accounts nor issue payroll cards and agree with consumers to provide EFT services in connection with payroll card accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

18(b) Alternative to Periodic Statements

1. *Posted transactions.* A history of transactions provided under §§ 205.18(b)(1)(ii) and (iii) shall reflect transfers once they have been posted to the account. Thus, an institution does not need to include transactions that have been authorized, but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under § 205.18(b)(1)(ii) must be provided in a form that the consumer may keep, as required under § 205.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, an institution satisfies the requirement if it provides a history at an Internet Web site in a format that is capable of being printed or stored electronically using an Internet web browser.

18(c) Modified Requirements

1. *Error resolution safe harbor provision.* Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period required by the regulation (as set forth in the Model Form in Appendix A–7). Specifically, an institution may disclose to payroll card account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability (as required under § 205.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. *Electronic access.* A consumer is deemed to have accessed a payroll card account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§ 205.6 and 205.11.

3. *Untimely notice of error.* An institution that provides a transaction history under § 205.18(b)(1) is not required to comply with the requirements of § 205.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history upon the consumer's request. (Alternatively, as provided in § 205.18(c)(4)(ii), an institution need not comply with the requirements of § 205.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 205.6 before it may impose any liability on the consumer.

Appendix A—Model Disclosure Clauses and Forms

1. * * *

2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii), 205.15(d)(1) and (d)(2), and 205.18(c)(1) and (c)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution's EFT services.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 24, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–7223 Filed 8–29–06; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1265]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The amendments clarify that the requirement to obtain a consumer's authorization to collect a service fee for insufficient or uncollected funds through an electronic debit to the consumer's account applies to *any* person that intends to collect the fee in that manner. The amendments also clarify notice requirements for electronic check conversion transactions and for collecting insufficient funds fees electronically. This interim final rule, for which the Board is seeking comment, will supersede the corresponding provisions of the January 2006 final rule that addressed these topics.

DATES: This interim final rule is effective January 1, 2007. Comments must be received on or before September 29, 2006.

ADDRESSES: You may submit comments, identified by Docket No. R–1265, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Senior Attorney, Vivian W. Wong, Attorney, or David A. Stein,

Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) (EFTA or Act), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of types of transfers covered by the Act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation provide for disclosure of terms and conditions of an EFT service, documentation of EFTs by means of terminal receipts and periodic account activity statements, limitations on consumer liability for unauthorized transfers, procedures for error resolution, and certain rights related to preauthorized EFTs. Further, the Act and regulation also restrict the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) is designed to facilitate compliance and provide protection from liability under Sections 915 and 916 of the EFTA for financial institutions and other persons subject to the Act. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

II. Background and Summary of Interim Final Rule

On January 10, 2006, the Board published a notice of final rulemaking in the **Federal Register** (71 FR 1,638) (January 2006 final rule) that was primarily intended to provide guidance regarding the rights, liabilities, and responsibilities of parties engaged in electronic check conversion transactions (ECK transactions).[1] In addition to the provisions addressing authorization and notice requirements for ECK transactions, the final rule provided that before a fee for insufficient or uncollected funds may be debited via an EFT from a consumer's account, the consumer must authorize the debit. Authorization is obtained when notice is provided to the consumer stating that the fee will be collected by means of an EFT and the consumer goes forward with the underlying transaction. The notice must also disclose the specific amount of the fee. *See* 71 FR at 1,645–46, 1,659.

Although the Board intended to apply the requirement to provide notice to the consumer for the electronic collection of insufficient funds fees to all persons seeking to collect such fees electronically, the Board inadvertently omitted a reference that would have specifically applied the requirement to all persons that intend to collect insufficient funds fees electronically. The interim final rule corrects this omission and also clarifies that the requirement to provide notice and obtain the consumer's authorization to collect a fee for insufficient or uncollected funds electronically does not apply to the consumer's account-holding financial institution. The interim final rule further specifies how to disclose the amount of the fee when the dollar amount of the fee may vary based on the transaction amount or due to other factors.

The interim final rule clarifies that payees that intend to collect fees for insufficient or uncollected funds electronically at POS need not provide consumers an exact copy of the posted notice stating the payees' intent to collect such fees electronically, but instead may provide a notice that is substantially similar to the posted notice. Similar flexibility is provided for payees engaged in ECK transactions at POS with respect to the requirement to provide the consumer a notice stating the payee's intent to convert checks provided by a consumer to EFTs.

The effective date of this interim final rule is January 1, 2007. However, the rule provides that payees at POS will not have to disclose either the dollar amount of the insufficient funds fee or an explanation of how that fee will be determined on the version of the notice given to consumers at the time of the transaction until January 1, 2008.

Because the substantive requirements of this rule are largely unchanged from the corresponding provisions of the January 2006 final rule, the Board is issuing this rule in interim final form, rather than as a new proposal. The interim final rule also provides interested parties an opportunity to comment on all aspects of the revised requirement and clarifications.

III. Section-by-Section Analysis

Section 205.3 Coverage

3(a) General

Section 205.3(a) is revised to incorporate a revision that was inadvertently omitted from the January 2006 final rule addressing electronic check conversion transactions, ATM disclosures and other matters. *See* 71 FR 1,638 (January 10, 2006). Specifically, § 205.3(a) is revised pursuant to the Board's authority under Sections 904(c) and 904(d)(1) of the EFTA to provide that the requirement in § 205.3(b)(3) to obtain a consumer's authorization to collect a fee for insufficient or uncollected funds via an EFT to the consumer's account applies to any person. *See* 71 FR at 1,645–46. As further discussed under § 205.3(b)(3), this amendment would enable the Board to clarify that the requirement to obtain the consumer's authorization applies to the merchant or other payee seeking to collect an insufficient funds fee electronically and not to the consumer's account-holding institution.

3(b) Electronic Fund Transfer

Electronic Check Conversion

Under the January 2006 final rule, merchants and other payees in ECK transactions are required to obtain the consumer's authorization for the one-time transfer. Generally, authorization is obtained when the payee provides a notice to the consumer that a check received as payment will be converted to an EFT, and the consumer goes forward with the transaction. At POS, the notice must be posted in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer at the time of the transaction, such as on a receipt. *See* § 205.3(b)(2); 71 FR at 1,640–41. Model language was provided in the January 2006 final rule to facilitate compliance. *See* Model Clause A–6. This interim final rule clarifies that the notice given to the consumer at the time of the transaction must be substantially similar to the notice posted at POS, but need not be an exact copy of the posted notice.

Since publication of the January 2006 final rule, the Board has received inquiries regarding whether the requirement to provide a copy of the notice posted at POS affords payees flexibility to modify the language in the notice given to consumers, or whether the rule requires the copy to contain the same language as the posted notice. For example, a payee might seek to modify the text of the notice given to the consumer (*e.g.*, by changing the text

[1] In an ECK transaction, a merchant or other payee takes information from a consumer's check to initiate a one-time EFT from the consumer's account.

from ''You authorize us to use information from your check * * *'' to ''I authorize you to use information from my check * * *'') to make the notice more meaningful to the consumer. The Board did not intend that the text of the copy given to the consumer necessarily be identical to the text on the posted sign. As stated in the **SUPPLEMENTARY INFORMATION** to the January 2006 final rule, the requirement to provide a copy is intended to give consumers a document explaining that their checks might be converted that they may take home to refer to later, if necessary. *See* 71 FR at 1,642. Accordingly, § 205.3(b)(2) is revised to clarify that payees may provide to the consumer either a copy of the text of the notice posted at POS or alternatively, a substantially similar notice. Payees modifying the text of the posted notice in the notice given to the consumer must ensure that consumers are sufficiently informed that, by providing a check as payment, the consumer has authorized the conversion of the check to an EFT from the consumer's account.

Collection of Service Fees Through an Electronic Fund Transfer

Section 205.3(b)(3) was added in the January 2006 final rule to clarify that an EFT from a consumer's account to collect a fee due to insufficient or uncollected funds is covered by Regulation E and must be authorized by the consumer. Under the January 2006 final rule, a consumer authorizes the electronic collection of a fee for a check or EFT returned due to insufficient funds when the consumer receives notice of the intent to collect the fee from the consumer's account by EFT, along with a disclosure of the amount of the fee, and goes forward with the underlying transaction. *See* 71 FR at 1,645–46. The interim final rule redesignates § 205.3(b)(3) as § 205.3(b)(3)(i) and also clarifies that the obligation to provide notice to obtain the consumer's authorization to electronically collect a fee for insufficient or uncollected funds applies to the person seeking to collect the fee. The interim final rule also provides that if the amount of the fee may vary due to the amount of the underlying transaction or due to other factors, the person collecting the fee may, in many cases, provide an explanation of how the fee is determined, rather than provide a specific dollar amount. In addition, § 205.3(b)(3) is revised to state that at POS, the notice given to the consumer may be substantially similar to the posted notice, so long as the consumer is sufficiently informed of the payee's intent to electronically collect an insufficient funds fee and the amount of the fee.

Persons Subject to the Requirement

While § 205.3(b)(3) as adopted in the January 2006 final rule was intended to apply the notice and authorization requirement to the person electronically collecting a fee for any items returned to that person due to insufficient or uncollected funds in the consumer's account, the rule did not specifically indicate the party that was required to provide the notice. Section 205.3(b)(3) thus arguably could create some confusion as to whether the obligation of providing the notice lies with the payee seeking to collect the insufficient funds fee electronically or with the consumer's account-holding financial institution. The interim final rule therefore clarifies that the obligation to provide the notice to obtain the consumer's authorization for the electronic collection of insufficient funds fees rests with the party seeking to collect the fee, which typically would be a merchant or other payee. Accordingly, if a payee fails to obtain a consumer's authorization for it to collect a fee for insufficient or uncollected funds by means of an EFT from the consumer's account, the payee collecting that fee, and not the consumer's account-holding financial institution, has violated the regulation. Section 205.3(b)(3) is redesignated as § 205.3(b)(3)(i).

Revised comment 3(b)(3)–1 clarifies that the requirement in § 205.3(b)(3) is not intended to apply to the consumer's account-holding financial institution when it assesses a fee against the consumer's account for returning a check or EFT unpaid or for paying an overdraft, regardless of where the underlying transaction has taken place (for example, at a POS, at an ATM, or for a check that a consumer has sent in as payment).

Notice Requirements—General

As provided in the January 2006 final rule and in this interim final rule, payees must provide notice of their intent to electronically collect a fee for insufficient or uncollected funds. The notice must also state the amount of the fee. At POS, the notice must be posted in a prominent and conspicuous location and a copy of the notice must be provided to the consumer at the time of the transaction, such as on the sales receipt. Payees in accounts receivable conversion (ARC), or lockbox, transactions will typically provide written notice on a billing statement or invoice. *See* § 205.3(b)(3); 71 FR at 1,646.

A separate notice to obtain the consumer's authorization to electronically collect a fee for items returned not paid due to insufficient funds in the consumer's account must be provided by the payee each time the payee seeks to collect the fee. Thus, the inclusion of authorization language in a contract or initial terms and conditions, for example, in an insurance contract or a utility agreement, would not satisfy a payee's obligation to provide notice each time it may seek to electronically collect an insufficient funds fee from the consumer's account. *See* comment 3(b)(2)–3.

The interim final rule in § 205.3(b)(3)(i) clarifies that the disclosure of the fee must be expressed in a dollar amount. This requirement is intended to inform consumers of how much they may be charged in the event they have insufficient funds in their account to clear the underlying transaction. *See* 71 FR at 1,646. State laws addressing the maximum fee that payees may collect for returned items due to insufficient or uncollected funds are not uniform, however. While in many states, the maximum fee that may be charged for items returned for insufficient funds is expressed as a flat fee regardless of the amount of the transaction, in others the fee may vary based on the transaction amount or on additional factors. For example, in some states, the maximum fee that may be collected may be a series of flat fees based on the amount of the transaction (*e.g.*, $25 for transactions up to $50, $30 for transactions between $50.01 and $300.00, and the greater of $40, or 5% of the face amount of the check, for transactions above $300), and in other states the maximum fee is a fixed percentage of the transaction amount (*e.g.*, 5% of the transaction amount). Moreover, in at least one state, the maximum fee might vary based on the number of days that a payment continues to be owed (*e.g.*, the maximum fee that may be collected in most cases is $25, but the fee may increase to $35 if the obligation remains outstanding after 15 days' notice). Thus, where the actual fee charged to the consumer may vary based on the amount of the underlying transaction or upon other factors beyond the payee's control, a requirement to disclose a specific dollar amount might impose considerable programming costs in some cases or be impossible to comply with in others. Accordingly, the interim final rule provides that where a fee for insufficient or uncollected funds may vary based on the amount of the transaction or other factors, such as the

amount of time the obligation is left outstanding, a payee seeking to collect the fee electronically may, in many cases, instead provide an explanation of how the fee will be determined. (*But see* § 205.3(b)(3)(ii), requiring payees at POS to state the dollar amount of the fee on the notice given to the consumer where the fee can be calculated at the time of the transaction.) Comment 3(b)(3)–2 provides an example of how the rule would apply when a person seeks to electronically collect an insufficient funds fees in connection with an ARC transaction.

To facilitate compliance, the January 2006 final rule provided model language that payees may use to disclose their intent to collect a fee for insufficient or uncollected funds electronically as well as the amount of the fee. Specifically, payees could disclose: ''You authorize us to collect a fee of $____ through an electronic fund transfer from your account if your payment is returned unpaid.'' *See also* Model Clauses A–6(a) and (b) in the January 2006 final rule. In the interim final rule, this clause has been moved to a new section A–8 of Appendix A because the requirement to disclose the payee's intent to collect electronically a fee for insufficient or uncollected funds is not limited to electronic check conversion transactions, but could apply more broadly (*e.g.,* when the underlying transaction is processed as a check transaction). The model clause has been revised for consistency with the interim final rule, and to improve its readability.

Notice Requirements—POS Transactions

As noted previously, under the January 2006 final rule, payees at POS must post notice of their intent to collect an insufficient funds fee electronically (along with the amount of the fee) in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer at the time of the transaction, such as on the sales receipt. The interim final rule in § 205.3(b)(3)(ii) permits payees to provide on the posted notice a description of how the fee is determined if it may vary based on the transaction amount or upon other factors beyond the payee's control. However, if the dollar amount of the fee can be calculated at the time of the transaction, the interim final rule provides that the copy of the notice provided to the consumer at POS must state that dollar amount, rather than an explanation of how that fee is determined. For example, in a state where the fee may vary based solely on the amount of the underlying transaction, the payee may provide an explanation of how the fee may be determined on the posted notice, but would be required to provide the actual dollar amount of the fee on the notice provided to the consumer. Conversely, in a state where the amount of the service fee cannot be calculated at the time of the transaction (*e.g.,* where the amount of the fee will depend on the number of days a debt continues to be owed), the payee may provide a description of how the fee will be determined on both the posted notice as well as on the copy provided to the consumer. *See* comment 3(b)(3)–3. Comment is requested on this approach, and specifically on the feasibility and the costs associated with providing the specific dollar amount of the insufficient funds fee that may be collected on the copy of the notice provided to the consumer at POS, if the maximum amount of the fee that may be collected is determined solely based on the amount of the transaction. Comment is also solicited regarding whether insufficient funds fees may be electronically collected by payees in circumstances other than in connection with a POS transaction or an ARC transaction when a consumer sends in a payment for a recurring bill or invoice (*e.g.,* to pay a credit card or a utility bill).

Consistent with the prior discussion regarding disclosures for ECK transactions, the notice given to the consumer at the time of the transaction regarding a person's intent to electronically collect an insufficient funds fee may be a copy of the posted notice, or may be a substantially similar notice. *See* § 205.3(b)(3)(ii). Thus, payees at POS may modify the text of the notice given to consumers as long as the notice sufficiently conveys to the consumer the payee's intent to electronically collect a fee if an item is returned to the payee due to insufficient or uncollected funds in the consumer's account, and the amount of the fee (or an explanation of how that fee is determined).

Delayed Compliance Date for Terminals at POS

Since publication of the January 2006 final rule, the Board has had discussions with vendors of check processing services and understands that achieving full compliance with the requirement to disclose the amount of the service fee on the receipt given to the consumer at POS will require considerable time and expense in order to reprogram existing terminals to provide the necessary information. In light of the fact that the notice posted at POS will inform consumers of the payee's intent to electronically collect fees for insufficient funds and at a minimum describe how those fees may be determined, the Board believes that the costs of reprogramming terminals used to generate receipts provided to the consumer by the January 1, 2007, compliance date would outweigh the additional benefit of providing the specific dollar amount of the fee to the consumer. Accordingly, § 205.3(b)(3)(iii) of the interim final rule provides a one-year delay in the compliance date with respect to the requirement to disclose the amount of the insufficient funds fee (or an explanation of the fee when the specific amount cannot be determined at the time of the transaction) on the copy of the notice, or substantially similar notice, given to the consumer at the time of the transaction.

This delayed compliance provision is limited solely to the disclosure on the version of the notice given to the consumer regarding the amount of the insufficient funds fee that may be collected and does not apply to the requirement to disclose on that notice, the payee's intent to electronically collect the fee. The delayed compliance date also does not apply to the requirement to provide the amount of the fee, or an explanation of how the fee is determined, on the posted notice.

This interim final rule supersedes the corresponding provisions of §§ 205.3(a) and 205.3(b)(3) and associated commentary that was contained in the January 2006 final rule. The Board seeks comment on all aspects of the interim final rule.

IV. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the interim final rule.* The Board is revising Regulation E to clarify that a person that intends to collect a fee for insufficient or uncollected funds via

an EFT from a consumer's account must obtain the consumer's authorization. Authorization would be obtained by the person, typically a merchant or other payee, if the person provides a written notice of its intent to collect the fee electronically, along with a disclosure of the dollar amount of the fee, and the consumer goes forward with the underlying transaction after receiving that notice. This requirement would allow consumers to receive prior notice of a payee's intent to electronically collect a fee for insufficient or uncollected funds and enable the Board to promote consistency in the notice provided to consumers by merchants and other payees.

In response to industry requests for flexibility with respect to the requirement to provide consumers with a copy of the notice posted at POS informing them of the payee's intent to electronically collect a fee for insufficient or uncollected funds, the interim final rule states that payees may provide a substantially similar notice. A similar revision is made with respect to the electronic check conversion requirements at POS. Accordingly, payees may provide consumers with a notice that is substantially similar to the notice posted at POS informing consumers that the payee may convert checks received as payment to EFTs.

In addition, to address state laws that, for example, permit payees to charge a fee for items returned due to insufficient funds in a consumer's account based on a percentage of the underlying transaction (rather than a flat fee regardless of the transaction amount), the interim final rule permits payees to disclose a description of how the fee will be determined in lieu of an actual dollar amount. However, if the dollar amount can be calculated at the time of the transaction, payees must state the dollar amount of the fee on the version of the notice provided to the consumer.

The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion [of the Act], or to facilitate compliance [with the Act].'' 15 U.S.C. 1693b(c). The Act also states that ''[i]f electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the act] are made applicable to such persons and services.'' 15 U.S.C. 1693b(d). The Board believes that the revisions to Regulation E discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Issues raised by comments in response to the initial regulatory flexibility analysis*. In accordance with section 603(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the September 2004 proposal (69 FR 55,996 (September 17, 2004)). In accordance with section 604(a) of the RFA, the Board also conducted a final regulatory flexibility analysis in connection with its January 2006 final rule (71 FR 1,638 (January 10, 2006)). The Board did not receive any comments on either of these regulatory flexibility analyses specifically with respect to the disclosure of a person's intent to electronically collect a fee for insufficient or uncollected funds. However, one commenter, a major provider of check processing services, in response to the September 2004 proposal, noted that in general any changes to the authorization language provided to consumers in electronic check conversion transactions at POS locations would entail re-programming of the terminals typically used to provide notices and obtain the consumer's authorization.

3. *Small entities affected by the interim final rule*. Merchants or other payees that initiate one-time EFTs from a consumer's account to electronically collect a fee for items returned due to insufficient or uncollected funds in the consumer's account will be required under the regulation to obtain the consumer's authorization for the transfer. Payees must provide written notice of their intent to collect the fees electronically, and disclose the dollar amount of the fee. For ARC transactions, notice will likely be provided on a billing statement or invoice. At POS, notice must be provided by posted signage, and a copy of the notice, or a substantially similar notice, must be given to the consumer.

The Board believes many small merchants and other payees that electronically collect fees for returned items due to insufficient or uncollected funds in a consumer's account are currently providing written notices to collect such fees debited, either on posted signage or on a transaction receipt at POS, and possibly both. Similarly, the Board believes that payees are providing written notices in ARC transactions because payment system rules currently require written notices. Therefore, small entities affected by this interim final rule are unlikely to have to craft entirely new notices as a result of this rule. Although they will have to review, and likely revise, their existing notices, including reprogramming the terminals used to generate these notices, the Board does not expect that the burden associated with these tasks will be significant. To further facilitate compliance, the Board provided model language regarding the notice requirement as part of the January 2006 final rule, and has provided revised model language in this interim final rule. In addition, the interim final rule would extend for one year, the compliance date for the requirement to disclose the dollar amount of the fees for insufficient or uncollected funds on the notice provided to the consumer to allow additional time for any necessary programming changes.

4. *Other federal rules*. The Board has not identified any federal rules that duplicate, overlap, or conflict with the interim final revisions to Regulation E.

5. *Significant alternatives to the proposed revisions*. The Board solicits comment about potential ways to reduce regulatory burden associated with this interim final rule.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The interim final rule contains requirements subject to the PRA. The collection of information that is required by this rule is found in 12 CFR 205.3(b)(3). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200. This information is required to provide benefits for consumers and is mandatory (15 U.S.C. 1693 *et seq*.). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months.

All persons, such as merchants and other payees, that may collect a fee for insufficient or uncollected funds via an EFT from the consumer's account potentially are affected by this collection of information, because these merchants and payees will be required to obtain a consumer's authorization for the electronic transfer under § 205.3(b)(3).

Burden with respect to the requirement to provide notice to the consumer for the purpose of obtaining the consumer's authorization for the electronic collection of fees for insufficient or uncollected funds was previously estimated in the January 2006 final rule (Docket No. R–1210 and R–1234), and reported in accordance with those estimates in documents filed with OMB. Under the Board's prior analysis, the total burden under Regulation E for all financial institutions, including but not limited to the burden of obtaining a consumer's authorization to collect a fee for insufficient or uncollected funds electronically as a result of the January 2006 final rule as further amended by this interim final rule, is 1,250,959 hours. This burden estimate does not, however, include the burden associated with the new disclosure requirements in connection with payroll card accounts as announced in a separate final rule (Docket No. R–1247).

Because the records would be maintained by the institutions and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Text of Interim Final Revisions

Comments are numbered to comply with **Federal Register** publication rules.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 205 and the Official Staff Commentary, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1603b.

■ 2. Section 205.3 is amended by revising paragraphs (a), (b)(2)(ii) and (b)(3) as follows:

§ 205.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ 205.3(b)(2) and (b)(3), 205.10(b), (d), and (e) and 205.13, this part applies to any person.

(b) *Electronic fund transfer.* * * *

(2) *Electronic fund transfer using information from a check.* * * *

(ii) The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an EFT, and obtain a consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.

* * * * *

(3) *Collection of insufficient funds fees via electronic fund transfer.* (i) *General.* The person initiating an electronic fund transfer to collect a fee for the return to that person of an electronic fund transfer or a check due to insufficient or uncollected funds in the consumer's account must obtain the consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for insufficient or uncollected funds if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the transaction. The notice must state that the fee will be collected by means of an electronic fund transfer from the consumer's account if the payment is returned due to insufficient or uncollected funds and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, except as otherwise provided in paragraph (b)(3)(ii), the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.

(ii) *Point-of-sale transactions.* If a fee for insufficient or uncollected funds may be collected electronically in connection with a point-of-sale transaction, the person collecting the fee must post the notice described in paragraph (b)(3)(i) of this section in a prominent and conspicuous location, and also provide the consumer a copy of the posted notice, or a substantially similar notice, at the time of the transaction. If the amount of the fee may vary due to the amount of the transaction or due to other factors, the posted notice may explain how the fee will be determined, but in such cases, the notice provided to each consumer must state the dollar amount of the fee if the amount can be calculated at the time of the transaction.

(iii) *Delayed compliance date for fee disclosure.* Through December 31, 2007, the copy of the notice given to consumers at point-of-sale under paragraph (b)(3)(ii) of this section need not include either the dollar amount of any fee collected electronically for insufficient or uncollected funds or an explanation of how the fee will be determined.

* * * * *

■ 3. In Appendix A to part 205,

■ a. Section A–6 Model Clauses for Authorizing One-Time Electronic Fund Transfer Using Information From a Check (§ 205.3(b)(2)), paragraphs (a) and (b) are revised; and

■ b. Section A–8 Model Clause for Electronic Collection of Insufficient Funds Fees (§ 205.3(b)(3)) is added.

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–6 Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§ 205.3(b)(2))

(a)—Notice About Electronic Check Conversion

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

(b)—Alternative Notice About Electronic Check Conversion (Optional)

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction.

[Specify other circumstances (at payee's option).]

* * * * *

A–8 Model Clause for Electronic Collection of Insufficient Funds Fees (§ 205.3(b)(3))

If your payment is returned due to insufficient funds in your account, you authorize us to make a one-time electronic fund transfer from your account to collect a fee of $____. [If your payment is returned due to insufficient funds in your account, you authorize us to make a one-time electronic fund transfer from your account to collect a fee. The fee will be determined [by]/[as follows]: _____.]

■ 4. In Supplement I to Part 205, under *Section 205.3—Coverage*, the heading ''Paragraph 3(b)(3)—Collection of Service Fees via Electronic Fund Transfer'' is revised as ''Paragraph 3(b)(3)—Collection of Insufficient Funds Fees via Electronic Fund Transfer'', paragraph 1. is revised, and paragraphs 2. and 3. are added.

Supplement I to Part 205—Official Staff Interpretations

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Section 205.3—Coverage

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3(b) Electronic Fund Transfer

* * * * *

Paragraph 3(b)(3)—Collection of Insufficient Funds Fees via Electronic Fund Transfer

1. *Fees imposed by account-holding institution.* The requirement to obtain a consumer's authorization to collect a fee via EFT for the return of an EFT or check unpaid due to insufficient or uncollected funds in the consumer's account applies only to the person to whom the EFT or check was returned and that intends to collect the service fee by means of an EFT from the consumer's account. The authorization requirement does not apply to any fees assessed by the consumer's account-holding financial institution when it returns the unpaid underlying EFT or check or pays the amount of the overdraft.

2. *Accounts receivable transactions.* In an accounts receivable (ARC) transaction where a consumer sends in a payment for amounts owed, a person seeking to electronically collect a fee for returned items due to insufficient or uncollected funds in a consumer's account must obtain the consumer's authorization to collect the fee. A consumer authorizes a person to electronically collect an insufficient funds fee when the consumer receives notice, typically on an invoice or statement, that the person may collect the fee through an EFT to the consumer's account, and the consumer goes forward with the underlying transaction by sending payment. The notice must also state the dollar amount of the fee. However, an explanation of how that fee will be determined may be provided in place of the dollar amount of the fee if the fee may vary due to the amount of the transaction or due to other factors. For example, if a state law permits a maximum fee of $30 or 10% of the underlying transaction, whichever is greater, a payee may explain how the fee is determined, rather than state a specific dollar amount for the fee.

3. *Disclosure of dollar amount of fee at POS.* The notice provided to the consumer at POS under § 205.3(b)(3)(ii) must state the amount of the fee for insufficient or uncollected funds if the dollar amount of the fee can be calculated at the time of the transaction. For example, if a state sets a maximum fee that may be collected due to insufficient or uncollected funds in a consumer's account based on the amount of the underlying transaction (such as where the amount of the fee is expressed as a percentage of the underlying transaction), the person collecting the fee must provide the actual dollar amount of the fee on the notice provided to the consumer. Alternatively, in a state where the amount of the insufficient funds fee a person may collect cannot be calculated at the time of the transaction (for example, where the amount of the fee will depend on the number of days a debt continues to be owed), the person collecting the fee may provide a description of how the fee will be determined on both the posted notice as well as on the notice provided to the consumer.

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By order of the Board of Governors of the Federal Reserve System.

Dated: August 24, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–14342 Filed 8–29–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE257, Special Condition 23–197–SC]

Special Conditions: West Pacific Air LLC; Raytheon Beech Model B–36TC; Protection of Electronic Flight Instrument Systems From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to West Pacific Air LLC, 6427 E. Rutter Road, Spokane, WA 99212, for a Supplemental Type Certificate for the Raytheon Beech Model B–36TC airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model ICDS–10 manufactured by SAGEM Avionics, Inc. for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is August 23, 2006. Comments must be received on or before September 29, 2006.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE257, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE257. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public