

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

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

### 3. Federal Branches and Agencies (revised § 5.70)

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

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

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

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

##### 2. Filing of Notice (revised § 28.5)

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

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

##### 1. Definitions (revised § 28.11)

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

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

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

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

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

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

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

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