DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA93

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: We are amending our regulation at 31 CFR Part 210 (Part 210), which governs the use of the Automated Clearing House (ACH) system by Federal agencies (agencies). The ACH network is a nationwide electronic funds transfer (EFT) system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. Part 210 adopts, with some exceptions, the ACH rules (ACH Rules) developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH system by agencies.

This document includes changes to Subpart A and Subpart B, as well as Appendix C, of Part 210. We are amending Subpart A to clarify and shorten the notification statement contained in Appendix C, which is required for converting checks to ACH payments, and to expand the circumstances in which agencies may accept checks for conversion to ACH payments. We are amending Subpart B of the rule to address certain issues relating to the reclamation of Federal benefit payments and the receipt of misdirected Federal payments.

DATES: This rule is effective April 19, 2004.

ADDRESSES: You can download this rule at the following World Wide Web address: *http://www.fms.treas.gov/ach.*

FOR FURTHER INFORMATION CONTACT: Donald Clark, Senior Financial Program Specialist, at (202) 874–7092 or *don.clark@fms.treas.gov*; or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We published a notice of proposed rulemaking (NPRM) to amend Part 210 on August 21, 2003. *See* 68 FR 50672. This proposed rule addressed the circumstances in which checks presented or delivered to agencies may be converted to ACH debit entries and issues relating to the reclamation of Federal benefit payments and the receipt of misdirected payments. We requested comment on the NPRM. We received comments from 5 credit unions, 11 banks, 5 government agencies, 19 trade and professional groups, and two individual citizens. Several of the proposed amendments to Part 210 were generally supported by commenters, and we are adopting those proposals without substantive change.

A number of commenters, however, strongly opposed certain proposed amendments to allow for the wider use of check conversion by agencies. In light of these comments and the enactment in October 2003 of the Check Clearing for the 21st Century Act (Check 21), we have modified or eliminated certain proposed changes to Part 210 relating to check conversion, as discussed in Section II below.

We plan to use check conversion for consumer checks that we receive over-the-counter and at lockboxes to the extent that appropriate notice can be provided. We will not convert consumer checks submitted to a lockbox where notice is not feasible. Instead, we will wait until Check 21 becomes effective and initially use either a substitute check or, where possible, an electronic image for presentment. Eventually, we hope to clear all of these items by image exchange.

We are currently converting a nominal number of business checks to ACH at some operational locations, but we will not expand these operational locations to convert more business checks. We will not convert business checks at new operational locations received over-the-counter or at our lockboxes. Instead, we will wait until Check 21 becomes effective and initially use either a substitute check or an electronic image, where possible, for presentment. Eventually we would want to have all of these items cleared by image exchange.

We do not plan to convert other types of payment instruments such as money orders, traveler's checks, certified bank checks and credit card checks. We will wait until Check 21 becomes effective and those items then will be cleared either using a substitute check or an electronic image, where possible.

We have decided not to allow agencies to originate an ACH debit entry to collect a service fee related to a Re-presented Check (RCK) entry for which the agency has not obtained explicit authorization. Agencies will be able to originate a debit to collect such a fee if they have obtained express authorization.

II. Summary

A. Check Conversion

In this final rule, we are shortening the disclosure statement that agencies must provide before converting checks that they receive at lockboxes, and we are expanding the circumstances in which agencies may accept checks for conversion to ACH debit entries. We are not adopting the proposal to broaden the definition of ''business check'' to include additional instruments such as money orders, traveler's checks, certified bank checks and credit card checks. We also are not adopting, for reasons discussed below, the proposal to allow agencies to originate an ACH debit entry to collect a service fee related to an RCK entry where the agency has provided prior notice of the fee, but has not obtained the Receiver's express authorization.

In the NPRM, we proposed to amend Part 210 to allow agencies to convert to ACH debit entries certain types of payment instruments that are commonly received at lockboxes and points-of-purchase, including money orders, traveler's checks, certified bank checks and credit card checks. The proposal was to broaden the definition of business checks to include these additional payment instruments, thereby allowing agencies to convert these items to ACH debit entries. We received 33 comments on this proposed change. Five commenters agreed with the proposal and 28 commenters disagreed with the proposal. Those agreeing with the proposed change noted the efficiencies to be gained. Commenters who opposed the change expressed a variety of concerns. A number of financial institutions commented that the proposal would hinder their ability to detect fraudulent items; interfere with check processing capabilities inherent to the paper check (*e.g.*, stop payments, account reconciliation services, controlled disbursement, and services such as positive pay and payee verification); and create a greater number of exception items, all of which would result in significant costs to the financial services industry. Some commenters suggested that these costs could exceed $100 million, and that the proposal thus constituted a ''significant regulatory action'' for purposes of Executive Order 12866.

Issuers of money orders indicated that, to establish that a money order has been altered (*e.g.*, amount increased, endorsement forged, or payee name forged) it is often necessary to view the original money order. Some issuers of money orders commented that the

proposed change would undermine their anti-money laundering compliance programs under the Bank Secrecy Act. Other commenters noted that the presenter of a cashier's check, official check, money order or traveler's check is not the owner of the account on which the instrument is drawn, and thus cannot properly authorize the instrument's conversion to an ACH debit. One commenter noted that for credit card checks and some other instruments, the account contained in the Magnetic Ink Character Recognition (MICR) line is not an account that is reachable through the ACH processes at the Receiving Depository Financial Institution (RDFI), meaning that, in every case, the ACH entry will be returned.

We have considered all of these comments and also the passage of Check 21, which will become effective on October 28, 2004, in deciding not to proceed with the proposal to convert additional instruments. At the time the NPRM was published, Check 21 had not yet been enacted. The Financial Management Service (FMS) believes that Check 21 presents an alternative to check conversion that may make possible many of the same benefits and efficiencies of check conversion without raising the issues identified by commenters. Accordingly, as we continue our efforts to move to an all-electronic environment for the processing of payments and collections, we will be evaluating the use of check conversion, substitute checks and, ultimately, electronic image presentment, for all items that are received.

In the NPRM, we proposed to allow agencies to originate an ACH debit entry in order to collect a service fee related to an RCK entry, if notice of the fee is given to the Receiver before the agency accepts the Receiver's check. We received 7 comments agreeing, and 14 comments disagreeing with this proposal. All credit unions that commented agreed with this proposal. Two banks agreed with this proposal, while five disagreed. All professional and trade organizations opposed the proposal. The opposing commenters noted that NACHA had considered a ''notice equals authorization'' approach and had determined that this approach raised significant issues. Accordingly, the ACH Rules require explicit authorization to collect a service fee related to an RCK entry. Commenters also pointed out that the NPRM, if adopted, would create another discrepancy from ACH Rules. Some commenters stated that state attorneys general are responding to consumer complaints regarding check conversions and that the proposal would likely generate additional consumer complaints. After considering the merits of these comments, we have decided not to proceed with this proposal.

Revised Accounts Receivable Disclosure

We are amending Part 210 to shorten the disclosure that agencies must provide for accounts receivable check conversion because the existing disclosure is too lengthy to be included on many invoices and remittance documents. We received 17 comments on this proposal. Eight commenters agreed with the proposal and 9 commenters disagreed with the proposal. Those who disagreed voiced concern that the public is not yet knowledgeable and comfortable with the check conversion process. They suggested that more explanation is better than less. One commenter that supported the change stated that the ''proposed language seems to address in plain language what [check conversion] would do with the customer's check.'' We agree that more work is required to educate the public regarding check conversion. To that end, FMS has joined NACHA's Check Conversion Education Coalition, which is working to advance public education. However, we also believe that the disclosure need not be lengthy to be clear. To the contrary, as one commenter noted: ''The current disclosure is too long and the consumer is probably not reading it.'' We are adopting this proposal without substantive change.

Expanded Accounts Receivable Check Conversion Applications

We are amending Part 210 to allow agencies to convert checks using accounts receivable check conversion rules in certain circumstances that fall outside typical accounts receivable and point-of-purchase settings. Our proposal addressed situations in which agencies accept checks in unusual circumstances, such as when Army pay officers travel to remote, off-base locations in order to cash checks for soldiers. In those situations, pay officers cannot bring along the necessary equipment to scan and convert checks. Thus, pay officers cannot convert these checks using point-of-purchase check conversion. However, neither does the acceptance of checks in these circumstances constitute an accounts receivable (lockbox) setting, meaning that these checks cannot be converted using accounts receivable check conversion either. Similarly, National Park Service rangers collect park entrance fees at park entrances where check conversion equipment cannot always be used because there is not adequate enclosed and protected space, or proper connectivity. In some other situations, agency employees accept checks but do not have authority to process those checks. For example, U.S. Customs agents may be required to accept check payments incident to their inspection duties, but in some cases these agents don't have authority to process the payments. In all of these circumstances, checks are received in situations that don't fall within the conventional meaning of a lockbox or an accounts receivable setting, but it is not possible to scan and return the voided check, as required in the rules governing point-of-purchase (POP) entries. We therefore proposed to amend Part 210 to permit the conversion of checks presented in these kinds of circumstances using the rules governing accounts receivable check conversion.

We received 19 comments on this proposal. Four commenters expressed full support for the proposal, 3 commenters either conditionally supported or partially opposed the proposal, and 12 commenters opposed the proposal. The primary concern of the commenters who opposed or expressed reservations regarding the proposal was that the expansion of circumstances in which checks may be converted could result in the conversion of additional business checks to ACH entries. Commenters noted that agencies convert business checks using the Cash Concentration or Disbursement (CCD) Standard Entry Class, and voiced concern that check conversion using this format would confuse Receivers and RDFIs. Commenters expressed concern over the conversion of additional business checks to ACH debits and described the difficulty RDFIs experience in distinguishing these entries from other CCD debit entries. They commented that converted business checks require unique processing by these RDFIs. Some commenters also noted their concern that this proposal represented another deviation from the ACH Rules.

The great majority of checks received in the situations we are seeking to address are consumer checks, in which case the checks will be converted using the ARC standard entry class code. We do not plan to begin converting new collection flows with business checks. When Check 21 becomes effective, we will consider using either a substitute check or an electronic image to process these items.

B. Reclamations; Misdirected Payments

We are amending several of the reclamation provisions of Part 210, as

discussed below. We are not proceeding with the proposal to amend Part 210 to provide an exception to the general rule that an RDFI is liable to the Federal government for all post-death benefit payments unless the RDFI has the right to limit its liability. This proposal was intended to recognize that in a small number of situations, an agency may properly issue a payment after the death of the recipient and may not wish to reclaim that payment. The proposal would have allowed agencies to choose not to attempt to recover certain post-death payments to which the recipient is entitled, and to relieve RDFIs of liability for those payments. Six commenters agreed with the proposal and four commenters disagreed with the proposal. A concern noted by commenters was that financial institutions should not be required to determine eligibility for Federal payments.

The proposal would not have allowed, or required, financial institutions to determine a recipient's eligibility for a Federal payment. However, it is clear from the comments that this proposal created significant confusion for RDFIs with respect to their role in determining to which post-death payments a deceased recipient is entitled. In light of the small number of situations in which agencies do not seek to reclaim post-death benefit payments, we have decided not to proceed with this proposed amendment.

We have also determined not to proceed with the proposed amendment to Part 210 that would have required RDFIs to notify an account owner of receipt of a notice of reclamation ''promptly'' rather than ''immediately.'' We received seven comments on this proposal. Three credit unions and two banks agreed with the proposal, but observed that most financial institutions already notify account holders as soon as possible. Two government agencies were critical of the proposed change. One commenter felt that the term ''promptly'' is too vague and that a specific deadline should be provided.

Although the intent of the proposal was to reduce unnecessary burden on financial institutions, a review of the comments suggests this change could be a source of confusion and debate among agencies and financial institutions as to what period of time constitutes prompt notification. Accordingly, we have decided not to adopt this change.

Use of R15 or R14 Return Reason Code

We are amending Part 210 to provide that an RDFI that returns a payment using return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased) is deemed to have satisfied the requirement to notify an agency of the death of a payment recipient if the RDFI learns of the death from a source other than notice from the agency. However, we are not proceeding with the proposal to require financial institutions that learn that an account holder has died to return any subsequent Federal benefit payments using an R15 or R14 code.

Under Part 210, a financial institution that learns of the death of a recipient from a source other than the agency is required to notify the agency of the death. Also, a financial institution is required to return any Federal benefit payment received after the institution learns of the death of the recipient. *See* 31 CFR 210.10(a). However, Part 210 currently does not specify what ACH return reason code financial institutions must use in effecting these returns. In some cases, financial institutions use an R02 (Account Closed), or other non-death code, whereas in other cases financial institutions use an R15 or R14 code. Most agencies that receive payments returned with an R15 code automatically stop payments to the recipient and begin an investigation. In contrast, when a payment is returned using an R02 or other non-death code, agencies may only temporarily suspend the payment rather than terminating further payments to the recipient. Thus, the use of the R02 or other non-death code to return a payment made to a deceased recipient may result in further payments being issued to the deceased beneficiary, creating a risk of loss of additional public funds. To reduce the potential for such losses, we proposed to require financial institutions to use an R15 or R14 code when they return post-death payments.

We received 9 comments on this proposal that supported the proposal and 10 comments that opposed the proposal. Those opposing the proposal stated that many financial institutions have systems in place to automatically generate an R02 code when an account has been closed for any reason, whether due to the account holder's death or for another reason. Therefore, complying with this proposal would require substantial systems changes at great cost.

Rather than finalize the amendment as proposed, we are amending Part 210 to provide that the use of an R15 or R14 code will satisfy the financial institution's obligation to notify the agency. A financial institution may use a code other than R15 or R14 to effect these returns, but in that case the financial institution will still have the obligation to separately notify the agency of the recipient's death. FMS will revise the *Guide to Federal Government ACH Payments and Collections* (Green Book) to encourage financial institutions to use return Reason Code R15 or R14 if the financial institution learns of the death from a source other than the agency. By using one of these codes, the financial institution will satisfy both the requirement to return post-death payments and the requirement to notify the agency of the death of the recipient.

Misdirected Federal Payments

We are amending Part 210 to provide that if an RDFI becomes aware that an agency has directed a payment to the wrong account, the RDFI shall notify the agency, and that the origination of a Notification of Change (NOC) entry or the return of the funds with an appropriate return reason code constitutes such notice.

On rare occasions, a Federal payment is directed to an account that does not belong to the entitled payee because, for example, the payee mistakenly provided an incorrect account and/or routing number to the paying agency. FMS recognizes that RDFIs may rely on the account number alone in posting a payment, and that RDFIs have no obligation to verify that the payee name matches the name of the account holder on the RDFI's records. However, in some cases, the owner of an account to which a Federal payment was erroneously delivered has brought the error to the attention of the RDFI. The RDFI, rather than notifying the agency, has removed the funds from the account to which they were credited and credited the funds to the account of the intended payee, based on the payee name and/or the individual identification number in the ACH information accompanying the payment. When an RDFI decides to transfer a Federal payment to an account other than the account indicated in the ACH payment information, it does so at its own risk and may be liable to the issuing agency if the RDFI's judgment regarding the intended payee is incorrect and there is a resulting loss to the agency. Moreover, when this approach is taken, and the RDFI does not in some way notify the agency that originated the payments, the agency will remain unaware of any problem and may continue to direct subsequent payments to the wrong account.

We received five comments in support of the proposal, three comments that conditionally supported the proposal and seven comments that disagreed with the proposal.

Commenters did not disagree with the importance of notifying the agency when an RDFI recredits a payment to an account number other than that contained in the ACH entry. However, several commenters indicated that it would be burdensome to have to make telephone calls or use some other non-automated way to contact the agency. These commenters expressed a preference, instead, for using the NOC process as a means of providing notice.

In light of these comments, we are amending the regulation to provide that, where appropriate, the use of an NOC entry will constitute notice to the agency. We recognize that the normal time limit for originating NOC entries is two banking days and that the financial institution is likely to learn of the misdirected payment after this deadline has passed. However, agencies do not return NOCs that they receive after the two-day cutoff, and an NOC initiated after the two-day cutoff will constitute proper notice to the agency. Alternatively, as another commenter suggested, the RDFI may return the payment to the agency with an appropriate return reason code, rather than deposit it to another account that the RDFI believes to be correct. These are not the only means of notice that an RDFI may use, but they are in all cases a sufficient means of notice.

Six Year Limit on Reclamations

We are amending Part 210 to prohibit agencies from reclaiming payments that were made more than six years prior to the date of the notice of reclamation. The only exception to this limitation would be in a situation in which the account balance exceeds the total amount of the payments that the agency would otherwise be permitted to reclaim after applying the six-year limitation.

Part 210 currently prohibits (subject to one exception) an agency from reclaiming any post-death or post-incapacity payment made more than six years prior to the most recent payment made by the agency to the recipient's account. There have been situations in which the most recent payment that an agency made to a recipient's account took place several years before the reclamation was initiated. Thus, notwithstanding the existing limitation, there have been reclamations initiated by agencies for payments made many years ago. These reclamations are difficult and time-consuming to process because neither agencies nor financial institutions retain records indefinitely, meaning that very old payment records and related account information frequently are not available.

In the NPRM, we proposed to prohibit agencies from reclaiming payments that were made more than seven years prior to the date of the notice of reclamation. We received three comments in favor of the proposed change—two from banks and one from an agency. One credit union agreed with the change, with the condition that FMS should work with NACHA to lengthen their record retention period to coincide with the FMS proposal. Nine commenters, including five banks and four payment associations, opposed to the change. Commenters supported the proposal that the lookback period begin from the date of the notice of reclamation and not the date on which the last payment was issued. However, commenters who disagreed with the proposal uniformly commented that it would not be consistent with the ACH Rule, in that the period that banks are required to retain documentation under the ACH Rules is limited to six years. On the basis of these comments, we have determined that agencies will be limited to reclaiming payments made up to six years prior to the date of the notice of reclamation, rather than seven years.

Right to Financial Privacy Act Changes

We are amending Part 210 to limit the information that agencies may request from financial institutions, in accordance with the Right to Financial Privacy Act. Part 210 currently provides that in order to limit its liability in a reclamation, a financial institution must respond to a notice of reclamation by providing the names, addresses, and ''any other relevant information'' regarding account co-owners and other persons who withdrew, or were authorized to withdraw, funds from the recipient's account after the death or legal incapacity of the recipient. 31 CFR 210.11(b)(3)(i). This information is used by paying agencies to pursue the recovery of the payments from persons who have made use of the funds but who were not entitled to them.

The information that an agency may obtain from a financial institution in connection with a reclamation is limited by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* (Financial Privacy Act). The Financial Privacy Act prohibits, subject to some exceptions, agencies from obtaining from financial institutions any information contained in or derived from the financial records of any customer, except pursuant to an administrative or judicial subpoena, a search warrant, or other method prescribed by the Act. The Financial Privacy Act contains two exceptions that permit agencies to obtain from a financial institution certain information related to an account to which an erroneous Social Security Federal Old-Age, Survivors, and Disability Insurance (SSA) benefit payment, or a benefit payment made by the Railroad Retirement Board or Department of Veterans' Affairs (VA), was sent without following the Act's procedural requirements. The exceptions permit disclosure by a financial institution of the name and address of any customer ''where the disclosure of such information is necessary to, and such information is used solely for the purpose[s] of, the proper administration of'' title II of the Social Security Act (42 U.S.C. 401 *et seq.*), the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) or benefits programs under laws administered by VA. 12 U.S.C. 3413(k), (p). These exceptions permit disclosure only of names and addresses—not of other transaction information, such as dates and times of withdrawals.

In order to clarify that the information that financial institutions are required to provide in connection with a reclamation is limited to the information specified in the Financial Privacy Act, we proposed in the NPRM to revise the wording of subsection 210.11(b)(3)(i). Treasury received five comments agreeing with this proposal and none that opposed it. We are proceeding with the amendment as proposed.

III. Section-by-Section Analysis

Section 210.6(h)

We are revising § 210.6(h) in order to provide that agencies may originate ACH debit entries using checks that are (1) received via the mail; (2) received at a dropbox; and (3) delivered in person in circumstances in which it is impossible or impractical for the agency to image and return the check at the time the check is delivered. In all cases, the disclosure set forth at Appendix C must be provided to the Receiver before the check is delivered. In situations in which the check is being delivered in person, the disclosures must be posted or handed to the Receiver.

Section 210.8(d)

We are adding a new subsection to § 210.8 in order to provide that an RDFI shall promptly notify an agency if the RDFI becomes aware that the agency has originated an ACH credit entry to an account that is not owned by the payee whose name appears in the ACH payment information. ''Promptly'' will normally mean no later than two business days after the error has come to the RDFI's attention. Although § 210.8(d) does not dictate the means of

notice, it does provide that notification may be accomplished by either originating a NOC entry through the ACH, or by returning the payment to the agency with the appropriate reason code. An RDFI that fails to provide the notice may be liable to the Federal government for loss resulting from its failure to notify the paying agency pursuant to the general liability provision of § 210.11(d).

This subsection does not impose any duty on RDFIs to verify the account numbers on incoming payments against the receiver names.

Section 210.10

We are adding a sentence to § 210.10(a) stating that the use of an R15 or R14 code will satisfy the RDFI's obligation to notify the agency after learning of the death of a recipient or beneficiary from a source other than notice from the agency. This is not the only means that an RDFI may use to provide the required notice, but it is in all cases a sufficient form of notice.

We are revising § 210.10(d) in order to amend the limitation on the age of payments that an agency may reclaim. Revised § 210.10(d) prohibits agencies from reclaiming any payment that was made more than six years prior to the date of the notice of reclamation. The only exception to this limitation is in a situation in which the account balance exceeds the total amount of the payments that the agency would otherwise be permitted to reclaim.

In addition, we are revising the wording of the first sentence of § 210.10(d) to provide that the 120-day period for initiating a reclamation begins when an agency receives ''actual or constructive knowledge'' of the death or legal incapacity. This is the standard to which financial institutions are subject as a condition of limiting their liability for a reclamation under § 210.11. Also, the second sentence of § 210.10(d) has been reworded in order to make it more clear that a notice of reclamation applies only to the type of payments which are the subject of the notice, and does not preclude reclamation actions by other agencies that may have issued payments to the recipient or by the same agency with respect to a different type of payment issued to the recipient. For example, the Social Security Administration issues two different types of benefit payments: SSA payments and Supplemental Security Income (SSI) payments. Some recipients receive both of these types of benefit payments. A notice of reclamation regarding SSA payments is separate from, and does not affect the potential liability of a financial institution under, a notice of reclamation for SSI payments issued to the same recipient.

Section 210.11

We are revising § 210.11 to limit the information that an RDFI is required to provide in order to limit its liability in a reclamation. First, the information regarding withdrawers and co-owners is limited to the name and address of these individuals. Second, the information is to be provided only in cases involving the reclamation of SSA benefit payments, or benefit payments certified by the Railroad Retirement Board or Department of Veterans' Affairs.

Section 210.14

We are correcting an error in § 210.14 by changing the word ''direct'' to ''directed.''

Appendix C

We are amending Appendix C to the regulation by shortening the disclosure that agencies must provide in connection with ACH debit entries they originate pursuant to § 210.6(h).

IV. Procedural Requirements

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Executive Order 12866

The rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. The changes to the regulation related to check conversion will not result in significant costs for individuals or financial institutions affected by the changes, including financial institutions that are small entities. The changes to the regulation related to reclamations will generally reduce costs for financial institutions affected by the changes. The changes to the regulation related to notice of misdirected payments will involve minimal costs to financial institutions, particularly since an automated means of notice may be used, and therefore will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the 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 the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the 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. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Executive Order 13132—Federalism Summary Impact Statement

Executive Order 13132 requires agencies, including the Service, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has federalism implications. Under the Order, a regulation has federalism implications if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' In the case of a regulation that has federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

In general, the Executive Order requires the agency to adhere strictly to Federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 31 CFR Part 210

Automated ClearingHouse, Electronic funds transfer, Financial Institutions, Fraud, Incorporation by reference.

Authority and Issuance

■ For the reasons set forth in the preamble, we are amending part 210 of title 31 of the Code of Federal Regulations as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARINGHOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. Revise § 210.6(h) to read as follows:

§ 210.6 Agencies.

* * * * *

(h) *Accounts receivable check conversion.* (1) *Conversion of consumer checks.*—An agency may originate an Accounts Receivable (ARC) entry using a check drawn on a consumer account that is received via the mail or at a dropbox, or that is delivered in person in circumstances in which the agency cannot contemporaneously image and return the check. The notice and authorization requirements of ACH Rules 2.1.4 and 3.6.1 shall be met for an ARC entry only if an agency has provided the Receiver with the disclosure set forth at appendix C to this part.

(2) Conversion of business checks. An agency may originate an ACH debit using a business check that is received via the mail or at a dropbox, or that is delivered in person in circumstances in which the agency cannot contemporaneously image and return the check. The agency shall use the CCD SEC code for such entries, which shall be deemed to meet the requirements of ACH Rule 2.1.2 if the agency has provided the disclosure set forth at appendix C to this part. For purposes of ACH Rules 3.10 and 4.1.1, authorization shall consist of a copy of the notice and a copy of the Receiver's source document.

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■ 3. Add a new paragraph (d) to § 210.8 to read as follows:

§ 210.8 Financial institutions.

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(d) *Notice of misdirected payment.* If an RDFI becomes aware that an agency has originated an ACH credit entry to an account that is not owned by the payee whose name appears in the ACH payment information, the RDFI shall promptly notify the agency. An RDFI that originates a Notification of Change (NOC) entry with the correct account and/or Routing and Transit Number information, or returns the original ACH credit entry to the agency with an appropriate return reason code, shall be deemed to have satisfied this requirement.

■ 4. Amend § 210.10 by revising paragraphs (a) and (d) to read as follows:

§ 210.10 RDFI liability.

(a) *Full liability.* An RDFI shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of a recipient or the death of a beneficiary unless the RDFI has the right to limit its liability under § 210.11 of this part. An RDFI shall return any benefit payments received after the RDFI becomes aware of the death or legal incapacity of a recipient or the death of a beneficiary, regardless of the manner in which the RDFI discovers such information. If the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency issuing payments to the recipient, the RDFI shall immediately notify the agency of the death or incapacity. The proper use of the R15 or R14 return reason code shall be deemed to constitute such notice.

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(d) *Time limits.* An agency that initiates a request for a reclamation must do so within 120 calendar days after the date that the agency first has actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary. An agency may not reclaim any post-death or post-incapacity payment made more than six years prior to the date of the notice of reclamation; provided, however, that if the account balance at the time the RDFI receives the notice of reclamation exceeds the total amount of post-death or post-incapacity payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all post-death or post-incapacity payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity to act on the notice (not to exceed one business day).

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■ 5. Amend § 210.11 by revising paragraph (b)(3)(i) to read as follows:

§ 210.11 Limited liability.

* * * * *

(b) *Qualification for limited liability.*

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(3)(i) In cases involving the reclamation of Social Security Federal Old-Age, Survivors, and Disability Insurance benefit payments, or benefit payments certified by the Railroad Retirement Board or the Department of Veterans' Affairs, provide the name and last known address of the following person(s):

(A) The recipient and any co-owner(s) of the recipient's account;

(B) All other person(s) authorized to withdraw funds from the recipient's account; and

(C) All person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

* * * * *

■ 6. Amend § 210.14 by revising paragraph (a) to read as follows:

§ 210.14 Erroneous death information.

(a) Notification of error to the agency. If, after the RDFI responds fully to the notice of reclamation, the RDFI learns that the recipient or beneficiary is not dead or legally incapacitated or that the date of death is incorrect, the RDFI shall inform the agency that certified the underlying payment(s) and directed the Service to reclaim the funds in dispute.

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■ 7. Revise appendix C to part 210 to read as follows:

Appendix C to Part 210—Standard Disclosure for Accounts Receivable Conversion—Notice

Notice to Customers Making Payment by Check

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times [and we will charge you a one-time fee of $__, which we will also collect by EFT].

Note: This disclosure must be conspicuous. This means that it should be printed in reasonably large typeface. If this disclosure is combined with other information, it should be set off by contrasting color, by surrounding it with a box, or by using other means to ensure that it is prominently featured.

Dated: March 15, 2004.

Richard L. Gregg,

Commissioner.

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