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: Proposed rule with request for comment.

SUMMARY: We are proposing to amend our regulation at 31 CFR part 210, which governs the use of the Automated Clearing House (ACH) system by Federal agencies (agencies). 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.

The proposed rule addresses the circumstances in which checks presented or delivered to agencies may be converted to ACH debit entries. The proposed rule also addresses issues relating to the reclamation of Federal benefit payments and the receipt of misdirected Federal payments. We are requesting comment on all aspects of the proposed rule.

DATES: Comments on the proposed rule must be received by October 20, 2003.

ADDRESSES: You can download the proposed rule at the following World Wide Web address: *http://www.fms.treas.gov/ach.* You may also inspect and copy the proposed rules at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

You may send comments on the proposed rule electronically to the following address: *210comments@fms.treas.gov.* You may also mail your comments to Stephen M. Vajs, Director, Risk Management Division, Financial Management Service, U.S. Department of the Treasury, Room 423, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: John Galligan, Program Advisor, at (202) 874–6657 or *john.galligan@fms.treas.gov;* Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fms.treas.gov;* or Donald J. Skiles, Senior Financial Program Specialist, at (202) 874–6994 or *donald.skiles@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Part 210 governs the use of the ACH system by agencies. The ACH system is a nationwide electronic fund 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 incorporates the ACH Rules adopted by NACHA, with certain exceptions.

We are issuing a proposed rule to amend part 210 in order to address the circumstances in which checks presented or delivered to agencies may be converted to ACH debit entries. In addition, the proposed rule amends several provisions of part 210 that address the reclamation of Federal benefit payments issued to deceased recipients and the receipt of misdirected Federal payments. We are requesting comment on the proposed rule.

II. Summary

A. Check Conversion

On April 11, 2002, we published a final rule that amended part 210 by permitting agencies that receive checks at points-of-purchase, dropboxes and via the mail to convert those checks to ACH debit entries. 67 FR 17895. The rule modified the ACH Rules governing check conversion to provide that presentment to an agency of a completed and signed check, following notice that the check will be converted, constitutes authorization for the conversion of the check to an ACH debit entry. The rule, which permits the conversion of both consumer and business checks, requires that agencies provide standard disclosures in connection with point-of-purchase and accounts receivable check conversion.

Since we published the final rule, we have continued to develop and implement initiatives to promote check conversion. These initiatives have demonstrated that point-of-purchase and accounts receivable check conversion can result in substantial cost-savings and efficiencies for the Federal government. However, we have identified certain barriers that our current rule poses for the wider use of check conversion by agencies. We are therefore proposing several amendments to part 210 to eliminate these barriers. The proposed amendments support the continuation of the efforts of the Financial Management Service (Service) and agencies to move to an all-electronic environment for the processing of payments and collections.

1. Revised Accounts Receivable Disclosure

Currently agencies that receive checks via the mail or at a dropbox may convert those checks to debit entries if the notice set forth at Appendix C to part 210 has been provided to the check writer. A number of agencies have indicated that the standard disclosure set forth in Appendix C is too lengthy to be included on many invoices and remittance documents. We recognize that there are space constraints on agency forms, which in many cases preclude the addition of several paragraphs of disclosure. We also believe that as check conversion and the use of electronic debits become more common, there is less of a need for very detailed disclosure. At the same time, it is important that consumers understand what is happening to their checks, particularly since an individual who sends a check to an agency is deemed to have authorized its conversion to an ACH debit on the basis of having been provided with prior notice of its conversion. We are requesting comment on whether the proposed disclosure strikes the appropriate balance between the need for a shorter notice and the need to ensure that consumers understand what is happening to their checks. We are also soliciting comment on whether the wording of the proposed notice is clear and understandable.

2. Expanded Accounts Receivable Check Conversion Applications

Currently, part 210 permits agencies to originate ACH debit entries using checks received at points-of-purchase, dropboxes and via the mail. However, agencies accept or cash checks in a broad array of circumstances that fall outside typical commercial settings, *e.g.*, retail sales locations and lockboxes. We have been asked to address a number of situations in which agencies accept or cash checks in circumstances that do not fall within the generally understood meanings of ''point-of-purchase,'' ''dropbox,'' or ''lockbox.'' For example, Army pay officers sometimes 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 the check. Similarly, some National Park Service rangers collect park entrance fees at park entrances where check conversion equipment cannot be set up because there is not electric power or adequate enclosed and protected space. Additionally, in some situations checks are collected by agency representatives as an incident to their performance of ceremonial duties,

inspections or other responsibilities. These individuals may not have the authority to process payments, or it may not be appropriate to process the payments when they are received in light of the nature of the circumstances. In all of these situations, it is not possible to scan and return the voided check as required under the point-of-purchase check conversion rules (31 CFR 210.6(g)), and we therefore have been asked whether these checks can be converted under the accounts receivable check conversion rules (31 CFR 210.6(h)).

It is unclear whether situations such as those described above are more in the nature of a point-of-purchase or a dropbox transaction. The ACH Rules define a Point-of-Purchase (POP) entry as a debit entry initiated pursuant to a single entry authorization and a source document, provided to the Originator [1] by the Receiver [2] at the point-of-purchase to effect a transfer of funds. *See* ACH Rule 13.1.42. When we amended 31 CFR 210.6(g) to address point-of-purchase check conversion, we stated that the term ''point-of-purchase'' was intended to mean ''any location where an agency accepts checks as payment in connection with a contemporaneous transaction or any location where an agency cashes checks for employees or the public.'' 67 FR 17901.

The ACH Rules define an Accounts Receivable (ARC) entry as a ''debit entry initiated pursuant to a source document provided to the Originator by the Receiver via the U.S. mail or at a dropbox location.'' When we amended 31 CFR 210.6(h) to address accounts receivable check conversion, we stated, ''A dropbox is similar to a lockbox except that a payor delivers a payment to a dropbox in person rather than mailing the payment.'' 67 FR 17901.

When we amended part 210 to address check conversion, we envisioned check conversion as occurring at on-site agency locations—either agency locations where, in the usual course of business, checks are cashed or goods or services are sold (points-of-purchase) or locations where payments for accounts receivable are routinely received. We did not necessarily intend to preclude the conversion of checks in scenarios that do not precisely fit one of these two models; rather, we had not been presented with other potential scenarios at that time.

Because it is not possible to comply with the point-of-purchase rules in converting checks in the situations discussed above, whereas it is possible to comply with the accounts receivable check conversion rules, we believe that the most reasonable approach to these situations is to treat them as accounts receivable check conversion. Under this approach, these checks would be converted using an ARC code (for consumer checks) or a Cash Concentration or Disbursement (CCD) code (for business checks), and the checks would be destroyed rather than returned to the check writer. We believe that the check writer's interests would be adequately protected by applying the accounts receivable rules because the check writer will receive prior written notice in the form of Appendix C to part 210 (with minor alterations, as appropriate) and because the physical check will be destroyed. We are requesting comment on this approach.

3. Conversion of Additional Instruments

Part 210 incorporates the restrictions imposed under ACH Rules 3.6.2 and 3.7.1 on the kinds of source documents that can be used to originate ARC and POP entries. In contrast to the ACH Rules, part 210 does permit agencies to convert business checks received at points-of-purchase, dropboxes and via the mail. However, agencies currently are not permitted to originate ACH debit entries using as a source document various other kinds of payment instruments, such as money orders, traveler's checks, certified bank checks, and credit card checks. A number of agencies routinely receive these kinds of payment instruments in addition to personal and business checks. In these instances it becomes a significant operational burden to sort these payments and process them separately. Some agencies have elected not to participate in check conversion for this reason. We are proposing to amend part 210 to eliminate the regulatory prohibition against converting to ACH debit entries certain types of payment instruments that are commonly received at lockboxes and points-of-purchase.

We recognize that there are significant operational barriers that currently prevent the conversion of money orders and similar instruments, including debit blocks or filters on the accounts on which these items are drawn. However, removing regulatory obstacles to the conversion of these instruments will enable agencies to be positioned to convert these instruments once it becomes operationally feasible to do so without the need to undertake an additional rulemaking process. Until conversion of these instruments is possible, we may use stored item images to create paper drafts of any items returned due to debit blocks or similar mechanisms and process these drafts through the check processing system. In most cases, the use of a paper draft makes possible many of the same efficiencies as check conversion (*i.e.*, elimination of paper to process and deposit, enhanced reporting, archiving of documentation, increased speed of presentment and deposit of funds). In this regard, although we are not proposing to include U.S. Treasury checks among the items eligible for conversion, legislation currently in Congress would, if enacted, treat paper drafts created from images of U.S. Treasury checks as legally equivalent to the original checks.

We are aware that authorization issues can arise in connection with converting these instruments because an individual presenting such an item to an agency does not have authority to act with respect to the account on which the check is drawn and therefore cannot authorize conversion of the item. However, we believe that the ACH Rules incorporated in part 210 provide an adequate framework to enable a Receiver to pursue recovery of an unauthorized debit to the Receiver's account.

4. Re-Presented Check Entry Service Fees

Under the ACH Rules incorporated in part 210, agencies may use a Re-presented Check (RCK) entry to electronically re-present, via the ACH Network, a consumer check that has been returned unpaid due to insufficient funds. Some agencies that originate RCK entries also wish to use the ACH Network to collect a service fee from the issuer of the returned item. To collect such a fee, agencies must obtain the consumer's explicit authorization for the debit and must initiate a separate debit entry to the consumer's account. (Part 210 and the ACH Rules prohibit the addition of any service fee to the amount of the RCK entry.) Agencies often do not find it cost effective or customer friendly to obtain a written authorization from every check writer to collect a service fee electronically because only a small percentage of checks are returned unpaid.

Regulation E, 12 CFR part 205, is the Federal Reserve's regulation governing

[1] In an ACH debit transaction, the Originator is the person or entity originating the debit entry to the account of the payor. In the transactions discussed in this section of the notice, the Originator is the agency collecting payment.

[2] In an ACH debit transaction, the Receiver is the person or entity making the payment (*i.e.*, the payor) by authorizing a debit to an account. In this document, we may refer to a person or entity making a payment to a Federal agency as a payor, a Receiver, a customer, or a consumer, as appropriate.

Electronic Fund Transfer (EFT) payments. The Official Staff Commentary on Regulation E (Commentary) states that the electronic re-presentment of a returned check is not covered by Regulation E because the transaction is originated by check. Commentary, Section 205.3, Paragraph 3(c)(1). Regulation E does apply, however, to any fee authorized by the consumer to be debited electronically from the consumer's account because the check was returned for insufficient funds. Accordingly, such a fee may be collected by ACH debit only if authorized by the consumer. The Commentary states that a consumer authorizes a one-time EFT where the consumer receives notice that the transaction will be processed as an EFT and completes the transaction. Commentary, Section 205.3, Paragraph 3(b).

Part 210 currently provides that agencies may collect a service fee by ACH debit in the case of accounts receivable and point-of-purchase entries that are returned for insufficient funds, provided that notice of the fee has been included in the required disclosure.[3] We are proposing to expand this provision 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.

B. Reclamations; Misdirected Payments

We are proposing to amend part 210 to address certain issues relating to the reclamation of Federal benefit payments and the receipt of misdirected Federal payments. The changes that we are proposing to make are:

(1) To require financial institutions that learn that an account holder has died to return any subsequent Federal benefit payments using return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased), as appropriate;

(2) To provide that financial institutions are not liable for post-death benefit payments to which the recipient was entitled;

(3) To require a financial institution that becomes aware that a Federal benefit payment was misdirected to notify the agency that sent the payment of the error;

(4) To prohibit agencies from reclaiming payments that were made more than seven years prior to the date of the notice of reclamation;

(5) To limit the information that agencies may request from financial institutions, in accordance with the Right to Financial Privacy Act; and

(6) To allow financial institutions to notify an account owner of the receipt of a notice of reclamation ''promptly'' rather than ''immediately.''

We are also making several non-substantive changes to the wording of the reclamation provisions of part 210 in order to correct typographical errors and clarify its operation.

1. Mandatory Use of R15 or R14 Return Reason Code

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 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) code, whereas in other cases financial institutions use an R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased) code. Most Federal paying 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.

We are proposing to require financial institutions to return benefit payments using an R15 or R14 code, as appropriate, if the financial institution is aware that the recipient is deceased. This requirement would not impose any additional burden on financial institutions to take steps to learn of the death of account holders, but would simply require that, in circumstances where the financial institution is aware of the death of the recipient, the R15 or R14 code be used to return payments. We are also proposing to amend the regulation to provide that a Receiving Depository Financial Institution (RDFI) that returns a payment using the R15 or R14 code 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. We believe that the use of the R15 and R14 codes is an efficient means of notifying agencies that a recipient is deceased because of the stop on subsequent payments and investigation that is automatically triggered when an agency receives an R15 returned payment. We request comment both from agencies and from financial institutions on this proposed rule change.

2. Post-Death Payments to Which Recipient Is Entitled

We are proposing 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. Currently, part 210 imposes on RDFIs partial or full liability for benefit payments received after the death or legal incapacity of a recipient. The allocation of this liability to RDFIs is based on the presumption that a post-death payment is improper because the recipient is not entitled to the payment. However, we have become aware that there are certain types of payments to which a recipient (or his or her estate) is legally entitled, and which an agency may not have the legal obligation or authority to recover, notwithstanding that the payment was issued following the recipient's death. For example, agencies sometimes issue payments that represent retroactive benefits owed to the recipient. The recipient's legal entitlement to such a payment does not necessarily end upon death.

One of the premises underlying the allocation of liability to financial institutions for payments that agencies issue to deceased recipients is that because these payments are improper, there is a loss of public funds unless the payments are recovered. We do not believe that it is equitable to impose liability on a financial institution where there is no loss of public funds because the agency that certified the payment has determined that the payment was properly issued notwithstanding its issuance following the recipient's death. Accordingly, we are proposing to amend part 210 to address these situations. In determining whether to reclaim post-death payments, we will rely on the determination of the certifying agency as to whether a recipient is entitled to a post-death payment. It is our understanding that, for the vast majority of Federal benefit payments, death does in fact end the recipient's legal entitlement to the payments. Therefore, as a practical matter, the effect of this amendment would be that financial institutions may expect that a small

[3] Any agency that seeks to collect a service fee from the issuer of a returned check must have independent authority to do so. Part 210 does not authorize the collection of a service fee, but only provides an electronic means through which such a fee can be collected if authority exists.

number of post-death payments will not be the subject of a notice of reclamation. We request comment both from financial institutions and from agencies on this proposal.

3. Misdirected Federal Payments

Although the vast majority of electronic Federal payments are delivered without incident to the intended recipient, on rare occasions a Federal payment is delivered to an account that does not belong to the entitled payee. This can occur, for example, if the payee mistakenly provides an incorrect account or routing number to the paying agency. RDFIs may rely on the account number alone in posting a payment, and have no obligation to verify that the payee name matches the name of the account holder on the RDFI's records.

In some cases, the owner of an account to which a Federal payment was erroneously delivered has brought the erroneous payment to the attention of the RDFI. Sometimes the RDFI contacts the agency that originated the payment. In other instances, rather than notifying the agency, RDFIs have handled such errors by removing the funds from the account to which they were credited and crediting 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 this approach is taken, the agency that originated the payments remains unaware of any problem, meaning that the agency may continue to direct subsequent payments to the wrong account.

The repeated delivery of payments to the wrong account, particularly where the account owner has taken steps to bring the mistake to the attention of the bank, undermines public confidence in the Federal government's use of the ACH system. We do not believe that it is unduly burdensome to require financial institutions to contact paying agencies in the small number of cases in which financial institutions are made aware that a Federal payment has been misdirected. We are requesting comment on this proposed amendment to part 210, including the means by which this notice to agencies could be most conveniently and effectively provided.

4. Seven Year Limit on Reclamations

We are proposing to amend the limitation on the age of payments that an agency may reclaim. 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, however, 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. Although these reclamations are infrequent, they are particularly difficult and time-consuming to process because neither agencies nor financial institutions retain records indefinitely, meaning that very old payment records or related account information frequently is not available. We therefore are proposing to prohibit agencies from reclaiming any payment that was made more than seven 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 seven-year limitation.

5. Right to Financial Privacy Act Changes

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 subpena, 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 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 are proposing to revise the wording of subsection 210.11(b)(3)(i).

6. Notification to Account Owners

We are proposing to revise § 210.13 in order to allow financial institutions to notify an account owner of the receipt of a notice of reclamation ''promptly'' rather than ''immediately.'' We do not believe that the need to notify account owners of a reclamation is so urgent as to require immediate notification. This change is intended to reduce an unnecessary burden on financial institutions.

III. Section-by-Section Analysis

Section 210.2(d)

We are proposing to revise the definition of Applicable ACH Rules at § 210.2(d) by adding a new subparagraph (8) in order to exclude ACH Rules 3.6.2 and 3.7.1 from the definition. ACH Rules 3.6.2 and 3.7.1, respectively, prohibit the origination of ARC entries and POP entries using, among other things, third-party checks, credit card checks, obligations of financial institutions (*e.g.*, traveler's checks, cashier's checks, official checks, money orders, etc.), and checks drawn on a state or local government.

Section 210.2(i)

We are proposing to add a new definition of ''business check'' to § 210.2. The definition would include not only any check drawn on a corporate or business deposit account (including a third-party check), but also credit card checks; negotiable instruments issued by a financial

institution (*e.g.,* traveler's checks, cashier's checks, official checks, money orders, etc.); and checks drawn on a state or local government. The new definition is used in proposed § 210.6(g) and (h) in order to permit agencies to use these instruments as source documents in originating ACH debit entries.

Section 210.6(g)

We are proposing to amend § 210.6(g) in order to permit the origination of ACH debit entries at agency points-of-purchase using as source documents instruments included under the new definition of ''business check'' set forth at proposed § 210.2(i).

Section 210.6(h)

We are proposing to revise § 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. Proposed § 210.6(h) uses the new term ''business check,'' as defined in proposed § 210.2(i), in order to permit the conversion of certain instruments that agencies currently are not permitted to convert.

Section 210.6(i)

We are proposing to revise § 210.6(i) in order to permit agencies to originate ACH debit entries to collect one-time service fees in connection with RCK entries if prior notice of the fee is given. Section 210.6(i) would override the requirement in the ACH Rules that a Receiver authorize, in writing, the collection of a service fee and instead require that, prior to accepting the Receiver's check or source document, the agency disclose to the Receiver that a service fee may be collected. This provision does not create for agencies the authority to impose a service fee; rather, it permits an agency that has the authority to impose such a fee to collect the fee by ACH debit without a written authorization.

Section 210.8(d)

We are proposing to add a new subsection to § 210.8 in order to require an RDFI to 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. 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. It does, however, require that if such an error is brought to the attention of an RDFI, the RDFI must notify the agency that originated the payment.

Section 210.10

We are proposing to revise paragraph (a) of § 210.10 to require that an RDFI use return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased), as appropriate, to return any benefit payments received after the RDFI becomes aware of the death of a recipient or beneficiary. We are also proposing to add a sentence 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.

We are proposing to revise § 210.10(c) to provide that an RDFI is not liable for a benefit payment received after the death of a recipient or beneficiary if the agency that certified the disbursement of the payment determines that the recipient or beneficiary is entitled to the post-death payment. It is the responsibility of the agency certifying the payment to make a determination regarding its legal obligation or authority to recover a post-death benefit payment. The Service will act in accordance with the agency's direction, as set forth at § 210.9(b). (''In processing reclamations pursuant to this subpart, the Service shall act pursuant to the direction of the agency that certified the benefit payment(s) being reclaimed.'')

We are proposing to revise § 210.10(d) in order to amend the limitation on the age of payments that an agency may reclaim. Section 210.10(d) 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. Proposed § 210.10(d) would prohibit agencies from reclaiming any payment that was made more than seven 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.

Additional wording changes have been made to proposed § 210.10(d). The first sentence of § 210.10(d) currently provides that an agency must initiate a reclamation within 120 calendar days after it receives notice of the death or legal incapacity of a recipient or death of a beneficiary. We are proposing to revise the wording of that sentence in order to provide that the 120 day period 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. In addition, the second sentence of proposed § 210.10(d)(1) 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: Social Security Federal Old-Age, Survivors, and Disability Insurance (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 proposing to revise § 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 Social Security Federal Old-Age, Survivors, and Disability Insurance benefit payments, or benefit payments certified by the Railroad Retirement Board or Department of Veterans' Affairs.

Section 210.13

We are proposing to revise § 210.13 to provide that an RDFI must promptly (rather than ''immediately,'' as currently

provided) notify account owner(s) of the receipt of a notice of reclamation.

Section 210.14

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

Appendix C

We are proposing to amend Appendix C to the regulation by shortening the disclosure that agencies must provide in connection with ACH debit entries that 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 proposed 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 proposed 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 Analysis

It is hereby certified that the proposed rule 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 proposed 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 proposed 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 Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Authority and Issuance

For the reasons set forth in the preamble, we propose to amend part 210 of title 31 of the Code of Federal Regulations as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

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. Amend § 210.2 as follows:

A. Revise paragraph (d);

B. Redesignate paragraphs (i) through (r) as (j) through (s);

C. Add new paragraph (i).

The revised and added text reads as follows:

§ 210.2 Definitions.

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(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before June 13, 2003, as published in Parts II, III, and IV of the ''2003 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network,'' including the supplement thereto approved February 27, 2003 and effective June 13, 2003, except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4; 2.2.1.10; Appendix Eight and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—*see* definition of ''Effective Entry Date'' in Appendix Two);

(6) ACH Rule 2.10.2.2 (requiring that originating depository financial institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries);

(7) ACH Rule 2.11.3 (requiring reporting regarding unauthorized Telephone-initiated entries); and

(8) ACH Rules 3.6.2 and 3.7.1 (restricting source documents for Accounts Receivable entries and Point-of-Purchase entries).

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(i) *Business check* means:

(1) A check drawn on corporate or business deposit account, including a third-party check,

(2) A credit card check,

(3) A negotiable instrument issued by a financial institution (*e.g.*, a traveler's check, cashier's check, official check, money order, *etc.*), and

(4) A check drawn on a state or local government.

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3. Revise §§ 210.6(g), (h) and (i) to read as follows:

§ 210.6 Agencies.

* * * * *

(g) *Point-of-purchase debit entries.* An agency may originate an ACH debit entry using a business check or a check

drawn on a consumer account that is presented at a point-of-purchase. Agencies shall use the Point-of-Purchase (POP) Standard Entry Class (SEC) code for entries to consumer accounts and the Cash Concentration or Disbursement (CCD) SEC code for entries to business accounts. The requirements of ACH Rules 2.1.2 and 3.4 shall be met for such an entry if the Receiver presents the check at a location where the agency has posted a conspicuous notice at the point-of-purchase containing the disclosure set forth at Appendix A to this part and the agency makes available to the Receiver at the same location, in a form that the Receiver can retain, the disclosure set forth at Appendix B 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.

(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.

(i) *Returned item service fee.* An agency may originate an ACH debit entry to collect a one-time service fee in connection with a Re-presented Check (RCK) entry or an ACH debit entry originated pursuant to paragraph (g) or (h) of this section that is returned due to insufficient funds. An entry originated pursuant to this paragraph shall meet the requirements of ACH Rules 2.1.2 and 3.4 if the agency has disclosed the collection of the fee to the Receiver as part of the disclosures required under paragraph (g) or (h) of this section or, in the case of a fee in connection with an RCK entry, prior to the acceptance of the check to which an RCK entry relates. For purposes of ACH Rule 3.10 and 4.1.1, authorization shall consist of a copy of the disclosure of the collection of the fee and a copy of the Receiver's check or source document.

4. 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.* 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.

5. Amend § 210.10 by revising paragraphs (a), (c) 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, using return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased), as appropriate, in the case of a deceased recipient or beneficiary. If the RDFI becomes aware 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 use of the R15 or R14 return reason code shall be deemed to constitute such notice.

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(c) *Exceptions to liability rule.*

(1) An RDFI shall not be liable for post-death benefit payments sent to a recipient acting as a representative payee or fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI did not have actual or constructive knowledge of the death of the beneficiary.

(2) An RDFI shall not be liable for a benefit payment received after the death of a recipient or beneficiary if the agency that certified the disbursement of the payment determines that the recipient or beneficiary was entitled to the post-death payment.

(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 seven 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 seven 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 (not to exceed one business day) to act on the notice.

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

§ 210.11 Limited liability.

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(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 address of the following person(s):

(A) The recipient (last known address) 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) Person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

* * * * *

7. Revise § 210.13 to read as follows:

§ 210.13 Notice to account owners.

Provision of notice by RDFI. Upon receipt by an RDFI of a notice of reclamation, the RDFI promptly shall mail to the last known address of the account owner(s) or otherwise provide to the account owner(s) a copy of any notice required by the Service to be provided to account owners as specified in the Green Book. Proof that this notice was sent may be required by the Service.

8. 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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9. Revise Appendix C to part 210 to read as follows:

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

If you send us a check, it will be converted into an electronic fund 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.*

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Dated: August 14, 2003.

Richard L. Gregg,

Commissioner.

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