branch;

* * * * *

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

* * * * *

■ 7. In § 28.5, revise paragraphs (a) and (b) to read as follows:

§ 28.5 Filing of notice.

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

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

■ 8. In § 28.10:

■ a. revise the heading in paragraph (b); and

■ b. add a new paragraph (c) to read as follows:

§ 28.10 Authority, purpose, and scope.

* * * * *

(b) Purpose. * * *

(c) *Scope.* This subpart applies to all Federal branches and agencies of foreign banks. Nothing in the OCC's rules relieves a Federal branch or agency from complying with requirements that are imposed by the FRB under Regulation K (12 CFR part 211) or otherwise imposed in accordance with applicable law.

■ 9. In § 28.11:

■ a. remove paragraph (d);

■ b. redesignate paragraphs (e) through (z) as paragraphs (d) through (y);

■ c. revise newly redesignated paragraphs (f)(1), (4), and (5);

■ d. add a new paragraph (f)(6);

■ e. add a new sentence to the end of newly redesignated paragraph (h); and

■ f. revise newly redesignated paragraph (u) to read as follows:

§ 28.11 Definitions.

* * * * *

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

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

* * * * *

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

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

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

* * * * *

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

* * * * *

(u) *Manual* has the same meaning as in 12 CFR 5.2(c).

* * * * *

■ 10. In § 28.12:

■ a. revise paragraphs (a) and (b)(5);

■ b. redesignate paragraphs (e)(2) through (4) as paragraphs (e)(4) through (6);

■ c. add new paragraphs (e)(2) and (3);

■ d. revise newly redesignated paragraph (e)(4);

■ e. revise paragraph (f) in the introductory text;

■ f. redesignate paragraph (h) as paragraph (j);

■ g. add a new paragraph (h);

■ h. revise paragraph (i);

■ i. revise newly redesignated paragraph (j); and

■ j. add a new paragraph (k) to read as follows:

§ 28.12 Approval of a Federal branch or agency.

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

(i) Establishes a Federal branch or agency; or

(ii) Exercises fiduciary powers at a Federal branch.

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

(b) * * *

* * * * *

(5) With respect to an application to establish a Federal branch or agency outside of the foreign bank's home state, whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor. The OCC, in its discretion, also may consider whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor when reviewing any other type of application to establish a Federal branch or agency; and

* * * * *

(e) * * *

* * * * *

(2) *Written notice for an additional intrastate Federal branch or agency.* (i) In a case where a foreign bank seeks to establish intrastate an additional Federal branch or agency, the foreign bank shall provide written notice 30 days in advance of the establishment of the intrastate Federal branch or agency.

(ii) The OCC may waive the 30-day period required under paragraph (e)(2)(i) of this section if immediate action is required. The OCC also may suspend the notice period or require an application if the notification raises significant policy or supervisory concerns.

(3) *Expedited approval procedures for an interstate Federal branch or agency.* An application submitted by an eligible foreign bank to establish and operate a de novo Federal branch or agency in any state outside the home state of the foreign bank is deemed conditionally approved by the OCC as of the 30th day after the OCC receives the filing, unless the OCC notifies the foreign bank prior to that date that the filing is not eligible for expedited review. In the event that the FRB has approved the application prior to the expiration of the period, then the OCC's approval shall be deemed a final approval.

(4) *Conversions.* An application submitted by an eligible foreign bank to establish a Federal branch or agency as defined in 12 CFR 28.11(f)(4) or (f)(6) is deemed approved by the OCC as of the 30th day after the OCC receives the filing, unless the OCC notifies the foreign bank prior to that date that the

filing is not eligible for expedited review.

* * * * *

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch and agency of the foreign bank or, if the foreign bank has no Federal branches or agencies and is engaging in an establishment of a Federal branch or agency as defined in 12 CFR 28.11(f)(4), each state branch and agency:

* * * * *

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

(1) The resulting bank is an ''eligible foreign bank'' under paragraph (f) of this section; and

(2) No Federal branch established by the transaction accepts deposits that are insured by the FDIC pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

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

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

(k) *Other applications accepted.* As provided in 12 CFR 5.4(c), the OCC may accept an application or other filing submitted to another U.S. Government agency that covers the proposed activity or transaction and contains substantially the same information as required by the OCC.

■ 11. In § 28.15:

■ a. revise paragraph (a)(1)(ii);

■ b. redesignate paragraph (a)(1)(iv) as (a)(1)(v);

■ c. revise paragraph (a)(1)(iii) by removing the word ''or'' at the end;

■ d. add a new paragraph (a)(1)(iv);

■ e. revise newly redesignated paragraph (a)(1)(v);

■ f. add a new paragraph (a)(3);

■ g. redesignate paragraph (e) as (f); and

■ h. add a new paragraph (e) to read as follows:

§ 28.15 Capital equivalency deposits.

(a) * * *

(1) * * *

(i) * * *

(ii) United States dollar deposits payable in the United States or payable in any other Group of Ten country;

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument;

(iv) Repurchase agreements; or

(v) Other similar assets permitted by the OCC to qualify to be included in the CED.

* * * * *

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

* * * * *

(e)(1) *Deposit and Consolidation.* As provided in 12 U.S.C. 3102(g), a foreign bank with a Federal branch or agency shall deposit its CED into an account in a bank that is located in the state in which the Federal branch or agency is located. For this purpose, such depository bank is considered to be located in those states in which it has its main office or a branch. A foreign bank with Federal branches or agencies in more than one state may consolidate some or all of its CEDs into one such account.

(2) *Calculation.* The total amount of the consolidated CED shall continue to be calculated on an office-by-office basis.

* * * * *

■ 12. In § 28.16, revise paragraph (b)(8) to read as follows:

§ 28.16 Deposit-taking by an uninsured Federal branch.

* * * * *

(b) * * *

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

* * * * *

■ 13. In § 28.18, add a new paragraph (c)(3) to read as follows:

28.18 Recordkeeping and reporting.

* * * * *

(c) * * *

* * * * *

(3) A foreign bank with a Federal branch or agency in more than one state that consolidates its CEDs into one account in accordance with § 28.15(e) shall designate a participating Federal branch or agency to maintain consolidated asset, liability, and capital equivalency account information for all Federal branches and agencies covered by the consolidated deposit. A foreign bank with a consolidated CED shall maintain a book entry accounting of assets designated under the consolidated CED for each office of that foreign bank.

■ 14. In § 28.20, revise the first sentence of paragraph (a)(2) to read as follows:

§ 28.20 Maintenance of assets.

(a) * * *

* * * * *

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

* * * * *

■ 15. In § 28.22, revise paragraphs (a) and (b) to read as follows:

§ 28.22 Voluntary liquidation.

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

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

* * * * *

■ 16. Redesignate § 28.23 as § 28.24.

■ 17. Add a new § 28.23 to read as follows:

§ 28.23 Procedures for closing of some of a foreign bank's Federal branches and/or agencies.

In cases where § 28.22 does not apply, and a foreign bank is closing one or more, but not all, of its Federal branches and/or agencies, it shall follow the

procedures set forth in 12 U.S.C. 1831r–1(a) and (b) (branch closings).

■ 18.Add new § 28.25 to read as follows:

§ 28.25 Change in control.

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

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

■ 19. Add a new § 28.26 to read as follows:

§ 28.26 Loan production offices.

A Federal branch may establish lending offices, make credit decisions, and engage in other representational activities at a site other than a Federal branch office, subject to the same rights, privileges, requirements and limitations that apply to national banks under 12 CFR 7.1003, 7.1004, and 7.1005.

Dated: December 15, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–31342 Filed 12–18–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin Meglumine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The ANADA provides for the veterinary prescription use of flunixin meglumine injectable solution for the control of inflammation in horses, beef cattle, and nonlactating dairy cattle.

DATES: This rule is effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV 104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed ANADA 200–308 for the use of Flunixin Injection by veterinary prescription for the control of inflammation in horses, beef cattle, and nonlactating dairy cattle. Norbrook Laboratories' Flunixin Injection is approved as a generic copy of Schering-Plough Animal Health's BANAMINE (flunixin) Solution, approved under NADA 101–479. The ANADA is approved as of November 17, 2003, and the regulations in § 522.970 (21 CFR 522.970) are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.970 [Amended]

■ 2. Section 522.970 *Flunixin meglumine solution* is amended in paragraph (b)(1) by removing ''000061 and 059130'' and by adding in its place ''000061, 055529, and 059130''.

Dated: December 9, 2003.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 03–31294 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9100]

RIN 1545–BC62

Guidance Necessary To Facilitate Business Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. These regulations affect business taxpayers who file income tax returns electronically. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 19, 2003.

Applicability Date: These regulations apply with respect to taxable years beginning after December 31, 2002. The applicability of §§ 1.170A–11T, 1.556–2T. 1.565–1T, 1.936–7T, 1.1017–1T, 1.1368–1T, 1.1377–1T, 1.1502–21T, 1.1502–75T, 1.1503–2T, 1.6038B–1T, and 301.7701–3T will expire on or before December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and evaluation of