

“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 K⁸ 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.