12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Arkansas was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Arkansas, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Arkansas from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Arkansas.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Arkansas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective on December 3, 1997. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Arkansas from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Arkansas, as well as buyers and importers of cattle from this State.

There are an estimated 32,553 cattle herds in Arkansas that would be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $3 per head.

Therefore, we believe that changing the brucellosis status of Arkansas will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding ''Arkansas,'' immediately after ''Arizona,'' and paragraph (b) is amended by removing ''Arkansas,''.

Done in Washington, DC, this 26th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31756 Filed 12–3–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 97–23]

RIN 1557–AB41

Assessment of Fees; National Banks; District of Columbia Banks

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), in order to more accurately reflect the OCC's costs of

supervising banks, is amending its assessment regulation to impose a surcharge on banks that receive a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System (UFIRS) (also referred to as the CAMELS rating) and on Federal branches and agencies of foreign banks that receive a rating of 3, 4, or 5 under the ROCA rating system (which rates risk management, operational controls, compliance, and asset quality). This amendment will enable the OCC to distribute more equitably the costs it incurs when supervising institutions that are experiencing significant problems. The OCC also is eliminating the annual franchise fee on banks that are registered as municipal and/or government securities dealers.

EFFECTIVE DATE: December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Madsen, Deputy Chief Financial Officer, Financial Review, Policy and Analysis, (202) 874–5130; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC charters, regulates, and supervises approximately 2,700 national banks and 64 Federal branches and agencies of foreign banks in the United States, accounting for nearly 60 percent of the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States. The OCC funds the activities that further this mission by imposing assessments, fees, and other charges on banks within its jurisdiction, as necessary and appropriate to meet the OCC's expenses, pursuant to 12 U.S.C. 482.

The OCC charges each national bank and Federal branch and agency a semiannual assessment according to a formula that is described in 12 CFR 8.2. In general, the OCC calculates the semiannual assessment by using a marginal rate that declines as an institution's asset size grows. The OCC also reduces assessments charged to a ''non-lead bank'' (which, generally speaking, refers to a national bank that is not the largest national bank owned by the same company) by a percentage determined in accordance with each assessment. For example, the OCC reduced the assessment for non-lead national banks that was due January 31, 1997, by 12 percent.

The marginal rate structure (which applies a declining marginal rate as bank asset size grows) and the assessment reduction for non-lead national banks reflect the OCC's cost savings resulting from the economies of scale realized in the examination and supervision of large institutions and non-lead banks. However, the current assessment regulation does not reflect the *increased* costs that the OCC incurs when supervising a bank whose condition requires special attention. As a result, healthy banks subsidize banks that are experiencing significant problems. The imposition of a surcharge on banks requiring additional OCC resources, discussed in the section that follows, addresses this concern.

Discussion of the Final Rule

Surcharge

In the proposed rule (62 FR 54747 (October 21, 1997)), the OCC sought comment on the addition of new paragraphs (a)(7) and (b)(5) to § 8.2, pursuant to which the OCC would impose a surcharge equal to 25 percent of the amount of the assessment that otherwise would be due from (a) national banks that receive a UFIRS rating of 3, 4, or 5 and (b) Federal branches and agencies of foreign banks that receive a ROCA rating of 3, 4, or 5. This proposal stemmed from OCC cost data, which show that there is a significant increase in supervision costs once an institution's rating moves from 2 to 3 and that these increased costs continue while the bank is rated 3, 4, or 5. To reflect this increase in costs of supervising a bank rated 3 or worse, the OCC proposed to use a UFIRS or ROCA rating (as appropriate) of 3 as the threshold for applying the surcharge. Using the most recently available data, the surcharge would affect approximately 94 national banks and Federal branches and agencies of foreign banks, resulting in an aggregate annual increase in assessments for these banks of approximately $983,000.

The OCC received three comments on the proposal, all of which were generally supportive of imposing the surcharge. The first commenter acknowledged that banks rated a 3, 4, or 5 require greater supervisory attention and concluded that the fee structure should reflect this. This commenter observed, however, that the surcharge might worsen the financial condition of institutions having to pay the surcharge. The second commenter, while supporting the imposition of a surcharge, suggested that the OCC (a) raise the surcharge for all banks rated a 3, 4, or 5 to some percentage higher than 25%, (b) increase the amount of the surcharge the worse a bank's condition becomes, and (c) charge banks a higher assessment the longer they fail to improve their condition. The third commenter agreed that banks rated a 3, 4, or 5 should pay a surcharge, but suggested that the OCC adopt a sliding scale that would impose a higher surcharge the worse a bank's rating became. This commenter also suggested that the OCC consider charging banks by the hour for examinations, but then noted that such an approach would raise the possibility of disputes over the number and qualifications of examiners used and the length of examinations.

The OCC believes, based on available cost data, that a 25% surcharge is an appropriate step toward minimizing the extent to which healthy banks subsidize banks requiring additional supervision without having counterproductive results. The data do not at this point support increasing the assessment surcharge in the other ways proposed by the commenters. Accordingly, the OCC, acting pursuant to 12 U.S.C. 482, adopts the proposed surcharge without change. The OCC will continue to review its cost data and make further adjustments to the assessment calculation as appropriate.

The OCC will use the date of the most recent Report of Examination to determine whether a surcharge should be imposed. If a bank is rated 3, 4, or 5 in the most recent exam report that is dated before the end of the relevant assessment period, a surcharge will be applied. Thus, for instance, if a bank is downgraded from a 2 to a 3 and receives this rating in an exam report dated on or before December 31, that bank would have to pay the surcharge with the assessment that is due by the following January 31. If, however, the exam report is dated January 1, in this example the bank would not have to pay the surcharge with the payment due the following January 31 but would have to pay the surcharge with all subsequent assessments until it is upgraded.

Assessments of a Bank That Owns Another Bank

In the preamble to the proposed rule, the OCC sought comment on the proper method of calculating the assessments of national banks that own other banks. This issue stems from a recent change in the Consolidated Report of Condition and Income (Call Report) instructions [1] pursuant to which the assets of a subsidiary bank are reported on a consolidated basis in the Call Report of its parent bank. Given that the subsidiary bank also must file a Call Report, the current assessment regulation, which bases assessments on

[1] See 62 FR 8078 (February 21, 1997).

assets reported in a bank's Call Report, has the unintended effect of double-counting at least some of the assets of the subsidiary bank.

The OCC received two comments on this issue. Both commenters suggested that subsidiary bank assets be subtracted from consolidated parent bank assets in determining the supervisory assessment base for the parent bank. The OCC agrees that it is appropriate to subtract the assets of the subsidiary bank for purposes of calculating the assessment of the parent bank. However, given the small number of banks that own other banks and the wide divergence in circumstances of these banks, the OCC has determined that it is appropriate to address this situation on a case-by-case basis instead of adopting a regulation that attempts to cover all situations. In order to ensure that these banks are assessed fairly, the OCC will inform the affected institutions in each semiannual assessment notice that they may submit information to the OCC demonstrating what the appropriate adjustment should be to the top-tier bank's total assets. The OCC then will review the information and adjust the assessment accordingly.

Removal of Annual Franchise Fees (§ 8.15)

The OCC also is removing § 8.15 from the current rule, which states that national banks that are registered or on file as municipal and/or government securities dealers shall pay an annual franchise fee covering each dealer activity. National banks engage in a wide variety of activities requiring an equally wide variety of supervisory activities. Rather than impose special fees on a few activities or, conversely, attempt to segregate and define all different types of supervisory activities and costs, the OCC has determined that it is more efficient and simpler for the industry for the OCC to recover its costs by imposing only one fee, namely, the semiannual assessment. Thus, the special fee charged to those banks that are registered as municipal and government securities dealers will be removed.

Adoption of Final Rule Removing Annual Franchise Fees

The OCC has determined that notice and comment is not required before removing § 8.15. The rule involves agency practice and procedure and thus is exempt under 5 U.S.C. 553(b)(A) from the prior notice requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). The determination of how fees are imposed is internal to the OCC, since the Comptroller is required by 12 U.S.C. 482 to recover expenses but is not required to follow specific calculations or formulae when making this determination. As a result, the OCC may revise its assessment structure as necessary to meet its expenses. In addition, the rule is exempt pursuant to 5 U.S.C. 553(b)(B) from the prior notice requirements because delaying adoption of the final rule pending receipt of comments would be unnecessary and contrary to the public interest. The rule confers a benefit on national banks that are registered as municipal and/or government securities dealers by eliminating the franchise fee.

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 (5 U.S.C. 604) 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 the agency publishes that certification and a short, explanatory statement in the **Federal Register** along with the final 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. While the rule requires national banks, Federal branches, and Federal agencies of all sizes that receive a UFIRS or ROCA rating of 3, 4, or 5 to pay an assessment surcharge, this will not create a significant or disparate impact on small institutions. The assessments for the 69 national banks, Federal branches, and Federal agencies with total assets of under $100 million that currently are rated 3, 4, or 5 would increase, in the aggregate, by approximately $357,683 per year, which is equal to approximately $5,184 per institution. Accordingly, a regulatory flexibility analysis under section 604 of the RFA is not required.

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, Public Law 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 this 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. The increase in the assessments of institutions rated a 3, 4, or 5 will be less than $1.0 million in the aggregate. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 12 CFR Part 8

Assessments, Fees, National banks.

Authority and Issuance

For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

1. The authority citation for part 8 continues to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. Section 8.2 is amended by adding new paragraphs (a)(7) and (b)(5) to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(7) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (a)(1) through (a)(6) of this section by multiplying that figure by 1.25 for each bank that receives a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System at its most recent examination.

(b) * * *

(5) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (b)(1) through (b)(4) of this section by multiplying that figure by 1.25 for each Federal branch or Federal agency that receives a ROCA rating (which rates risk management, operational controls, compliance, and asset quality) of 3, 4, or 5 at its most recent examination.

§ 8.15 [Removed]

3. Section 8.15 is removed.

Dated: December 1, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–31867 Filed 12–2–97; 11:32 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 516, 543, 545, 552, 556, 563

[No. 97–121]

RIN 1550–AA83

Application Processing

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: As a part of its on-going effort to review and streamline its regulations, the Office of Thrift Supervision (OTS) is issuing a final rule revising its comment procedures for specified applications and notices (collectively, applications). In addition to reorganizing the regulation, the OTS has expanded the comment period on these applications, set forth the information that a comment should contain, and replaced existing provisions requiring the OTS to conduct an oral argument on applications under certain circumstances, with provisions for informal and formal meetings. Under the final rule, the OTS will conduct an informal meeting ordinarily upon the request of a commenter, but also on its own initiative. Thereafter, upon the request of any participant to an informal meeting, the OTS will conduct a formal meeting. The OTS may also conduct a formal meeting on any application on its own initiative.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine Shepard, Senior Attorney, Regulations and Legislation Division, (202) 906–7275, Kevin Corcoran, Assistant Chief Counsel, Business Transactions Division, (202) 906–6962, Office of Chief Counsel; or Diana L. Garmus, Director, Corporate Activities Division, (202) 906–5683, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS regulations governing applications for permission to organize a federal stock or mutual savings association, to establish or relocate a branch office of a federal savings association, and to engage in a transaction that is subject to the Bank Merger Act require applicants to follow the public comment and review procedures at existing § 543.2 (e) and (f).

Currently, § 543.2 provides an opportunity for the public to submit communications in favor or in protest of applications, and permits the applicant to respond to any protest. When a protest is timely submitted, meets specified criteria and includes a request for oral argument, or if an applicant timely requests an oral argument, the regulation requires the OTS to conduct an oral argument on the merits of the application. The OTS may also hold an oral argument in the absence of any protests, if it determines that these additional proceedings are desirable.

On April 9, 1997, the OTS published a notice of proposed rulemaking revising these procedures.[1] In addition to reorganizing the regulations, the OTS proposed to amend its existing procedures to expand the comment period on applications, prescribe the information that comments must contain in order to be considered when the OTS evaluates applications, and replace existing provisions that require the OTS to conduct an oral argument on applications under certain circumstances, with provisions for discretionary conferences. The OTS believed that these changes would make the application processing procedures easier to understand and apply. Additionally, the OTS concluded that the discretionary conference procedures would align OTS regulations more closely with those of the other federal banking agencies in accordance with section 303 of the Community Development and Regulatory Improvement Act of 1994.

II. Summary of Comments and Description of Final Rule

A. General Discussion of the Comments

The public comment period on the proposed rule closed on June 9, 1997. Eight commenters responded to the proposal: four community advocacy groups, two trade associations, one federal savings association, and one professional records and information management association.

As a general matter, the four community advocacy groups opposed the elimination of mandatory oral arguments and supported the extension of the public comment period. Conversely, the trade associations and the federal savings association supported the proposed conference procedures and opposed the extension of the public comment period. The information management association expressed unqualified support for the proposal. Specific comments are discussed where appropriate in the section by section analysis below.

B. Section by Section Analysis

The final rule adds new Subparts C and D to part 516. The new subparts use plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the Federal Register Document Drafting Handbook (January 1997 edition). The primary goal of plain language drafting is to make regulations more readily understandable. Plain language drafting emphasizes the use of informative headings (often written as a question), non-technical language (including the use of ''you'') and sentences in the active voice.

Although commenters did not have the opportunity to comment on the plain language format prior to its use in this final rule, the OTS believes that the benefits of the format justify its use. Moreover, the use of the plain language format has not altered the substance of the regulation. The OTS welcomes comments on the plain language format, and suggestions on how to improve this format. The OTS is committed to converting more of its regulations to the plain language format in order to reduce regulatory burden. The recently issued OTS final rule on subsidiaries uses this plain English drafting format. See 12 CFR Part 559 (1997).

Subpart C—Comment Procedures

Section 516.100—What Does This Subpart Do?

Section 516.100 of the final rule provides that Part 516, Subpart C contains the procedures governing the submission of public comments on certain types of applications or notices pending before the OTS. Subpart C applies whenever a regulation incorporates the procedures, or where otherwise required by the OTS. This section is based on § 516.5(a)(1) of the proposed rule.

Section 516.110—Who May Submit a Written Comment?

Section 516.110 provides that any person may submit a written comment supporting or opposing an application. This provision is also based on proposed § 516.5(a)(1).

Section 516.120—What Information Should I Include in My Comment?

Under the existing rules, a protest is considered ''substantial'' if it is submitted in writing within the

[1] 62 FR 17110 (April 9, 1997).