delivered to the above address no later than that time.

I Wish to Cancel

Consumer's Signature

Date

Supplement I—[Amended]

11. In Supplement I to Part 226, under *Section 226.4—Finance Charge*, under *4(a) Definition*, paragraph 3. ii. would be removed.

12. In Supplement I to Part 226, under *Section 226.17—General Disclosure Requirements*, under *17(c) Basis of disclosures and use of estimates, Paragraph 17(c)(2)* would be redesignated as *Paragraph 17(c)(2)(i):*

Supplement I—Official Staff Interpretations

* * * * *

Section 226.17—General Disclosure Requirements

* * * * *

17(c) Basis of Disclosures and Use of Estimates

* * * * *

Paragraph 17(c)(2) ﬂ *(i).* ﬁ

* * * * *

13. In Supplement I to Part 226, under *Section 226.18—Content of Disclosures*, under *18(d) Finance charge*, paragraph 2 would be removed.

14. In Supplement I to Part 226, under *Section 226.23—Right of Rescission*, under *23(b) Notice of right to rescind*, the first sentence of paragraph 3 would be revised to read as follows:

* * * * *

Section 226.23—right of rescission

* * * * *

23(b) Notice of right to rescind.

* * * * *

3. *Content.* The notice must include all of the information outlined in Section 226.23(b)(1) ﬂ (i) through (v) ﬁ [through 5]. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 15, 1996.

William W. Wiles,

Secretary of the Board

[FR Doc. 96–12685 Filed 5–23–96; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 344

RIN 3064–AB74

Recordkeeping and Confirmation Requirements for Securities Transactions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is considering whether and how to amend its regulations governing recordkeeping and confirmation requirements for securities transactions by state nonmember banks. The agency's present regulation was adopted in 1979 and has remained essentially unchanged since that time. The FDIC is undertaking a review of this regulation with the goal of modernizing its requirements to, among other things, reflect the supervisory role played by other Federal agencies charged with supervision of securities transactions. The agency is soliciting comment on a number of issues that have been identified. The responses will be used to aid the FDIC in developing a proposed amendment for public comment.

DATES: Comments must be received by June 24, 1996.

ADDRESSES: Comments should be directed to Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be delivered to room F–402, 1776 F Street, NW, Washington, DC 20429, on business days between 8:30 am and 5:00 pm or sent by facsimile transmission to FAX number 202/898–3838. Internet: Comments@FDIC.gov. Comments will be available for inspection and photocopying in the FDIC Public Information Center, room 100, 801 17th Street, NW, Washington, DC 20429, between 9:00 am and 5:00 pm on business days.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, Division of Supervision, (202) 898–6759; John Harvey, Review Examiner (Trust), Division of Supervision (202) 898–6762; Patrick J. McCarty, Counsel, Legal Division (202) 898–8708; or Gerald Gervino, Senior Attorney, Legal Division (202) 898–3723. Federal Deposit Insurance Corporation, 550 17th St., N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires that each Federal banking agency review its regulations to streamline them to improve efficiency, reduce unnecessary costs and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the Federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. As part of the section 303 process, the FDIC published in December of 1995 a notice in the Federal Register describing the section 303 requirements and inviting the general public and interested parties to comment on FDIC regulations and policy statements. 60 FR 62345 (December 6, 1995).

On July 24, 1979 the FDIC and the other Federal banking agencies promulgated regulations addressing recordkeeping and confirmation requirements for securities transactions effected by banks. See 44 FR 43261 (July 24, 1979) (FDIC), 44 FR 43252 (July 24, 1979 (OCC) and 44 FR 43258 (July 24, 1979) (FRB). These regulations were, and are, virtually identical. With the exception of two amendments, the FDIC's part 344 has remained unchanged since it was promulgated in 1979. See 45 FR 12777 (February 27, 1980), 60 FR 7111 (February 7, 1995).

The FDIC wishes to review its recordkeeping and confirmation requirements for securities transactions in part 344 with the purposes of section 303 of the CDRI in mind. The Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (FRB) have already proposed amendments to their regulations concerning recordkeeping and confirmation requirements for securities transactions by national and state member banks, respectively. See 60 FR 66517 (December 22, 1995) and 60 FR 66759 (December 26, 1995). Before drafting and publishing a proposed regulation, the FDIC wishes to receive public comment on several basic issues underlying the purposes of part 344. The FDIC requests comments at this stage of regulatory review to assist development of a specific proposal.

Summary of Concerns

Part 344 sets forth the recordkeeping and confirmation requirements with respect to securities transactions effected for the customers of state nonmember banks. State nonmember banks are required to keep four types of records (1) Chronological records of original entry containing an itemized daily record of all purchases and sales, (2) Account records for each customer, (3) Separate order tickets for each transaction, and (4) A record of all broker/dealers used and the commissions paid. Section 344.3(a) through (d). Banks must keep these records for at least three years. Section 344.3.

Part 344 addresses both the ''form'' and ''timing'' of notification to customers for whom the bank has effected a securities transaction. Sections 344.4 through 344.5. Banks may provide one of two different types of notification forms to the customer. Both notification forms are required to contain such basic information as the name of the customer, the identity, price and number of shares or units of the security purchased or sold by the customer, the source and amount of any remuneration to be received by the broker/dealer and the bank (unless such remuneration is determined by a prior written agreement between the bank and the customer), and the name of the broker/dealer used. Banks are again required to retain copies of the notification form which is provided to customers for at least three years. Id.

As a general rule, banks are required to mail the notification form to customers within five business days of the transaction. Section 344.5. If a broker/dealer is used, the bank has 5 business days from the date of receipt of the broker/dealer's confirmation to mail notification to the customer. Id. Banks are permitted, however, to use alternate time of notification procedures depending upon the type of account involved. Section 344.5(a) through (e). The time of notification periods vary greatly from ''as promptly as possible'' after the transaction for periodic plans to annual statements for collective investment funds. Section 344.5(e) and (d), respectively.

Part 344 also requires banks effecting securities transactions for customers to establish written policies and procedures regarding securities trading. Section 344.6 Such policies and procedures must address supervision of officers and employees who place orders and execute transactions, allocation of securities and prices to accounts when orders are received at approximately the same time, the crossing of buy/sell orders, and the reporting of personal securities transactions by bank officers and employees who participate in or make investment recommendations or decisions for customer accounts.

The purpose of the FDIC implementing recordkeeping and confirmation requirements for securities transactions is to ensure that purchasers of securities in transactions effected by an insured nonmember bank are provided adequate information concerning the transactions. The regulations also are designed to ensure that insured nonmember banks maintain adequate records and controls with respect to securities transactions for their customers.

As the financial marketplace has grown, new delivery systems for bank customer's securities transactions have emerged. This array of delivery systems has led to the overlap of jurisdiction between the Federal banking agencies and the Federal securities regulators. The FDIC supports minimizing overlapping jurisdiction through a concept referred to as ''functional regulation''. In order for functional regulation to work properly, it is important that securities transactions do not go unregulated and leave customers unprotected. As currently written, part 344 overlaps existing securities regulation in certain areas. Although this overlap ensures that securities transactions for bank customers are adequately covered in relation to confirmation and recordkeeping requirements, it can create a competitive imbalance for banks, create customer confusion, regulatory uncertainty and additional costs to banks.

Delivery Systems

There are a variety of ways in which banks play a role in delivering securities brokerage services to their customers. Customers of banks may engage in securities transactions by either dealing directly with the bank or by dealing with a third party who has contracted with the bank to conduct securities transactions for, or through, the bank. Third parties may operate on bank premises using their own employees, or use persons who are dual employees of the bank and the third party. Third party providers may operate both on and off the bank's premises with the bank receiving remuneration for transactions originating from the bank. Other third party providers operate solely off bank premises. The bank may or may not receive remuneration for referring customers to the provider.

Categories of third party providers also vary by whether or not the provider is affiliated with the bank and the type of affiliation. Third party providers may be owned by the bank, while in other situations the bank and third party provider are commonly owned or have common officers or directors. In other cases, the bank may be an advisor to a mutual fund sponsored by a third party.

Within the bank itself, the institution may be engaged in retail recommendation and sale of securities, or the bank may be engaging in accommodation transactions only for customers of the bank. A limited number of banks operate municipal and government securities dealer departments separately registered under government securities regulations or regulations of the Municipal Securities Rulemaking Board (MSRB). Where there is sufficient demand, banks may engage in private banking for their higher income customers. In areas where capital markets are not well established, banks may engage in the sale of their own stock or the stock of their affiliates.

Historically banks have been most commonly involved in securities transactions through their Trust Departments. These transactions occur both when the bank has some fiduciary responsibility and when the bank is acting as an agent or custodian. A bank may have no investment discretion, partial investment discretion or full investment discretion over its trust accounts. Trust Departments often sponsor collective investment funds for their customers. They may also act as the customers' agent under a periodic investment plan, such as a stock-purchase plan or a dividend reinvestment plan. Each situation presents different customer needs relative to confirmation and recordkeeping requirements related to securities transactions.

Request for Comment

The FDIC is seeking comment from interested parties concerning the applicability of part 344 to securities transactions conducted under each of these delivery systems. Specifically, if the transactions under a specific delivery system are covered by another regulatory system, what coverage should an FDIC regulation provide, if any? Additionally, the FDIC seeks comment on whether other delivery systems, i.e., dedicated phone lines to broker/dealers and mutual fund complexes, or internet sites, should be considered in deciding on the scope of coverage of part 344. Commenters are asked to identify types of securities transactions which by their unique characteristics should be exempted, either completely or in part, from the requirements of part 344. The OCC and FRB proposals do not approach the delivery systems and regulatory coverage issues in the same manner as the FDIC.

Effecting a Transaction

The recordkeeping and confirmation requirements of part 344 are generally triggered when a bank effects a securities transaction on behalf of a customer. The regulation does not define the term ''effecting a securities transaction''. The term was borrowed from the Federal Securities laws, where it is quite common but also not defined. See Securities and Exchange Act of 1934, 15 U.S.C. 78o(a)(1), (c)(1)(A) through (B), Government Securities Act, 15 U.S.C. 78o–5(a)(1)(B)(i), (a)(4) and (b)(1), and SEC Rule 10b–10(a), 12 CFR 240.10b–10(a). The FDIC has taken a broad view of the term to include not only those situations in which securities transactions are effected by bank employees but also those situations in which third parties who are located on bank premises conduct the transactions for the bank and the bank receives transaction based compensation in connection with the transactions. This is so even if the transaction takes place off bank premises. The FDIC is considering various alternatives in defining the term ''effecting a securities transaction'' and seeks comment as to how the term should be defined. If securities transactions are conducted by third parties, should such transactions be excluded from the definition? If so, how should such exclusion/exemption be drawn? If specific bank activities or certain types of delivery systems should be exempted from the definition, what factors should be considered in determining which bank activities and delivery systems should be exempted? The OCC and FRB proposals do not address the definition or scope of the term ''effecting a securities transaction'' issue.

Retail Sales Through Trust Departments

As noted above, historically banks have been involved in securities activities through their Trust Departments. Trust Departments have accounting systems, internal controls and investment expertise with respect to securities transactions due to their investment management activities for trust clients. Banks may, however, be directing customers with retail securities transactions to their Trust Departments, even though such customers have no formal trust agreement with the bank. The FDIC specifically requests comment on whether this situation is commonplace in the industry and to what extent the requirements of part 344 should apply to such retail securities transactions for nontrust customers. The OCC and FRB proposals do not specifically address the retail sales through bank Trust Department issue.

Disclosure of the Source and Amount of Remuneration

Members of the public, including bank customers, normally pay commissions or sales loads when buying or selling securities through a registered broker/dealer which has no association with a bank. The securities transactions effected by the bank may be somewhat different in that the bank may share in that commission or load or the bank may charge a fee in addition to the usual commission or load. In order to make this difference clear to those customers who purchase or sell securities through their bank, part 344 requires that the bank disclose the source and amount of its remuneration. The regulation does not distinguish between those commissions or loads which the bank shares with another party (but the total cost to the customers remains the same) and fees which may be added by the bank to those commissions or loads.

As banks have become more heavily involved in effecting securities transactions for their customers, it has come to the FDIC's attention that there are practical problems concerning the timely disclosure of the source and amount of the bank's remuneration. Many insured nonmember banks have entered into what are commonly known as ''networking agreements'' with registered broker/dealers. Under these agreements the broker/dealer typically leases space on the bank's premises to sell securities. In some instances banks receive a fixed monthly payment plus a portion of the commissions which varies depending upon the volume of sales over a given period. The result is that in some situations banks are unable to determine and disclose the total amount of their remuneration within the general 5 business day time frame provided for under § 344.5.

On March 21, 1995, the FDIC Board of Directors granted a limited waiver of the remuneration disclosure requirement contained in § 344.4 based on the timing problem identified above. The waiver extends to any insured state nonmember bank which receives transaction-based compensation on a regular basis with respect to securities transactions effected for customers. The waiver is subject to the provisos that (1) no additional fees are added by the bank other than those described in the prospectus (if the securities are sold under a prospectus); (2) the sale is made by a registered broker/dealer subject to rules and supervision of the National Association of Securities Dealers (NASD) and the Securities and Exchange Commission (SEC); and (3) the sale is conducted in a fashion which meets the requirements of the NASD and SEC. The waiver does not relieve banks of the obligation to disclose the source of their remuneration. Nor does the waiver apply in the case of (1) services provided in a fiduciary capacity, or (2) services for which a flat fee has been paid which includes securities brokerage.

At the time the waiver was granted, the FDIC committed to working with the other Federal banking agencies to find an acceptable solution to the timing of the remuneration disclosure problem. The FDIC's current waiver differs from the position reflected in the OCC's proposal in that the FDIC continues to require that banks disclose the source of their remuneration and that the FDIC waiver extends to all securities transactions and not just to mutual fund transactions.

In attempting to keep customers who purchase securities on the premises of a bank informed of potential conflicts of interest, the FDIC has taken the position that the customer should be aware of the fact that the bank has a financial interest in the transaction. Thus, the FDIC has concluded that in all cases, the source of the remuneration should be disclosed. The timing of that disclosure may be important in determining how much burden this requirement places on the bank.

We note that the SEC's position regarding the disclosure of the source and amount of remuneration is much more limited than that under which the FDIC is currently operating. Pursuant to SEC Rule 10b–10, broker/dealers are required to disclose the source and amount of remuneration at or before completion of a transaction only when the broker/dealer is (1) participating in the distribution of a securities issuance or (2) participating in a tender offer. See 17 CFR 240.10b–10(a)(7)(iv). Otherwise, the broker/dealer is required to provide only a notice which states that the source and amount of other remuneration will be furnished ''upon the written request of the customer.'' Id. With respect to the sale of mutual funds, the SEC is considering changing a long standing no action position on the broker/dealer disclosure of source and remuneration. See Investment Company Institute, SEC No-Action Letter, 1994 WL 131068 (S.E.C.) (March 16, 1994).

Since 1979 the SEC's position has been that a broker/dealer does not need to disclose on confirmations the source and amount of remuneration received on the sale of open end management company shares if a prospectus with current fees, loads and expenses is provided to the customer. See Investment Company Institute, SEC No-Action Letter, [1979] Fed. Sec. L. Rep. (CCH) P82,041 (Mar. 19, 1979). Should the SEC change its position, broker/dealers would be required to provide confirmations which disclose both the source and amount of remuneration received on confirmations rather than relying upon the disclosure provided in the prospectus.

The FDIC specifically requests comments concerning the need for disclosure of the source of remuneration and, if necessary, when that disclosure should be made. In addition, the FDIC requests comment on the circumstances under which a bank should disclose the amount of the remuneration and, if necessary, the timing of these disclosures. If disclosures concerning the amount of remuneration are made, should there be a differentiation concerning disclosure of the bank's portion of loads and commissions normally charged and those fees which may be charged in excess of normal commissions and loads? If FDIC mandated disclosures are necessary, how should these disclosures interrelate with similar disclosures required under the Federal Securities laws? The OCC and FRB proposals do not address all of the issues raised herein.

Definition of Security

In part 344, the term ''security'' is defined in order to determine the scope of the regulation's coverage. Section 344.2(e). The definition is crafted specifically for the purposes of this regulation and does not mirror the definition of ''security'' in the Federal Securities laws. Specifically, there are eight exemptions to the definition of ''security'':

(1) A deposit or share account in a federally insured depository institution;

(2) A loan participation;

(3) A letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) Currency;

(5) Any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) Units of a collective investment fund;

(7) Interests in a variable amount (master) note of a borrower of prime credit; and

(8) U.S. Savings Bonds.

The FDIC specifically requests comment on the adequacy of the definition of the term ''security'' currently used in part 344 and if there are other exceptions which should be made to the definition. Comment is invited concerning the practicability of using the definition of ''security'' which is used in the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

Other Definitions

The OCC and FRB proposals add definitions of ''asset-backed security'', ''completion of the transaction'', ''crossing of buy and sell orders'', ''debt security'', ''government security'' and ''municipal security'' to their respective regulations. The new definitions are based on definitions contained in the Federal Securities laws and the SEC's confirmation rule, Rule 10b–10, 17 CFR 240.10b–10, and are necessary for applying the proposed confirmation disclosure and three day settlement requirements. Rule 15c6–1, 17 CFR 240.15c6–1. The definitions of the above terms contained in the OCC and FRB proposals are:

''Asset-backed security'' shall mean a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

''Completion of the transaction effected by or through a bank'' shall mean:

(1) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book entry for any part of the purchase price, if applicable), however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(2) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank, however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the bank makes payment into the account of the customer.

''Crossing of buy and sell orders'' shall mean a security transaction in which the same banks acts as agent for both the buyer and the seller.

''Debt security'' shall mean any security, such as a bond, debenture, note or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, shall not be included in this definition.

''Government security'' shall mean:

(1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the SEC; or

(4) Any put, call, straddle, option, or privilege on a security as described in paragraph (1), (2), or (3) of this definition other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association.

''Municipal security'' shall mean a security which is a direct obligation of, or obligation guaranteed as to principal or interest by a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond.

The FDIC is considering using identical definitions in revising part 344 and requests comment concerning these definitions. Specifically, the FDIC wishes to know if these definitions should be expanded in any manner or if they exclude transactions which should be covered by the scope of the definition. The FDIC proposal is consistent with the OCC and FRB proposals on the new definitions.

Exceptions

Under the current regulation, certain requirements concerning recordkeeping and securities trading policies and procedures do not apply to banks having an average of less than 200 securities transactions per calendar year for customers over the prior three-calendar-year period, exclusive of transactions in U.S. Government and Federal agency obligations. Section 344.7(a). The FDIC specifically requests comment concerning the continued appropriateness of this exemption and whether the current 200 transaction limit should be raised, and if so, what transaction or dollar limit should be adopted. Commenters are requested to address whether any increase in the threshold would (1) result in any material diminution in the protections to investors, and (2) how the applicability of and compliance with the Department of Treasury's Government Securities Dealer regulations would be affected. The OCC and FRB proposals do not address all the Government Securities trading issues raised herein.

Since part 344 was originally implemented, regulation of government securities has changed as a result of the enactment of the Government Securities Act of 1986 (Government Securities Act). 15 U.S.C. 78o–5. Under this statute, the Department of the Treasury has authority over government securities transactions (including United States Treasury securities and securities issued or guaranteed by Federal government agencies and government-sponsored enterprises). State nonmember banks which are government securities brokers and dealers are not required to follow certain recordkeeping requirements established by the Department of the Treasury regulations because they are subject to part 344. Consistent with the requirements of the Government Securities Act, state nonmember banks that conduct fewer than 500 government securities brokerage transactions per year would not have to comply with certain recordkeeping requirements of part 344 if the exemption contained in the Government Securities Act is carried over to the FDIC's regulation. See 17 CFR 401.3(a). The FDIC specifically requests comment if there is a need to adopt this exemption in its regulations. The FDIC proposal is consistent with the OCC and FRB proposals on this issue.

Safe and Sound Operations

As noted above, both the FRB and the OCC have issued proposed amendments to their regulations relating to recordkeeping and confirmation requirements for securities transactions. Those proposed amendments include a provision concerning safe and sound operations. See proposed § 208.24(h) of the FRB's regulations and § 12.1(c)(3) of the OCC's regulations. The provisions would require that a bank maintain effective systems of records and controls regarding customer securities transactions that reflect accurate information and are sufficient to provide an adequate basis for an audit of the information. The provisions are intended to emphasize the importance of effective internal controls with respect to all securities transactions. The FDIC requests comment on the desirability of adding this type of provision to its regulation.

Settlement of Securities Transactions

In October 1993, the SEC adopted a securities settlement rule, effective June 7, 1995, requiring the payment of funds and delivery of most securities by the third business day after the date of the contract (T+3). Rule 15c6–1, 17 CFR 240.15c6–1. Many banks effecting customer securities transactions use a clearing broker which would be subject to the T+3 rule. In these situations securities transactions for bank customers would routinely settle within three days. However, some banks may clear and settle their securities trades directly. For this reason, the FDIC is considering revising part 344 to include a separate T+3 settlement requirement that tracks the language of the SEC's securities settlement rule. Alternatively, the FDIC could cross-reference the language of the SEC rule.

The FDIC seeks comment on the need for and the effect of adopting the T+3 securities settlement requirement and specifically invites comment on the feasibility of alternate approaches to implement the T+3 settlement cycle. The FDIC's position is consistent with the OCC and FRB proposals on this issue.

Securities Transactions for Banks

The FDIC seeks comment on how part 344 affects small banks which use the services of other banks to buy and sell securities for their own account. Small banks are active buyers and sellers of U.S. Government and Municipal securities for their own accounts. It is not clear what effect, if any, part 344's recordkeeping, disclosure and settlement requirements have had on the banks which are the securities customers of other banks. The FDIC solicits comments from the banks which are consumers of other bank's securities services on what concerns they have and what improvements can be made to part 344. The OCC and FRB proposals do not address the bank as customer issues raised herein.

Sweep Accounts and Confirmations

It has now become commonplace for banks to offer ''sweep accounts'' to retail, commercial and trust customers. These ''sweep accounts'' are cash management services which permit customers to earn interest on otherwise idle cash balances. Sweep accounts automatically ''sweep'' excess cash out of a checking or non interest bearing deposit account into a money market mutual fund as frequently as every day after the close of business at the bank. The ''sweep'' is triggered by the amount of cash in the deposit account, which can be set by the depositor. The ''sweep'' may also be reversed so that shares in the money market mutual fund are redeemed and cash is deposited into the checking or non interest bearing account at certain times or when certain dollar limits are reached. Banks receive a fee for the ''sweep'' service.

The FDIC notes that ''sweep accounts'' bear some similarities to ''periodic plans,'' which is a defined term under part 344. See § 344.1(d). Under the current part 344, banks which are effecting securities transactions under periodic plans are required to provide confirmations to customers ''as promptly as possible after each transaction. * * * '' See § 344.5(e). The SEC permits broker/dealers, under certain conditions, to send confirmations for sweep transactions out of brokerage accounts into money market mutual funds to be provided on a quarterly basis. See 12 CFR § 240.10b–10(b). The OCC and FRB have proposed amending their regulations to permit banks to provide confirmations for periodic plan transactions on a quarterly basis. The FDIC supports such a change, as it will reduce regulatory burden for banks and will harmonize securities and banking regulation.

The FDIC requests comment on whether the definition of ''periodic plans'' in part 344 needs to be revised to specifically include ''sweep accounts'' or whether the term and activity is sufficiently distinct to warrant its own definition. In addition, the FDIC solicits comment regarding whether all ''sweep accounts'' should receive such treatment or just ''sweep accounts'' which invest in certain types of securities, e.g., money market mutual funds, and under certain conditions, e.g., no sales commission is charged for either purchases or sales. The FDIC also requests comment on whether ''sweep accounts'' raise any issues peculiar to bank Trust Departments. The OCC and FRB proposals do not specifically address the ''sweep account'' issues identified herein.

Reporting of Personal Trading

Part 344 currently requires certain bank officers and bank employees engaged in or aware of the investment decisions or recommendations for customer accounts to provide quarterly reports regarding their personal trading of securities. Section 344.6(d). The regulation does not require reporting of personal trading where the securities transactions aggregate $10,000 or less during the calendar quarter. The SEC has a similar reporting requirement for principal underwriters and investment advisers of registered investment companies under the Investment Company Act of 1940. See SEC Rule 17j–1, 12 CFR 270.17j–1. The SEC Rule does not provide an exemption for securities transactions involving in the aggregate $10,000 or less. The FDIC requests comments on whether the exemption from reporting personal trading by bank officers and employees engaged in or aware of the investment decisions or recommendations for customer accounts in section 344.6(d) is appropriate. Additionally, the FDIC requests comment on whether all bank directors, as opposed to just those bank directors who are also officers or employees of the bank, should be required to report on their personal trading. The OCC and FRB proposals do not address the personal trading issues raised herein.

Additional Comment

The FDIC is interested in receiving any additional comments regarding part 344 which the public feels should be taken into account as the agency undertakes to modernize the regulation.

By Order of the Board of Directors.

Dated at Washington, DC, this 14th day of May, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–12928 Filed 5–23–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 95N–0374]

RIN 0910–AA32

Latex Condoms; User Labeling; Expiration Dating

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed regulation that would require the labeling of latex condoms to contain an expiration date based upon physical and mechanical testing performed after exposing the product to varying conditions that age latex. Studies show that latex condoms degrade over time. Such degradation has a significant effect on the product's ability to provide a barrier to sexually transmitted disease (STD) agents, including the human immunodeficiency virus (HIV). This requirement is being proposed in order to provide consumers with essential information regarding the safe use of these products.

DATES: Written comments on this proposed rule by August 22, 1996. Written comments on the information collection requirements should be submitted by June 24, 1996. FDA proposes that any final rule that may be issue based on this proposal become effective 180 days after the date of its publication in the Federal Register.

ADDRESSES: Submit written comments on this proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–150), Food and Drug Administration, 12200 Wilkins Ave., Rockville, MD 20852, 301–443–7003.

SUPPLEMENTARY INFORMATION:

I. Background

It is estimated that over 1 million persons in the United States are infected with HIV (Ref. 1). HIV is transmitted primarily through sexual contact; however, nonsexual transmission has occurred in health care settings as a result of contact with infected blood. Additionally, HIV has been isolated from other body fluids in addition to blood. With the prevalence of HIV infection and the risk of transmission of other infections, the importance of the quality of an effective barrier to the transmission of infection is crucial.

Numerous studies in the scientific literature, including the proceedings of a conference on ''Latex as a Barrier Material'' sponsored by FDA in 1989, have addressed and overwhelmingly supported the use of latex membranes, such as condoms and medical gloves, as effective barriers against the transmission of various disease agents, including hepatitis, HIV, and other infections (Ref. 2). The Centers for Disease Control and Prevention (CDC) and the Surgeon General of the Public Health Service have recommended, on the basis of evidence that latex provides a barrier against the transmission of STD's, that latex condoms should be used according to instructions with every act of intercourse for maximum protection against STD's (Ref. 3). Two recent studies involving serodiscordant heterosexual couples (i.e., one partner is HIV positive, the other HIV negative) indicate that using latex condoms substantially reduces the risk of HIV transmission (Refs. 4 and 5). In one study, none of the 123 partners who used condoms consistently became infected while 12 (10 percent) of 122 partners who used condoms inconsistently became infected (Ref. 4). In the second study, 3 (2 percent) of the 171 consistent condom users became infected compared to 8 (15 percent) of 55 inconsistent condom users (Ref. 5).

The effectiveness of latex condoms as a barrier, however, is dependent upon the integrity of the latex material. Degradation of latex film products (e.g., the embrittlement of the latex film, an increase in the porosity of the membrane, or other loss of physical properties) occurs when latex is exposed to various types of environmental conditions (such as elevated temperature, fluorescent lights, or ozone) normally experienced in product use, shipment, or storage situations. Exposure to these environmental conditions degrades the film progressively over time, and may result in bursts, rips, tears or seepage that allows the transmission of infectious agents.

To understand the effects of aging and other storage conditions on latex properties, the State of Washington's Board of Pharmacy initiated an FDA-sponsored study of the material integrity