

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<sup>9</sup> 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,<sup>10</sup> authorizes interstate branching for foreign banks with Federal branches and agencies to the same extent as national banks. However, section 103 of that Act<sup>11</sup> 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

<sup>9</sup> 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.

<sup>10</sup> 12 U.S.C. 1831u.

<sup>11</sup> 12 U.S.C. 36(g).