

Proposed Rules

Federal Register

Vol. 78, No. 237

Tuesday, December 10, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Regulation J; Docket No. R-1473]

RIN 7100-AE06

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire; Time of Settlement by a Paying Bank for an Item Received from a Reserve Bank

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board of Governors (Board) is requesting comment on proposed amendments to subpart A of its Regulation J, *Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire*. The proposed rule would permit the Federal Reserve Banks (Reserve Banks) to require paying banks that receive presentment of checks from the Reserve Banks to make the proceeds of settlement for those checks available to the Reserve Banks as soon as one half-hour after receipt of the checks. The proposed rule would also permit the Reserve Banks to obtain settlement from paying banks by as early as 8:30 a.m. Eastern time for checks that the Reserve Banks present. These proposed amendments to Regulation J are necessary to implement the proposed method for posting debits and credits to banks' Federal Reserve accounts to measure daylight overdrafts under the Federal Reserve Policy on Payment System Risk (PSR policy), as proposed in Docket No. OP-1472, elsewhere in the **Federal Register**.

DATES: Comments must be submitted by February 10, 2014.

ADDRESSES: You may submit comments, identified by Docket No. R-1473, by any of the following methods:

- Agency Web site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at

- <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Email: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- FAX: (202) 452-3819 or (202) 452-3102.

- Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

Susan V. Foley, Senior Associate Director (202) 452-3596, Samantha J. Pelosi, Manager (202) 530-6292, Edith Collis, Senior Financial Services Analyst (202) 453-3638, Division of Reserve Bank Operations and Payment Systems; or Kara Handzlik, Counsel (202) 452-3852, Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart A of Regulation J, *Collection of Checks and Other Items by Federal Reserve Banks*, governs the collection of checks by the Reserve Banks and applies to all parties interested in an item handled by any Reserve Bank. Among other things, the subpart specifies the time and manner in which paying banks must settle for items presented to them by the Reserve Banks. The subpart is supplemented by the Reserve Banks' Operating Circular 3, *Collection of Cash Items and Returned Checks*, which provides more specific terms and conditions under which Reserve Banks will handle checks and

other cash items and noncash items.¹ The Board's Regulation CC, *Availability of Funds and Collection of Checks*, also governs the collection, presentment, and return of checks, as do the provisions of the Uniform Commercial Code (UCC), as adopted in a state, to the extent those provisions are not inconsistent with Regulation J.² Under the UCC, a paying bank generally will be accountable for the amount of a check if the paying bank does not settle for or return the check (or send notice of dishonor) before midnight of the banking day on which the paying bank received the check.³ A paying bank that has settled for a check before midnight of the banking day on which it received the check, nonetheless, may avoid accountability for the check by returning the check (or sending notice of dishonor) before midnight of the next banking day (the "midnight deadline").⁴

Regulation J adopts similar rules for checks presented by Reserve Banks. Under § 210.9(b)(1), a paying bank must, on the day it receives the check, settle for the check by the close of Fedwire Funds Service on that day, or return the check by the later of the close of its banking day or the close of Fedwire (both of which are earlier than the UCC deadline) in order to avail itself of the ability to return the check and revoke settlement within the midnight deadline under the UCC.⁵ If a paying bank settles with a Reserve Bank for a check on the day that the Reserve Bank presents the

¹ Operating Circular 3 is available at www.frb-services.org/regulations/operating_circulars.html.

² 12 CFR part 229.

Article 4 of the UCC, as adopted by each state, governs the check collection process.

³ UCC § 4-302(a). Under the UCC, a "banking day" is the part of a day that a depository institution is open to the public for carrying on substantially all of its banking functions. UCC § 4-104. An institution may treat items received after a cutoff hour of 2:00 p.m. local time or later as being received on the next banking day. UCC § 4-108. For example, if a paying bank establishes a cutoff hour of 2:00 p.m. local time and a presenting bank, including a Reserve Bank, presents an item to the paying bank at 3:00 p.m. local time Monday, the paying bank may consider an item to be received on its Tuesday banking day.

⁴ UCC § 4-301(a). Section 229.30(c) of the Board's Regulation CC extends the UCC midnight deadline (and Regulation J return deadline) to the time of dispatch of the return or notice for expeditious means of delivery (generally those that would result in receiving institution's receipt of the return or notice before the cutoff hour on the receiving institution's next banking day after the otherwise applicable midnight deadline). 12 CFR 229.30(c).

⁵ 12 CFR 210.9(b)(1).

check to the paying bank, the paying bank may revoke settlement of a check if it returns the check by midnight of the next banking day. For purposes of determining whether a paying bank will be subject to any applicable overdraft charges under the PSR policy, § 210.9(b)(2)(i) of Regulation J states that the proceeds of the paying bank's settlement must be made available to its administrative Reserve Bank by the latest of (A) the next clock hour that is at least one hour after the paying bank receives the item; (B) 9:30 a.m.; or (C) such later time as provided in the Reserve Banks' operating circulars.⁶ Under this provision, 9:30 a.m. is the earliest possible time of day by which the paying bank would be required to settle for an item in order to avoid overdraft charges, and there must be at least one hour between the time the item is presented to the paying bank and the time the paying bank settles for the item. For example, if a Reserve Bank presents an item by 8:00 a.m., then the paying bank would be required to settle for the item at 9:30 a.m., unless a later settlement time were called for in the Reserve Banks' operating circulars. (Section 210.12(i) of Regulation J provides that recipients of returned checks must settle with Reserve Banks in the same manner and by the same time as checks presented for payment.)

In accordance with § 210.9(b), section 12.2 of the Reserve Banks' Operating Circular 3 sets forth 11:00 a.m. as the earliest settlement time (later than the 9:30 a.m. set forth in Regulation J). Under section 12.2, the proceeds of the paying bank's settlement must be available to its administrative Reserve Bank by the later of 11:00 a.m. or the next clock hour that is at least one hour after the paying bank receives the item, but no later than 3:00 p.m. local time of the paying bank.

II. Proposed Amendments

Separately from this notice, the Board is proposing changes to the PSR policy.⁷ The proposed changes relate to the Board's procedures for posting debit and credit entries to depository institutions' Federal Reserve accounts for automated clearing house (ACH) debit and commercial check transactions.

⁶ Section 210.9(b)(3)(i) sets forth similar times of day if the paying bank closes voluntarily on a Reserve Bank banking day. Section 210.9(b)(4)(i) sets forth analogous times if the paying bank receives an item on a banking day on which the Reserve Bank is closed, i.e., a business day that is not a banking day for the Reserve Bank. All times are stated in Eastern time, unless otherwise specified.

⁷ The Board's current policy on payment system risk is available at www.federalreserve.gov/paymentsystems/psr_policy.htm.

Therefore, the Board is proposing changes to § 210.9(b) of Regulation J to conform to the portions of the proposed changes to the PSR policy that relate to the Reserve Banks' posting practices for debits to paying banks' accounts for check presentments. Specifically, the Board proposes to permit the Reserve Banks to require a paying bank to settle for an item presented by a Reserve Bank as soon as one half-hour after it receives the item from the Reserve Bank and by as early as 8:30 a.m., in order to avoid overdraft charges. The settlement timeframe to preserve the right to return the check (close of Fedwire) would not be affected.

The Board proposes that § 210.9(b)(2)(i) be revised to state that the paying bank shall settle for an item by the latest of (A) the next clock hour or clock half-hour that is at least one half-hour after the paying bank receives the item; (B) 8:30 a.m.; or (C) such later time as provided in the Reserve Banks' operating circulars.⁸ For example, if the Reserve Banks present an item by 8:00 a.m., then the paying bank would be required to settle for the item at 8:30 a.m. to avoid overdraft charges, unless a later settlement time were provided for in the Reserve Banks' operating circular. The Board proposes similar changes in §§ 210.9(b)(3)(i) and (b)(4)(i).

A. Half-Hour Window Between Presentment and Settlement

The Board adopted the current one-hour window between presentment and settlement in 1992.⁹ At that time, the Board reasoned that decreasing to one hour the amount of time a paying bank has to examine the checks on the day of presentment and decide whether to settle for or return them would not affect the cash letter (batches of checks) verification processes of most institutions. The Board noted that, prior to the amendments, paying banks had to settle for or return the checks by the close of business, which permitted only limited verification of the cash letters. For example, a paying bank could verify that a cash letter had been received, but likely could not examine individual checks prior to settling for the cash letter by the close of business. Paying banks generally did not examine checks individually until after the close of business on the day of presentment or during the following day. Therefore the Board determined that the one-hour period between the paying bank's

⁸ The Reserve Banks would modify paragraph 12.2 of Operating Circular 3 to eliminate 11:00 a.m. as the earliest posting time.

⁹ See 57 FR 46950 (Oct. 14, 1992).

receipt of and settlement for the checks was sufficient.¹⁰

When the Board adopted the one-hour window between presentment and settlement in 1992, depository institutions handled most checks in paper form. The Board believes that several technological and operational developments since that time justify requiring paying institutions to settle as soon as one half-hour after presentment. In the wake of the Check Clearing for the 21st Century Act of 2003 (Check 21 Act), banks now handle most checks electronically.¹¹ The Reserve Banks now present virtually all (over 99.9 percent) checks to paying banks electronically. Electronic delivery of checks between Reserve Banks and paying banks, and computerized handling of those checks within institutions, should facilitate paying banks' ability to verify the receipt of cash letters sooner than when presentment of checks was done predominantly in paper form, such that one half-hour between an institution's receipt of checks from the Reserve Banks and the institution's settlement with the Reserve Banks for the checks should be sufficient.

The Board requests comment on whether one half-hour between receipt of checks by a paying bank and the paying bank's settlement is a sufficient amount of time for a paying bank to perform a limited verification of cash letters and determine whether to settle for or return the cash letter. Alternatively, the Board requests comment on whether a shorter period of time between presentment and settlement would be appropriate (for example, fifteen minutes).

The Board also proposes to define "clock half-hour" as a new term in § 210.2(p)(2) to mean a time that is on the half-hour (e.g., 1:30 or 2:30). Section 210.2(p), which the Board proposes to redesignate as § 210.2(p)(1), currently defines the term "clock hour" as a time that is on the hour (e.g., 1:00 or 2:00).

B. Earliest Settlement Time at 8:30 a.m.

In 1997, the Board revised § 210.9(b) to explicitly refer to 9:30 a.m. (rather than one hour after the opening of Fedwire) as the earliest time a paying bank could be required to settle for an item. This revision to § 210.9(b) was intended to ensure the earliest settlement time for checks remained unchanged when the scheduled opening of Fedwire moved from 8:30 a.m.¹²

¹⁰ *Id.* at 46951.

¹¹ Public Law 108-100, 117 Stat. 1177 (codified at 12 U.S.C. 5001-5018) (2003). The act went into effect on October 28, 2004.

¹² 62 FR 48166, 48169 (Sept. 15, 1997). Today, the Reserve Banks' Fedwire opening hour for a given

Depository institutions will need to have funding available by 8:30 a.m. to settle for checks presented under the proposal. Institutions may fund their accounts by holding sufficient balances overnight, arranging for funding before the settlement time, or incurring daylight overdrafts in their Federal Reserve accounts (if eligible). The Reserve Banks now pay interest on institutions' Federal Reserve account balances, thereby reducing institutions' opportunity cost (i.e., loss of interest) associated with holding higher Federal Reserve account balances overnight.¹³ Although an institution cannot know the exact value of check presentments it will receive on a given day, it should, based on past trends, be able to predict within a reasonable margin of error an approximate amount it expects to receive and to hold balances sufficient to cover that amount. In addition, the current PSR policy, implemented in 2011, allows eligible institutions to collateralize their daylight overdrafts, which would reduce or eliminate any daylight overdraft fees associated with the proposed posting rule change. For each two-week reserve maintenance period, eligible depository institutions also receive a \$150 fee waiver, reducing the burden on institutions that might incur small amounts of uncollateralized daylight overdrafts resulting from the proposed posting rule change.¹⁴

The posting rules were last updated in 2002, well before the Reserve Banks' check processing became almost 100 percent electronic. Thus the proposed change better aligns with today's electronic check-processing environment in which about 90 percent

of checks, on average, are available to be presented by 8:00 a.m. and prompt settlement is possible for the majority of the value of check activity.

The Board requests comment on whether the Reserve Banks should be permitted to obtain settlement from a paying bank for a check by as early as 8:30 a.m. The Board also requests comment on the feasibility of settlement before 8:30 a.m., given the current electronic check-processing environment, and whether an earlier posting time would even better align presentment to settlement.

C. Effective Date

The effective date for these proposed changes would correspond to the effective date of the changes the Board is proposing to the PSR policy, the final versions of which the Board would expect to announce contemporaneously. The Board proposes that the changes to the PSR policy, and thus these conforming changes to Regulation J, would become effective six months after publication of the final changes in the **Federal Register**. The Board requests comment on whether six months between publication of the Regulation J final rule and the rule's effective date provides paying banks with sufficient time to make any necessary operational changes. Alternatively, the Board also requests comment on whether a shorter period, such as three months, would be sufficient time.

III. Competitive Impact Analysis

The Board conducts a competitive impact analysis when it considers a rule or policy change that may have a substantial effect on payment system participants, such as that being proposed for the posting of ACH debit and commercial check transactions. Specifically, the Board determines whether there would be a direct or material adverse effect on the ability of other service providers to compete with the Federal Reserve due to differing legal powers or due to the Federal Reserve's dominant market position deriving such legal differences.¹⁵ The Board believes that there are no adverse effects resulting from the proposed changes due to legal differences.

Under Regulation J, the Reserve Banks have the legal and operational ability to debit paying banks for paper presentments of checks earlier in the day than private-sector collecting banks and, in turn, can pass credits for deposited checks earlier in the day without incurring significant intraday float. To obtain settlement from paying

banks for paper checks presented, Regulation J permits the Reserve Banks to debit directly the account of the paying bank or its designated correspondent.¹⁶ In contrast, a paying bank settles for checks presented by a private-sector bank for same-day settlement by sending a Fedwire Funds transaction to the presenting bank or by another agreed upon method.¹⁷ In addition, the Reserve Banks have the right to debit the account of the paying bank for settlement of checks on the next clock hour that is at least one hour after presentment, whereas a private-sector collecting bank may not receive settlement until the close of Fedwire on the day of presentment.¹⁸

In March 1998, the Board requested comment on whether these legal differences between the Reserve Banks and the private sector provided the Reserve Banks with a competitive advantage. Most commenters acknowledged that the regulation governing the timing and settlement favor Reserve Banks over private-sector collecting banks. None of the commenters, however, suggested an alternative that eliminated the disparity while maintaining a balance between the needs of both the paying bank and collecting banks to control some part of the settlement process.¹⁹

Additionally, under Regulation J, Reserve Banks can obtain same-day settlement for checks presented to a paying bank before the paying bank's cutoff hour, generally 2:00 p.m. local time or later.²⁰ The same-day settlement rule for private-sector banks, however, requires that they make their presentments by 8:00 a.m. local time to ensure that they receive same-day settlement by Fedwire without being assessed presentment fees. In March 1998, the Board also requested comment on the effect of the difference in presentment deadlines for Reserve Banks and private-sector banks. Most commenters did not believe that the six-hour difference in presentment deadlines was a significant impediment to the ability of private-sector banks to compete with the Reserve Banks.

Based on the analysis of the comments received, the Board concluded then and continues to believe that these legal disparities do not materially affect the efficiency of or competition in the check collection

Reserve Bank banking day is even earlier than it was in 1997; in 2004 it moved to 9:00 p.m. on the preceding calendar day. For example, for the Reserve Banks' banking day of Tuesday, Fedwire opens at 9:00 p.m. on Monday. See www.newyorkfed.org/banking/circulars/11589.html.

¹³ 12 CFR 204.10. The Board notes that Federal Home Loan Banks (FHLBs) are not eligible to earn interest on balances in Federal Reserve accounts, but can act as pass-through correspondents. Per section 204.10 of Regulation D, in cases of balances maintained by pass-through correspondents that are not interest-eligible institutions, Reserve Banks shall pay interest only on the balances maintained to satisfy a reserve balance requirement of one or more respondents, and the correspondents shall pass back to its respondents interest paid on balances in the correspondent's account (12 CFR 204.10).

¹⁴ The Board notes that voluntary collateralization of daylight overdrafts and the \$150 fee waiver are not available to Edge and agreement corporations, bankers' banks that have not waived their exemption from reserve requirements, limited-purpose trust companies, and government-sponsored enterprises (including FHLBs) and international organizations. These types of institutions do not have regular access to the discount window and, therefore, are expected not to incur daylight overdrafts in their Federal Reserve accounts.

¹⁵ Federal Reserve Regulatory Service, 7-145.2.

¹⁶ 12 CFR 210.9(b)(5).

¹⁷ 12 CFR 229.36(f)(2).

¹⁸ 12 CFR 210.9(b)(2); 12 CFR 229.36(f)(2).

¹⁹ The request for comment and the subsequent notice of the Board's decision can be found, respectively, at 63 FR 12700 (March 16, 1998) and 63 FR 68701 (December 14, 1998).

²⁰ 12 CFR 210.9(b)(1).

system. The costs to paying banks and their customers associated with reducing any remaining legal disparities would outweigh any payment system efficiency gains.

In addition, the Check 21 Act facilitated the transformation of the nation's check collection system from one that was largely paper-based to one that is virtually all electronic, based on agreements between the parties. Institutions may determine, as part of the agreements, the presentment and settlement deadlines. Thus, private-sector presenting banks may be able to obtain settlement times equivalent to the Federal Reserve's check posting rule through clearinghouse rules or individual agreements with paying banks. Furthermore, for depository and paying banks that opt to use a check clearinghouse rather than directly exchange paper or electronic checks, private-sector clearinghouses have the option to use the Reserve Banks' National Settlement Service (NSS) to effect settlement of checks or may settle by directing their members to initiate funds transfers over the Reserve Banks' Fedwire Funds Service.²¹ NSS's operating hours extend from 8:30 a.m. to 5:00 p.m., while Fedwire Funds operating hours begin at 9:00 p.m. the previous calendar day and end at 6:30 p.m. The Reserve Banks today settle current check transactions (including corrections and adjustments associated with check-processing) from 11:00 a.m. to 6:30 p.m. within the Fedwire Funds operating day.

Under the proposed posting rules, the bulk of the Reserve Banks' postings of credits to senders and debits to paying banks for commercial check transactions may shift to earlier in the day. Depending on the number of checks an institution sends to the Reserve Banks and that it receives from the Reserve Banks, the institution may receive either a "net credit" or a "net debit" earlier in the day. As a result, the earlier posting of commercial check transactions may be viewed as more or less attractive, depending on changes to balances.

Given the factors discussed above, the Board does not believe that the proposed changes to Regulation J would have any direct adverse effect on other service providers to compete effectively

²¹ NSS is a multilateral settlement service owned and operated by the Reserve Banks. The service is offered to depository institutions that settle for participants in clearinghouses, financial exchanges, and other clearing and settlement groups. Settlement agents, acting on behalf of those depository institutions in a settlement arrangement, electronically submit settlement files to the Reserve Banks. Files are processed upon receipt, and entries are automatically posted to the depository institutions' Federal Reserve accounts.

with Reserve Banks in providing similar services.

IV. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. In this case, the proposed rule would apply to all depository institutions that receive presentment or return of checks from the Reserve Banks. Based on current information, the Board believes that the proposed rule would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). Nonetheless, an initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 in order for the Board to solicit comment. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. Statement of the Need for, Objectives of, and Legal Basis for, the Proposed Rule

These proposed amendments to Regulation J are necessary to conform the required settlement times for checks presented by Reserve Banks to the proposed method for posting debits and credits to institutions' Federal Reserve accounts to measure daylight overdrafts under the PSR policy, as proposed in Docket No. OP-1472, elsewhere in the **Federal Register**. The Board believes that the proposed posting rules better align the settlement for checks with actual deposit and presentment times, reflecting the industry's almost complete shift from paper to electronic check-processing.

The proposal would permit the Reserve Banks to require a paying bank to settle for an item by as early as 8:30 a.m. (one hour earlier than under the current rule) and would require a paying bank to settle for an item as soon as one half-hour after it receives the item from the Reserve Banks (currently, paying banks are required to settle for an item as soon as one hour after they receive the item). Subpart A of Regulation J is issued by the Board pursuant to the following sections of the Federal Reserve Act: Sections 11(i) and (j), which grant the Board general supervisory and rulemaking authority over Reserve Bank activities; section 13,

which authorizes the Reserve Banks to engage in check collection on behalf of depository institutions; and section 16(14), which authorizes the Board to make regulations concerning the transfer of funds among Reserve Banks and to require Reserve Banks to exercise the functions of a clearinghouse for depository institutions.²²

2. Small Entities Affected by the Proposed Rule

The proposed rule would affect all institutions that receive checks or returned checks handled by the Reserve Banks. The Board believes that virtually all depository institutions receive checks or returned checks handled by the Reserve Banks on at least an occasional basis. Pursuant to regulations issued by the Small Business Administration (SBA) (13 CFR 121.201), a "small banking organization" includes a depository institution with \$500 million or less in total assets. Based on data reported as of June 30, 2013, the Board believes that there are approximately 12,164 small depository institutions.

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule would permit the Reserve Banks to require a paying bank to settle for an item by as early as 8:30 a.m., instead of 9:30 a.m., and as soon as one half-hour, instead of one hour, after it receives the item from the Reserve Banks. Paying banks may choose to maintain sufficient overnight Federal Reserve account balances to fund checks debited at 8:30 a.m. The Reserve Banks' payment of interest on institutions' Federal Reserve account balances reduces paying banks' opportunity cost associated with doing so. In addition, the PSR policy allows eligible institutions to collateralize their daylight overdrafts, which would reduce or eliminate any daylight overdraft fees that may occur from the earlier settlement. Eligible institutions also receive a \$150 fee waiver for each two-week reserve maintenance period, which reduces the burden particularly for smaller institutions if small amounts of uncollateralized daylight overdrafts occur.²³ As noted earlier, under the proposed posting rules, the bulk of the Reserve Banks' postings of debits to paying institutions for commercial check transactions may shift to earlier in the day, allowing Reserve Banks to provide credits to depositing

²² 12 U.S.C. 248(i) and (j); 12 U.S.C. 342; 12 U.S.C. 248-1.

²³ As previously noted, the Board recognizes that these cost-mitigating options are not available to all institutions.

institutions earlier, thus mitigating adverse effects on depository institutions.

The Board seeks information and comment on any costs that would arise from the application of the proposed rule.

4. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Subpart C of the Board's Regulation CC (12 CFR part 229) sets forth conditions under which a paying bank must settle with a presenting bank for a check on the same day the check is presented to the paying bank in order for the paying bank to avail itself of its ability to return the check on its next banking day under the UCC. Settlement for checks presented by Reserve Banks is governed by the provisions of subpart A of Regulation J, and the same-day settlement provisions of Regulation CC do not supersede or limit the rules in Regulation J.²⁴

5. Significant Alternatives to the Proposed Rule

As noted above, the proposed rule would permit the Reserve Banks to require a paying bank to settle for an item by as early as 8:30 a.m., instead of 9:30 a.m., and as soon as one half-hour, instead of one hour, after it receives the item from the Reserve Banks. In connection with the proposed changes, the Board recognizes that an alternative to the proposed rule would be a rule that permits the Reserve Banks to require a paying bank to settle for an item at a time earlier than 8:30 a.m. The Board believes the proposed time of 8:30 a.m. achieves the Board's goal of better aligning presentment to settlement while imposing minimal costs on paying banks. The Board is seeking comment, however, on the feasibility of settlement before 8:30 a.m. and whether an earlier posting time would even better align presentment to settlement. (See discussion above in section II.B.) In addition, in lieu of proposing to permit the Reserve Banks to require a paying bank to settle as soon as one half-hour after it receives the item from the Reserve Banks, the Board could have proposed a shorter period of time, such as fifteen minutes. The Board believes the proposed time period of one half-hour promotes the Board's objective of minimizing the window between presentment and settlement to reflect technological and operational developments while continuing to provide paying banks with sufficient time to perform a limited verification of

cash letters. The Board is seeking comment on whether one half-hour between presentment and settlement is appropriate or if a shorter window would be sufficient. (See discussion above in section II.A.)

V. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). No collections of information pursuant to the PRA are contained in the proposed rule.

List of Subjects in 12 CFR Part 210

Banks, banking, Federal Reserve System.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation J, 12 CFR part 210, as follows:

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH FEDWIRE (REGULATION J)

- 1. The authority citation for part 210 is revised to read as follows:

Authority: 12 U.S.C. 248(i), (j), and 248–1, 342, 360, 464, 4001–4010, and 5001–5018.

- 2. In § 210.2, revise paragraph (p) to read as follows:

§ 210.2 Definitions.

* * * * *

(p) *Clock hour and clock half-hour.*

(1) Clock hour means a time that is on the hour, such as 1:00, 2:00, etc.

(2) Clock half-hour means a time that is on the half-hour, such as 1:30, 2:30, etc.

- 3. In § 210.9, revise paragraphs (b)(2), (b)(3), and (b)(4) to read as follows:

§ 210.9 Settlement and Payment.

* * * * *

(b) * * *

(2) *Time of settlement.* (i) On the day a paying bank receives a cash item from a Reserve Bank, it shall settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank, or return the item, by the latest of—

(A) the next clock hour or clock half-hour that is at least one half-hour after the paying bank receives the item;

(B) 8:30 a.m. Eastern Time; or

(C) such later time as provided in the Reserve Banks' operating circulars.

(ii) If the paying bank fails to settle for or return a cash item in accordance with

paragraph (b)(2)(i) of this section, it shall be subject to any applicable overdraft charges. Settlement under paragraph (b)(2)(i) of this section satisfies the settlement requirements of paragraph (b)(1) of this section.

(3) *Paying bank closes voluntarily.* (i) If a paying bank closes voluntarily so that it does not receive a cash item on a day that is a banking day for a Reserve Bank, and the Reserve Bank makes a cash item available to the paying bank on that day, the paying bank shall either—

(A) on that day, settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank, or return the item, by the latest of the next clock hour or clock half-hour that is at least one half-hour after it ordinarily would have received the item, 8:30 a.m. Eastern Time, or such later time as provided in the Reserve Banks' operating circulars; or

(B) on the next day that is a banking day for both the paying bank and the Reserve Bank, settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank by 8:30 a.m. Eastern Time on that day or such later time as provided in the Reserve Banks' operating circulars; and compensate the Reserve Bank for the value of the float associated with the item in accordance with procedures provided in the Reserve Bank's operating circular.

(ii) If a paying bank closes voluntarily so that it does not receive a cash item on a day that is a banking day for a Reserve Bank, and the Reserve Bank makes a cash item available to the paying bank on that day, the paying bank is not considered to have received the item until its next banking day, but it shall be subject to any applicable overdraft charges if it fails to settle for or return the item in accordance with paragraph (b)(3)(i) of this section. The settlement requirements of paragraphs (b)(1) and (b)(2) of this section do not apply to a paying bank that settles in accordance with paragraph (b)(3)(i) of this section.

(4) *Reserve Bank closed.* (i) If a paying bank receives a cash item from a Reserve Bank on a banking day that is not a banking day for the Reserve Bank, the paying bank shall—

(A) settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank by the close of Fedwire on the Reserve Bank's next banking day, or return the item by midnight of the day it receives the item (if the paying bank fails to settle for or return a cash item in accordance with this paragraph (b)(4)(i)(A), it shall become accountable

²⁴ See 12 CFR 210.3(f).

for the amount of the item as of the close of its banking day on the day it receives the item); and

(B) settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank by 8:30 a.m. Eastern Time on the Reserve Bank's next banking day or such later time as provided in the Reserve Bank's operating circular, or return the item by midnight of the day it receives the item. If the paying bank fails to settle for or return a cash item in accordance with this paragraph (b)(4)(i)(B), it shall be subject to any applicable overdraft charges. Settlement under this paragraph (b)(4)(i)(B) satisfies the settlement requirements of paragraph (b)(4)(i)(A) of this section.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2013.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2013-28747 Filed 12-9-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 130813710-3710-01]

RIN 0648-BD60

Gray's Reef National Marine Sanctuary Regulations and Management Plan

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: NOAA is proposing to update the regulations and management plan for Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary). The regulations would be revised to clarify the prohibition on anchoring and add an exemption to allow the use of weighted marker buoys that are continuously tended and used during otherwise lawful fishing or diving activities and that are not attached to a vessel and not capable of holding a boat at anchor. A draft environmental assessment has been prepared that includes analysis of the consequences of this proposed action. A draft management plan outlining management priorities for GRNMS for the next 5-10 years has also been prepared. NOAA is soliciting public comment on the proposed rule,

draft environmental assessment, and draft management plan.

DATES: Comments will be considered if received by February 10, 2014. A Public hearing will be held as detailed below:

- (1) January 7, 2014, 5:30-7:30 p.m., Pooler Public Library, 216 S. Rogers St., Pooler, Georgia
- (2) January 8, 2014, 5:30-7:30 p.m., Statesboro Regional Library, 124 S. Main St., Statesboro, Georgia
- (3) January 9, 2014, 5:30-7:30 p.m., Marshes of Glynn Library, 208 Gloucester St., Brunswick, Georgia

ADDRESSES: You may submit comments on this document, identified by NOAA-NOS-2013-0160, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/ #!docketDetail;D=NOAA-NOS-2013-0160, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411, Attn: Greg McFall, Superintendent.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Shortland at (912) 598-2381.

Copies of the proposed rule, draft environmental assessment, and draft management plan can be downloaded or viewed on the internet at www.regulations.gov (search for docket # NOAA-NOS-2013-0160) or at <http://graysreef.noaa.gov>. Copies can also be obtained by contacting Resource Protection Coordinator Becky Shortland, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, Georgia; or, becky.shortland@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Gray's Reef National Marine Sanctuary

NOAA designated GRNMS as the nation's fourth national marine sanctuary in 1981 for the purposes of: Protecting the quality of this unique and fragile ecological community; promoting scientific understanding of this live bottom ecosystem; and enhancing public awareness and wise use of this significant regional resource. GRNMS protects 22 square miles of open ocean and submerged lands of particularly dense and nearshore patches of productive live bottom habitat. The sanctuary is influenced by complex ocean currents and serves as a mixing zone for temperate (colder water) and sub-tropical species. The series of rock ledges and sand expanses has produced a complex habitat of caves, burrows, troughs, and overhangs that provide a solid base upon which temperate and tropical marine flora and fauna attach and flourish.

B. Need for action

The National Marine Sanctuaries Act of 1972 (NMSA; 16 U.S.C. 1431 *et seq.*) section 304(e) requires that NOAA review and evaluate, among other things, the site-specific management techniques and strategies to ensure that each sanctuary continues to fulfill the purposes and policies of the NMSA. Emerging issues, such as the effects of invasive lionfish on sanctuary resources, for example, are not adequately addressed in the 2006 plan. The new draft management plan reflects some of these emerging issues and presents management priorities for GRNMS for the next 5-10 years. These proposed regulatory changes would, in the case of the anchoring prohibition, clarify that attempting to anchor is also prohibited because deployment of anchors, even if the anchors do not set on the bottom, can result in impacts to the submerged lands. In the case of the weighted marker buoys, these proposed regulatory changes would allow the placement of weighted marker buoys used during otherwise lawful fishing or diving activities. The purpose of deployment of a weight on the bottom is for safety or convenience while conducting diving and recreational fishing activities, since anchoring is not allowed.

II. Summary of the Proposed Revisions to GRNMS Regulations

The proposed regulatory action would clarify a prohibition and add an exemption.