

Issued in Fort Worth, Texas, on April 4, 2001.

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[FR Doc. 01-9074 Filed 4-11-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510-AA84

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: We're proposing to revise our regulation, 31 CFR part 210 (Part 210), governing the use of the Automated Clearing House (ACH) system by Federal agencies. The proposed rule would govern the conversion of checks to ACH debit entries at Federal agency (agency) points-of-purchase and at lockbox locations where payments to agencies are sent. The check conversion methods proposed represent a departure from the traditional means of how checks presented by the public to agencies are processed. The proposed rule would also govern the origination by agencies of ACH debit entries authorized over the Internet.

The proposed rule supports the continuation of the efforts of the Financial Management Service (FMS) and agencies to move to an all-electronic environment for the processing of payments and collections. More efficient processing of payments received at agency and lockbox locations could result in substantial savings for the Federal government and the taxpayer. In addition, the proposed rule supports the movement of collection activities to the Internet and supports the implementation of the Government Paperwork Elimination Act (GPEA). FMS is in the process of developing and implementing a government-wide collection portal, Pay.gov, which provides for the authorization of both consumer and corporate payments via the Internet. FMS also is conducting a pilot Internet application of the Electronic Federal Tax Payment System (EFTPS).

The proposed rule would generally adopt the ACH rules (ACH Rules) developed by NACHA—The Electronic Payments Association (NACHA) as the

rules governing these transactions, with several exceptions.

DATES: Comments must be received by July 11, 2001.

ADDRESSES: You may send comments electronically to the following address: 210comments@fms.treas.gov. You may also mail your comments to Donna Kotelnicki, Acting Director, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street, SW., Washington, DC 20227.

You can download this notice of proposed rulemaking at the following World Wide Web address: <http://www.fms.treas.gov/ach>. You may also inspect and copy this notice 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.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874-6705 or walt.henderson@fms.treas.gov; Matthew Helfrich, Financial Program Specialist, at (202) 874-6754 or matthew.helfrich@fms.treas.gov; Natalie H. Diana, Senior Attorney, at (202) 874-6680 or natalie.diana@fms.treas.gov; or Donna Kotelnicki, Acting Director, Cash Management Policy and Planning Division, at (202) 874-6590 or donna.kotelnicki@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 funds transfer (EFT) system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend Part 210 in order to address changes that NACHA periodically makes to the ACH Rules.

We are proposing to amend the ACH Rules currently incorporated in Part 210 governing the conversion of checks to ACH debit entries at the point-of-purchase. FMS is testing the conversion of checks to ACH debit entries at the point-of-purchase in on-going pilot programs with several agencies. Pilot check conversion activities are limited to consumer and corporate checks received over-the-counter by these agencies. These limited pilot programs involve patent and trademark filing fees

(consumer and corporate), general store sales at hospital canteens (consumer), and gift shop sales (consumer). During the pilot evaluation period of September 1998 to August 2000, 21,717 items worth over \$3.4 million were processed. Of the total items processed, 99.61% were successfully processed.

These pilots have demonstrated that point-of-purchase check conversion can be a useful and cost-effective way to collect certain payments made to Federal agencies. However, certain issues have arisen in connection with the operation of the pilot programs, including issues related to the conversion of corporate checks and the way in which the Receiver's authorization is obtained.

At the same time, FMS is evaluating whether the conversion of checks to ACH debits at Government lockboxes could offer significant cost savings as compared with regular check processing. Although we have not piloted accounts receivable check conversion, we are aware that several agencies are interested in testing this technology. We believe, however, that accounts receivable check conversion presents some of the same issues raised by point-of-purchase check conversion.

On February 16, 2001 (66 FR 10578), we published an interim rule amending part 210 in order to address certain amendments to the ACH Rules that NACHA published in its 2001 rule book. Among the NACHA rule amendments that we considered at that time were rules governing the conversion of checks at lockbox locations, as well as rules governing Internet-initiated ACH debit entries. We did not incorporate these ACH rules in our interim rule because we believed that we should seek public comment on the rules before they are adopted. The purpose of this notice of proposed rulemaking is to request comment on proposed rules that would govern point-of-purchase check conversion, lockbox check conversion, and Internet-initiated ACH debit entries, particularly with respect to the issues discussed below.

II. Summary of Issues We Are Seeking Comment On

A. Point-of-Purchase Check Conversion

Our regulation at 31 CFR part 210 currently incorporates the ACH Rules that allow for the conversion of checks to ACH debit entries at the point-of-purchase. Under the ACH Rules, a merchant may use a consumer's check as a source document to initiate a one-time ACH debit entry to the consumer's account for a purchase made in person at the point-of-purchase, using Standard

Entry Class (SEC) code POP (Point-of-Purchase Entry). Corporate checks may not be converted.

The ACH check conversion rule requires that the merchant (Originator) obtain written authorization from the consumer (Receiver)¹ prior to initiating the transaction. The merchant must provide the consumer with a copy of the authorization as well as a receipt containing specific, minimum information relating to both the merchant and the transaction.

Under this model of point-of-purchase check conversion, the merchant voids the consumer's check, scans it (capturing the consumer's routing number, check serial number, and account number) and returns the voided check to the consumer. The captured information is used to initiate an ACH debit entry to the consumer's account. The merchant must either retain the original, a microfilm, or a microfilm-equivalent copy of the consumer's authorization for a period of two years.

In our pilot programs, we have encountered certain difficulties in using this model. Based on input from agencies that have participated in our pilot programs, we are proposing to adopt rules that would allow the use of point-of-purchase check conversion in a way that may be more useful for Federal agencies. We are requesting comment regarding the possible use by Federal agencies of point-of-purchase check conversion using the model discussed in greater detail below.

Presentment of Check Constitutes Authorization

Pilot applications of point-of-purchase check conversion at Federal agency locations have demonstrated that obtaining a separate, written authorization from the customer and providing the customer with a copy of the authorization are major obstacles to the use of this technology. In our pilot programs, it took significantly more time at the point-of-purchase to convert checks to ACH debit entries than to process a regular check transaction. The additional time is a result of the need to explain the conversion process to the customer and have the customer sign an authorization stamped on the back of the check. Thus, agencies that piloted point-of-purchase check conversion experienced longer, slower checkout

lines. Despite the cost savings to the Federal government of converting checks to ACH debit entries, individual agencies are reluctant to use any method of payment collection that impedes efficient customer service. Accordingly, we are requesting comment regarding a framework in which Receivers would be notified by signage at the point-of-purchase, as well as by disclosure on receipts and/or literature provided at the point-of-purchase, that presenting a completed, signed check for payment constitutes authorization to convert the check to an ACH debit.

The Federal Reserve Board recently issued revisions to the Official Staff Commentary on Regulation E (12 CFR part 205) that address the treatment under Regulation E of point-of-purchase check conversion transactions. 66 FR 15187, March 16, 2001. As revised, the commentary indicates that a transaction in which a check is converted to an ACH debit entry at the point-of-purchase constitutes an electronic funds transfer (EFT) subject to Regulation E. See Official Staff Commentary, section 205.3(b)(1)(v). Accordingly, consumers whose checks are converted at the point-of-purchase under the model that we are proposing would have the protections provided under Regulation E. We request comment regarding whether, notwithstanding the consumer protections of Regulation E, the model of point-of-purchase check conversion we are proposing to use presents any issues or problems for consumers. The revised commentary also states that a consumer authorizes a one-time EFT (in providing a check to a merchant or other payee for encoding), where the consumer receives notice that the transaction will be processed as an EFT and completes the transaction. Official Staff Commentary, section 205.3(b)(3). We request input regarding whether a posted notice at the point-of-purchase, either alone or in combination with a paper disclosure handed to consumers, is sufficient to ensure that consumers understand that by presenting a check for payment, they are authorizing the conversion of the check to an ACH debit.

Conversion of Corporate Checks

Although the ACH Rules permit the conversion at the point-of-purchase of consumer checks only, in our pilot programs we convert both consumer checks and corporate checks at the point-of-purchase.² Some agencies that

are participating in point-of-purchase check conversion pilots routinely accept both consumer and corporate checks at the point-of-purchase. For these agencies, converting corporate checks to ACH debit entries offers the same efficiency and cost-savings benefits as converting consumer checks. Moreover, providing for separate processing of corporate checks and consumer checks at point-of-purchase locations where both kinds of checks are accepted would make check conversion more time consuming and costly.

For these reasons, we are proposing to amend part 210 to allow for the conversion of corporate checks at Federal agency points-of-purchase. Because currently there is not a SEC code designed for use in converting corporate checks at the point-of-purchase, we plan to train cashiers to identify corporate checks and to use a Cash Concentration or Disbursement (CCD) SEC code to convert those items. Technology would be employed allowing the cashier to generate the appropriate transaction.

We believe that it is important to use a corporate SEC code because, under the ACH Rules incorporated in part 210, a Receiving Depository Financial Institution (RDFI) is entitled to rely on an entry as complying with the requirements for the particular code that the Originating Depository Financial Institution (ODFI) used. See ACH Rule 4.4.6. Since the ACH Rules restrict the use of the POP SEC code to a debit to a consumer account, it appears that an RDFI that receives a point-of-purchase entry may have the right to treat the debit as one to a consumer account, even if the account is in fact a corporate account. The use of the POP SEC code presumably would mean that the RDFI would be required to recredit the corporate account if the account holder notified the RDFI that the debit is unauthorized within the fifteen day period, and that the RDFI could request an adjustment from an ODFI for the unauthorized debit within 60 days of the settlement date.³ These are rights that do not normally exist with respect to corporate accounts.

We are aware that the authorization issues in converting corporate checks are more complex than is the case for

Rules, in view of the experimental nature of the pilot programs. 68 FR 18866, 18867, April 7, 2000.

³ The ACH Rules require an RDFI to recredit a consumer's account if the consumer has notified the RDFI of an unauthorized debit within fifteen days after receiving his statement. See ACH Rule 7.6.1. The RDFI may then send an adjustment entry to the ODFI, as long as the adjustment entry is sent within 60 days of the settlement date of the debit at issue. See ACH Rule 7.7.1.

¹ 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. The ACH Rules permit a check to be converted to an ACH debit only where the Receiver (payor) is a consumer. In this notice, we may refer to a person making a payment to a Federal agency as a payor, a Receiver, or a consumer, as appropriate.

² As we indicated in our interim rule adopting the ACH point-of-purchase check conversion rules, our pilot programs may not conform to all of the requirements otherwise imposed under the ACH

consumer checks. In some instances, an individual presenting a corporate check to an agency may not have authority to act with respect to the corporate account. For example, a messenger from a messenger service may be authorized to deliver a check, but would not have authority to act with respect to the corporate account by authorizing the conversion of the check. However, we believe that the provisions of the ACH Rules incorporated in part 210 adequately address the Receiver's rights regarding an unauthorized debit to the Receiver's account. We also believe it is unlikely that corporate payors would wish to disavow a transaction on the basis that the funds were collected through the ACH system rather than through the check collection system.

We also are aware that converting corporate checks raises certain operational issues. For example, a debit entry to a corporate account could be returned as a result of a debit filter or positive pay system in use by a corporate account holder. It has been our experience in our pilot programs to date that very few corporate entries are returned for these reasons. However, to address this possibility, we are proposing to handle debits to corporate accounts that are returned by generating a paper draft on the account, using the stored check image. Because a corporate debit that is returned due to a debit filter or positive pay system will not be reflected as returned for insufficient funds, it is our understanding that neither the return of the item nor the process of generating a paper draft should result in any consequential damages (such as fines or penalties) to the corporate payor.

We request comment on all aspects of our proposed conversion of corporate checks. We specifically request comment from the perspective of an RDFI and a corporate Receiver on the operational impact and consequences of the conversion of corporate checks when debit filtering or positive pay technology is employed.

B. Accounts Receivable Check Conversion

Accounts receivable check conversion presents some of the same issues raised by point-of-purchase check conversion. Although NACHA has adopted a short-term ACH Rule governing accounts receivable check conversion,⁴ we have

not incorporated that rule in part 210. The ACH Rule requires the Originator to provide the consumer with notice of the check conversion policy prior to receiving the first check payment that will be converted. The ACH Rules provide that notice be given under one of two scenarios: (1) The Receiver authorizes the entry by a writing that is signed or similarly authenticated ("opt-in"); or (2) the Receiver is notified that if the Receiver does not provide the Originator with written notice *not* to convert the item, the item will be converted ("opt-out"). Only consumer checks received through the U.S. mail may be converted—not over-the-counter payments.

Originators must retain a copy of the consumer's authorization for two years and must be prepared to provide a copy of the authorization to the ODFI if requested to do so. Originators may transmit an accounts receivable converted check debit entry a maximum of three times via the ACH Network. Originators must retain the original check for 90 days from the settlement date of the entry, and must retain a copy of the check for seven years from the settlement date. In certain circumstances, the RDFI may return the entry up to 60 days following the settlement date and the Receiver may request that the RDFI recredit his or her account. Those circumstances include, among other things, where the item was converted without proper authorization, where the Receiver states that the signatures on the check are not authentic or authorized, or where the item has been altered.

The Federal government processes millions of checks annually. In Fiscal Year 1999, we processed over 100 million checks through our lockbox network alone. The checks processed represent a wide-range of payments to agencies, including payments for taxes, fees, permits, licenses, and merchandise or other consumer goods. Payments to Federal government lockboxes can be drawn on either consumer or corporate accounts. We believe that lockbox check conversion may offer the opportunity to lower the cost of our collection activities and bring greater value to the taxpayer.

There are two aspects of the ACH Rules model of accounts receivable check conversion rules that would significantly restrict our ability to implement check conversion technology

across the Federal government. First, the ACH Rules require that Receivers consent to conversion of their checks though an opt-in or opt-out process. Second, the ACH Rules prohibit the conversion of corporate checks.

Conversion Without Opt-in or Opt-out Authorization

The ACH opt-in/opt-out requirement would impose substantial costs and inefficiencies on the processing of checks at Federal lockboxes. Checks that are eligible for conversion (because Receivers have consented) would have to be segregated from checks as to which consent to convert has not been obtained. This would necessitate the duplication of lockboxes and maintenance of separate processing systems. These costs are likely to offset any cost-savings and efficiencies that would otherwise be available through check conversion. For these reasons, we are proposing to provide notice that checks received at lockboxes will be converted, and to convert all checks received.

Checks converted to ACH debits at lockboxes under the approach we are proposing would constitute EFTs covered by Regulation E. The Official Staff Commentary to Regulation E indicates that a check mailed to a merchant or other payee or a lockbox and later converted to an ACH transaction constitutes an EFT subject to Regulation E. See Official Staff Commentary, section 205.3(b)(1)(v). The authorization requirements of Regulation E would be met because a consumer who mails a check to a lockbox authorizes an EFT if he or she receives notice that the transaction will be processed as an EFT and completes the transaction. See Official Staff Commentary, section 205.3(b)(3).

We request comment on the extent to which (if any) payors would be disadvantaged if their checks were converted without making available an opt-in, opt-out procedure. We are also seeking comment on how useful the notice of the conversion of checks at lockboxes is for consumers, and how such notice might best be provided. The provision of notice to payors represents an additional burden to agencies in that forms may need to be redesigned and reprinted. Moreover, in some instances, payors send checks to lockbox locations without having received an invoice, rendering prior notice of the conversion of the check difficult.

Conversion of Corporate Checks

As mentioned above, the Federal government processes a large annual volume of both consumer and corporate

⁴ The ACH Rules use the phrase "truncation" rather than "conversion" to refer to the process of using checks received at a lockbox to initiate ACH debit transactions. The use of the term "truncation" was intended to indicate that the transaction constituted a check transaction subject to the Uniform Commercial Code rather than an EFT

subject to Regulation E. In light of the Federal Reserve Board's recent revisions of the Official Staff Commentary to Regulation E, these transactions do in fact constitute EFTs subject to Regulation E. Therefore we are using the term conversion in both the lockbox and the point-of-sale contexts.

checks. Operational efficiencies are realized in lockbox operations when all checks are subject to the same process. Many lockboxes receive both consumer and corporate checks. If it is necessary to segregate corporate checks and process them separately, the cost efficiencies of check conversion may be defeated. However, converting corporate checks at lockboxes raises legal and operational issues.

The ACH Rules provide that the Prearranged Payment and Deposit (PPD) SEC code is to be used to convert consumer checks at lockbox locations. The ACH Rules require an RDFI to recredit a consumer's account if the consumer has notified the RDFI of an unauthorized debit using the PPD SEC code within fifteen days after receiving his statement. See ACH Rule 7.6.1. The RDFI has a corresponding right to an adjustment from the ODFI. See ACH Rule 7.7.1. Accordingly, we request comment on the issues raised by using the PPD SEC code for both consumer and corporate check conversions, including whether it would be appropriate to extend the consumer and RDFI recredit and adjustment protections to corporate account-holders whose checks are converted at agency lockboxes and their RDFIs.

In addition to requesting comment on the foregoing specific issues, we're requesting comment on all aspects of our proposed accounts receivable check conversion rule.

C. Internet-Initiated ACH Debit Entries

Effective March 16, 2001, the ACH Rules will allow an Originator to use an SEC code, WEB, to initiate ACH debit entries to consumer accounts for purchases made over the Internet. NACHA's Internet-initiated ACH debit rule requires that each ODFI that transmits WEB entries on behalf of its Originators assume additional warranties in addition to the general warranties that cover ODFI transmission of all ACH entries. These additional warranties relate to the following areas: Verification of Routing Numbers; Security of Internet Sessions; Fraud Detection System; ODFI Exposure Limits; and Website Security.

Verification of Routing Numbers

The rule requires Originators to use commercially reasonable procedures to verify that routing numbers are valid.

Security of Internet Sessions

Each Originator that originates WEB entries must establish a secure Internet session prior to and during the key entry by the consumer of any banking information.

Fraud Detection System

The rule requires Originators to employ commercially reasonable fraudulent transaction detection systems in order to both authenticate the purchaser and minimize the risk of fraud related to Internet-initiated payments.

ODFI Exposure Limits

Each ODFI must establish an exposure limit for each Originator of Internet-initiated debit entries and establish procedures to monitor these entries and such exposure limits periodically.

Website Security

Originators must conduct an internal or external audit on an annual basis to ensure that its security practices and policies are adequate to protect the integrity and security of Receivers' financial information.

Internet-Initiated ACH Debit Entry Rules That We Propose to Accept

We are proposing to incorporate in part 210 the provisions of the ACH Rules relating to Internet-initiated ACH debit entries with two exceptions. First, we are proposing to allow agencies to originate WEB entries to corporate accounts as well as to consumer accounts. Second, we are proposing not to adopt the requirement that ODFIs establish exposure limits for Originators of Internet-initiated debit entries.

The purpose of establishing exposure limits is to ensure that ODFIs will verify the identity and creditworthiness of their merchant customers and to ensure that the volume and dollar amount of the transactions that merchants originate are appropriate. While we believe that these "know-your-customer" requirements are appropriate for most ODFIs, we do not believe that such requirements are appropriate or necessary for Federal government agencies originating ACH debit entries. The relationship between FMS and the Federal agencies for which we make payments and collections differs in some respects from the relationship between ODFIs and their Originators in the private sector. We do not believe it would be appropriate for FMS to establish transaction limits for Federal agencies. Nor do we believe such limits are necessary, because the collection of payments by agencies over the Internet does not raise the merchant creditworthiness concerns that have emerged in the private sector. Accordingly, we are proposing not to adopt the ODFI exposure limit requirement for WEB entries originated by Federal agencies.

In addition, we are proposing to permit agencies to initiate WEB entries to corporate accounts. While we understand that the primary use of ACH debit for Internet-initiated purchases has been in the context of consumer purchases, we are aware that some agencies are actively pursuing the use of Internet-initiated ACH debit entries to collect funds from corporations. Internet-initiated ACH debit transactions may be a convenient and cost-beneficial way for corporations to make payments to agencies.

Under the ACH Rules, the use of the WEB SEC code for an entry signifies that the entry is a debit to a consumer account. RDFIs are permitted to rely on the SEC code used for an entry as accurately reflecting the underlying transaction. Allowing agencies to use the WEB code for a debit entry to a corporate account raises the issue of whether the RDFI can or must provide the corporate customer with the right of recredit available to consumers under the ACH Rules. Specifically, the ACH Rules require an RDFI to recredit a consumer's account if the consumer has notified the RDFI of an unauthorized debit within fifteen days after receiving his or her bank statement. See ACH Rule 7.6.1. The RDFI may then send an adjustment entry to the ODFI, as long as the adjustment entry is sent within 60 days of the settlement date of the debit at issue. See ACH Rule 7.7.1.

We propose to extend to corporate Receivers of WEB entries, and their RDFIs, the same recredit and adjustment rights, respectively, that apply to debits to consumer accounts. While this is a right that does not normally apply to corporate Receivers of debit entries, we believe that it is appropriate to do so unless or until a separate SEC code is developed for debit entries initiated to corporate accounts over the Internet.

III. Section-by-Section Analysis

Section 210.2(d)

We are proposing to amend the definition of applicable ACH rules at § 210.2(d). Current § 210.2(d) defines applicable ACH rules to mean the ACH Rules with an effective date on or before September 14, 2001, as published in Parts II, III, and IV of the "2001 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," with certain exceptions. Those exceptions include the ACH rules addressing accounts receivable check conversion (210.2(d)(6)) and Internet-initiated debit entries (210.2(d)(7)). We are proposing to delete the current exceptions contained in subsections (d)(6) and (d)(7) to reflect our adoption

of the ACH rules governing those transactions, with certain limited exceptions that are addressed in § 210.6(h) and (i) of the proposed rule. We are proposing to add a new § 210.2(d)(6) to exclude, in its entirety, ACH Rule 2.10.2.2. from the definition of applicable ACH rules. ACH Rule 2.10.2.2 requires ODFIs to establish exposure limits for Originators of Internet-initiated debit entries.

Section 210.6(g)

We are proposing to amend § 210.6, which sets forth the rights and obligations of agencies that initiate or receive Government entries, by adding a new subsection (g) to specifically address the conversion of checks to ACH debit entries at agency points of purchase. Proposed subsection (g) would permit agencies to convert both corporate and consumer checks to ACH debit entries.

ACH Rule 2.1.2 requires that a debit entry to a consumer account be authorized in writing, signed or similarly authenticated by the consumer, and that the authorization be readily identifiable as such. Proposed § 210.6(g) provides that these requirements are met if the agency posts a notice at the point of purchase stating that presentment of a signed, completed check constitutes authorization to the agency to convert the check to an ACH debit entry and gives the customer the same disclosure in a form that the customer can retain. ACH Rule 3.4 and 3.8 require, respectively, that the Originator provide a copy of the authorization to the consumer and retain a copy of the authorization for two years. Under proposed § 210.6(g) either the check itself or an image of the check is equivalent to a copy of the authorization for purposes of these requirements. Similarly, the ODFI's obligation under ACH Rule 4.1 to provide a copy of the Receiver's authorization to an RDFI may be met by providing an image of the check.

Section 210.6(h)

Proposed § 210.6(h)(1) would allow an agency to originate a PPD Accounts Receivable Truncated Check Debit Entry without the Receiver's authorization or approval. Under proposed § 210.6(h)(1), an agency would be required to provide notice of the transaction, as provided in the ACH Rules, but would not be required to allow the Receiver to opt in or opt out of the transaction.

Proposed § 210.6(h)(2) would allow agencies to originate PPD Accounts Receivable Truncated Check Debit Entries relating to items drawn on corporate accounts. Under this

provision, corporate Receivers and their RDFIs would have the same rights of recredit and adjustment that consumer Receivers and their RDFIs have under the ACH Rules 7.6 and 7.7, respectively.

Section 210.6(i)

Proposed § 210.6(i) would provide that an agency may transmit a WEB entry to a corporate account. The Receiver of a WEB entry to a corporate account would have the same right to recredit provided to Receivers of consumer entries in ACH Rule 7.6, and the RDFI would have the same right to adjustment provided with respect to consumer entries in ACH Rule 7.7.

IV. Procedural Requirements

Request for Comment on Plain Language

On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive is effective for all new proposed and final rulemaking documents issued on or after January 1, 1999. We invite comment on how to make this 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 this proposed rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Executive Order 12866

This 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 this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

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 out in the preamble, we propose to amend 31 CFR part 210 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. Revise § 210.2(d) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before September 14, 2001, as published in Parts II, III, and IV of the "2001 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," 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); and

(6) ACH Rule 2.10.2.2. (requiring that Originating Depository Financial Institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries).

* * * * *

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

§ 210.6 Agencies.

* * * * *

(g) *Point-of-purchase debit entries.*

An agency may convert to an ACH debit entry a check drawn on a consumer or corporate account and presented at a point of purchase. The authorization requirements of ACH Rule 2.1.2 shall be met for such transactions if the agency (a) has posted a clear and conspicuous notice at the point of purchase stating that presentment of a signed, completed check constitutes authorization to the agency to convert the check to a ACH debit entry and (b) gives the customer the same disclosure in a form that the customer can retain. For purposes of ACH Rule 3.4, ACH Rule 3.8 and ACH Rule 4.1, either the check itself or an image of the check shall be equivalent to a copy of the authorization.

(h) *Accounts Receivable Check Conversion.*

(1) Conversion following prior notice. Notwithstanding ACH Rules 2.1.4, 2.9.1, and Appendix 2 (definition of

Prearranged Payment and Deposit (PPD)), an agency may initiate a PPD Accounts Receivable Truncated Check Debit Entry if it provides the Receiver with prior notice of the check conversion program. Notwithstanding ACH Rules 7.6.3 and 7.6.4, an agency is not obligated to recredit the amount of a PPD Accounts Receivable Truncated Check Debit Entry to a Receiver's account on the basis that the Receiver provided notice to the agency not to convert the item to which the entry relates.

(2) Notwithstanding ACH Rules 2.9.2 and 13.1.36, an agency may originate a PPD Accounts Receivable Truncated Check Debit Entry relating to an item drawn on a non-consumer account. A Receiver of a PPD Accounts Receivable Truncated Check Debit Entry to a non-consumer account shall have the same right to recredit provided to Receivers of consumer entries in ACH Rule 7.6, and the RDFI shall have the same right to adjustment provided with respect to consumer entries in ACH Rule 7.7, except that the Receiver shall not have a right of recredit on the basis that it provided notice to the agency not to convert the item.

(i) *Internet-Initiated ACH Debit Entries.*

Notwithstanding ACH Rules 2.10, 13.1.52 and Appendix 2 (definition of WEB), an agency may transmit an Internet-Initiated Entry (WEB) to effect a transfer of funds from a non-consumer account. A Receiver of a WEB entry to a Non-Consumer Account shall have the same right to recredit provided to Receivers of consumer entries in ACH Rule 7.6, and the RDFI shall have the same right to adjustment provided with

respect to consumer entries in ACH Rule 7.7.

Dated: April 5, 2001.

Richard L. Gregg,

Commissioner.

[FR Doc. 01-9015 Filed 4-11-01; 8:45 am]

BILLING CODE 4810-35-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID-00-001, ID-01-001; FRL-6957-2]

Approval and Promulgation of State Implementation Plans; Transportation Conformity: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve new sections to the Idaho State Implementation Plan (SIP) that contain the transportation conformity rule. These new sections to Rules for the Control of Air Pollution in Idaho (IDAPA) include IDAPA sections 58.01.01.563 through IDAPA 58.01.01.574, and IDAPA 58.01.01.582. They were submitted to EPA as part of a series of revisions to the SIP on December 6, 2000 and February 9, 2001. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse

comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATE: Written comments must be received in writing by May 14, 2001.

ADDRESSES: Send written comments to: Wayne Elson, Environmental Protection Specialist (OAQ-107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101. The Idaho Department of Environmental Quality, 1420 North Hilton, Boise Idaho 83706-1255.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Elson, Office of Air Quality, (OAQ-107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553-1463.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: March 9, 2001.

Ron Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 01-8930 Filed 4-11-01; 8:45 am]

BILLING CODE 6560-50-U