

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

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

### **Subpart A—Foreign Operations of National Banks**

#### *Authority, Purpose, and Scope (Section 28.1)*

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

#### *Definitions (Section 28.2)*

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

#### *Foreign Bank (Section 28.2(c))*

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

#### *Foreign Branch (Section 28.2(d))*

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

#### *Foreign Country (Section 28.2(e))*

The definition of the term “foreign country” is also new. The proposal defines “foreign country” as one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and Puerto Rico.

This definition is similar to the definition in Regulation K.

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

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

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

#### *Permissible Activities (Section 28.4)*

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

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

#### *Liability of National Banks for Foreign Branch Deposits*

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

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

### **Subpart B—Federal Branches and Agencies of Foreign Banks**

#### *Authority, Purpose, and Scope (Section 28.10)*

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

#### *Definitions (Section 28.11)*

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

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

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