

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 210****RIN 1510-AA81****Federal Government Participation in the Automated Clearing House****AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Interim Rule with request for comment.

SUMMARY: We're issuing an interim rule amending our regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. Our regulation generally adopts the ACH rules developed by NACHA—The Electronic Payments Association (NACHA) (ACH Rules) as the rules governing ACH transactions by Federal agencies. We're revising our regulation to reflect changes that NACHA has made to the ACH Rules since the publication of NACHA's 1999 rule book.

DATES: This interim rule is effective May 8, 2000. Comments must be received by June 6, 2000. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of May 8, 2000.

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

You may also inspect and copy this interim rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

You may send comments electronically to the following address: 210comments@fms.treas.gov. You may also mail comments to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, 401 14th Street, SW, Room 420, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT:

Walt Henderson, Senior Financial Program Specialist, at (202) 874-6705 or walt.henderson@fms.treas.gov;

Natalie H. Diana at (202) 874-6590 or natalie.diana@fms.treas.gov;

Adam Martin, Financial Program Specialist, at (202) 874-6881 or adam.martin@fms.treas.gov;

Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874-6590 or cindy.johnson@fms.treas.gov; or

Margaret Marquette, Deputy Chief Counsel, at (202) 874-6681.

SUPPLEMENTARY INFORMATION:**I. Background**

On April 9, 1999, we published a final rule in the **Federal Register** (64 FR 17472). The final rule amended our regulations at 31 CFR Part 210 (Part 210), which govern the use of the ACH system by Federal agencies (agencies). The ACH system is a nationwide electronic funds transfer system that provides for the interbank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. The final rule adopted the ACH Rules published in NACHA's 1999 rule book (including rule changes with an effective date on or before September 17, 1999) as the rules governing all Government ACH transactions, with 11 exceptions.

NACHA periodically updates the ACH Rules. Each year NACHA publishes a new rule book that reflects the changes to the ACH Rules that have been approved since the publication of the previous rule book. NACHA recently published its 2000 rule book.

Part 210 provides that any amendment to the ACH Rules, as published in the 1999 Rule Book, that takes effect after September 17, 1999, will not apply to Government ACH entries unless we publish notice of acceptance of the amendment in the **Federal Register**. 31 CFR 210.3(b)(2). We're publishing this interim rule in order to indicate which amendments to the ACH Rules we're accepting and which amendments we're rejecting, and to provide an opportunity for comment.

II. Summary of Rule Changes**A. Changes to ACH Rules**

The ACH Rules published in NACHA's 2000 rule book reflect changes to the ACH Rules published in NACHA's 1999 rule book related to seven topics:

1. Self-Audit Requirements

NACHA has revised the self-audit provisions of the ACH Rules to require self-audits annually rather than every three years; to require third-party service providers to conduct self-audits; to require proof be retained that a self-audit was completed; and to require that originating depository financial institutions (ODFIs) and receiving depository financial institutions (RDFIs) specifically warrant that they have completed self-audits. The effective date of these changes was December 17, 1999.

2. Point-of-Purchase Electronic Check Transactions

NACHA has adopted an interim rule to provide a legal framework for the conversion of checks to ACH debit entries at the point-of-purchase. The interim rule expands the definition of Prearranged Payment and Deposit (PPD) format in the ACH Rules to allow this format to be used to initiate a one-time ACH debit entry to a Receiver's account for purchases made in person at the point-of-purchase. The implementation period for the interim rule began on September 17, 1999 and will continue through September 14, 2000.

NACHA also has adopted a final rule, which will take effect when the interim rule ends, that amends the ACH Rules by establishing a legal framework to allow for the conversion of checks to ACH debit entries at the point-of-purchase. The amendment creates a new Standard Entry Class (SEC) code, POP (Point-of-Purchase Entry), that will allow for an Originator to initiate a one-time ACH debit entry to a Receiver's account for purchases made in person at the point-of-purchase. This rule change will become effective as of September 15, 2000.

3. Accounts Receivable Check Truncation

NACHA has adopted an interim rule expanding the definition of the PPD format in the ACH Rules to allow Originators to utilize the PPD format to truncate checks received through the U.S. mail for payment for goods or services and convert them to ACH debit entries. The rule provides a legal framework to allow pilot tests of lockbox check truncation. The rule requires the Originator to provide the consumer with notice of the check truncation policy prior to receiving the first check payment that will be truncated. The consumer must authorize the entry in writing, signed or similarly authenticated, unless the notice to the consumer indicates that the item will be truncated if the consumer doesn't provide the Originator with written notice not to truncate. The implementation period for the interim rule began on December 17, 1999, and will continue through December 15, 2000.

4. ACH Operator Definition

NACHA has revised the definition of ACH Operator to more clearly define the role and functions assumed by ACH Operators when clearing and settling

ACH transactions. This revision became effective June 18, 1999.¹

5. Cross-Border Payments

NACHA has amended the ACH Rules to establish two new SEC codes, CBR (Corporate Cross-Border Transactions) and PBR (Consumer Cross-Border Transactions), to be used for the origination and receipt of cross-border ACH entries. The amendment will become effective as of September 15, 2000.

6. Re-Presented Check Entries

NACHA has established a new SEC code to provide commercial depositors and their financial institutions with a legal framework and technical specifications to transmit ACH debit entries to collect checks that have been returned for insufficient or uncollected funds. The new code will become effective as of September 15, 2000.

7. Types of Accounts for ACH Transactions

NACHA has established two new sets of transaction codes to support the transmission of ACH credit and debit entries to financial institutions' general ledger accounts and the transmission of credit entries to loan accounts. This change to the ACH Rules will become effective as of September 15, 2000.

B. ACH Rule Changes That We Are Accepting

We are accepting all of the changes to the ACH Rules that are reflected in the 2000 Rule Book with two exceptions discussed in Section C below. Under the interim rule, there are still 11 provisions of the ACH Rules that Part 210 preempts, except that we are broadening our preemption of the ACH rules enforcement provisions to include the self-audit requirements (see 210.2(d)(3)). No change to the 11 preempted provisions is necessary to reflect our preemption of the changes related to types of accounts, because we were aware of NACHA's intention to permit the crediting of ACH credits to general ledger and loan accounts and had already preempted that provision of the ACH Rules for Federal payments other than vendor payments. See 64 FR 17474.

All of the ACH rule changes that we are accepting are effective as of the

effective date of publication of this interim rule or NACHA's effective date for the rule change, whichever is later.

Point-of-Purchase Electronic Check Transactions

We're accepting both the interim and the final ACH rule changes that allow an Originator to initiate a one-time ACH debit entry to a Receiver's account for purchases made in person at the point-of-purchase.

We are currently engaged in pilot programs with several agencies to test the conversion of checks to ACH debit entries at the point-of-purchase. We believe that these transactions could expand the utility of the ACH system and might provide useful and cost-effective applications for Government agency collections. We also recognize, however, that the conversion of checks to ACH debits raises various issues, including the kind of disclosure and authorization that is appropriate for such transactions and the kinds of checks that can or should be converted.

While we believe that the establishment of a legal framework for such transactions is desirable, it's difficult to determine the appropriate responsibilities and liabilities of the parties before the application of this technology has been tested. Moreover, attempting to establish a definitive legal framework for point-of-purchase check conversion by agencies at this time could hamper innovation and impede operational flexibility. Because of the diversity and unique concerns of Government check collections, it's unclear whether the model of POP check conversion will be workable or appropriate on a Government-wide basis. Accordingly, although we're accepting the NACHA's interim and final rule changes in order to provide a basic legal foundation for these transactions, we anticipate that we would seek public comment on the rules governing POP check conversion before engaging in POP check conversion on anything other than a pilot basis. In addition, in view of the experimental nature of pilot programs, it is possible that our pilots may not conform to all of the requirements otherwise imposed under the ACH Rules. It is our intention, however, to ensure that any on-going Government POP check conversion programs that we might establish in the future will conform to the ACH Rules that we incorporate in Part 210.

Accounts Receivable Check Truncation

We're accepting the Interim Rule that provides a legal framework for Originators to truncate checks received

through the mail in payment for goods or services and convert them to ACH debit entries. The rule requires the Originator to provide the consumer with notice of the check truncation policy prior to receiving the first check payment that will be truncated. The Receiver must authorize the truncation, either by "opting-in" (meaning that the Receiver must authorize the entry in writing, signed or similarly authenticated), or "opting-out" (meaning that the notice to the Receiver indicates that the Receiver may provide the Originator with written notice not to truncate the check).

Although we're not engaged in lockbox check truncation at this time, we are aware that lockbox check truncation could offer significant cost savings for Government collections. However, we're concerned that consumers understand and consent to such transactions. It is therefore our intention to seek public comment on the rules governing lockbox check truncation before engaging in lockbox check truncation other than on a pilot basis. As discussed above in the context of POP check conversion, pilot programs, by virtue of their very nature in exploring new or novel applications of technology, may not conform to all of the requirements otherwise imposed under the ACH Rules.

ACH Operator Definition

We are accepting the revisions to the ACH Operator definition.

Cross-Border Payments

We are accepting the rules establishing two new SEC codes to be used for the origination and receipt of cross-border ACH entries. We don't anticipate that agencies will be utilizing these codes for the origination or receipt of cross-border entries in the immediate future. However, it is possible that at some future time, agencies may wish to utilize these codes.

Re-Presented Check Entries

We're accepting the rule changes that establish a new SEC code to provide commercial depositors and their financial institutions with a legal framework and technical specifications to transmit ACH debit entries to collect checks that have been returned for insufficient or uncollected funds. We believe that the ability to use ACH debit entries in this manner may facilitate the Government's ability to collect on checks that have been returned unpaid.

¹ Part 210 adopted the ACH Rules published in NACHA's 1999 rule book (including rule changes with an effective date on or before September 17, 1999) as the rules governing all Government ACH transactions, with certain exceptions. Although NACHA's effective date for the ACH Operator definition was June 18, 1999, the changes to the definition were not published in the 1999 rule book and thus not previously incorporated in Part 210.

C. ACH Rule Changes That We Aren't Accepting

Self-Audit Requirements

We aren't accepting the ACH Rule changes related to the self-audit requirements. The purpose of the changes to the self-audit requirements is to promote better compliance with the ACH Rules. We believe that compliance with the ACH Rules is important and we are working with agencies to achieve Government-wide compliance with all ACH Rule requirements, including applicable time frames. Federal agencies are subject to oversight and audit requirements unique to the Federal Government. For example, the Office of the Inspector General and the General Accounting Office periodically review and audit various aspects of Federal agencies' operations. Accordingly, we believe that the imposition of a separate ACH compliance self-examination is both unnecessary and unlikely to significantly enhance the Government's compliance with Part 210.

Types of Accounts for ACH Transactions

We're not accepting, for Federal payments other than vendor payments, the changes to the ACH Rules that permit the crediting of ACH credits to a financial institution general ledger account or to a loan account. Section 210.5 provides that ACH credit entries representing Federal payments other than vendor payments must be deposited to an account at a financial institution in the name of the recipient, with three exceptions. As discussed in the rulemaking release that accompanied our adoption of this requirement, the term "account" for purposes of § 210.5 is intended to mean a deposit account and not a loan account or general ledger account. See 64 FR 17472, 17474 (1999). We believe that important consumer protections are associated with the crediting of Federal payments to a deposit account, including those available under Regulation E (12 CFR Part 205) and Regulation DD (12 CFR Part 230), as well as the availability of Federal deposit or share insurance. Therefore, we're not accepting this change to the ACH Rules with respect to payments other than vendor payments.

D. Section-by-Section Analysis

Section 210.2(a)

We are amending the definition of ACH Rules to reflect NACHA's name change from the National Automated Clearing House Association to

NACHA—The Electronic Payments Association.

Section 210.2(d)

We are amending the definition of "applicable ACH Rules" at section 210.2(d) to reference the rules published in NACHA's 2000 rule book rather than the rules published in NACHA's 1999 rule book. In addition, we are amending section 210.2(d)(3) to exclude the self-audit requirements of the ACH Rules.

Section 210.3(b)

We are amending subsection 210.3(b), "Incorporation by reference—applicable ACH Rules," by replacing the references to the ACH Rules as published in the 1999 rule book with references to the ACH Rules as published in the 2000 rule book.

Section 210.5

We are revising section 210.5, "Account requirements for Federal payments," by specifically providing in subsection 210.5(a) that an ACH entry representing a Federal payment other than a vendor payment must be deposited into a deposit account at a financial institution. This revision of the regulatory language does not represent a substantive change from the existing rule since, as discussed above, the rulemaking release that accompanied our adoption of this requirement indicated that § 210.5 was intended to require that Federal payments other than vendor payments must be deposited to a deposit account and not a loan account or general ledger account. See 64 FR 17472, 17474 (1999).

We also are amending the first sentence of § 210.5 to read, "Notwithstanding ACH Rules 2.1.2, 4.1.3, and Appendix Two, section 2.2 (listing general ledger and loan accounts as permissible transaction codes) * * *" in order to clarify that the requirements of § 210.5 preempt the ACH Rules that would otherwise allow ACH credits generally to be sent to general ledger or loan accounts.

III. Procedural Requirements

A. Request for Comment

We invite comment on all aspects of the interim rule.

B. 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 interim

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 interim rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

C. Notice and Comment; Effective Date

We find that good cause exists for issuing this interim rule without prior notice and comment. Under the Administrative Procedure Act, an agency is permitted to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). We believe that it is important to address the publication of new ACH rules as quickly as possible in order to mitigate the uncertainty and inconvenience to financial institutions that would result from a time lag in responding to NACHA's rule changes. When we proposed to address changes to the ACH Rules by reviewing and responding to rule changes on an annual basis, we received many comments expressing concern over the potential consequences of such a time lag. For these reasons, we conclude that we have good cause for issuing this interim rule without prior notice and comment. Nevertheless, we are inviting comment and will consider the comments received. For these reasons we also find that good cause exists to make this interim rule effective without a delayed effective date.

D. Executive Order 12866

This interim 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.

E. Regulatory Flexibility Act

Because notice and public comment are not required, the Regulatory Flexibility Act (5 U.S.C. 601) does not apply.

F. Paperwork Reduction Act

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3501) does not apply.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfers, Financial institutions, Fraud, Incorporation by reference.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR Part 210 is amended 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(a) and (d) to read as follows:

§ 210.2 Definitions.

* * * * *

(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by NACHA—The Electronic Payments Association (NACHA), a national association of regional member clearing house associations, ACH Operators and participating financial institutions located in the United States.

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(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before September 15, 2000, as published in Parts I, II, and IV of the “2000 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).

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3. Revise § 210.3(b) to read as follows:

§ 210.3 Governing law.

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(b) *Incorporation by reference—applicable ACH Rules.* (1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 15, 2000, as published in Parts I, II, and IV of the “2000 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network.” The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the “2000 ACH Rules” are available from NACHA—The Electronic Payments Association, 13665 Dulles Technology Drive, Suite 300, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North

Capitol Street, NW., Suite 700, Washington, D.C.

(2) Any amendment to the applicable ACH Rules that takes effect after September 15, 2000, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** document expressly accepting such amendment.

4. Revise § 210.5 to read as follows:

§ 210.5 Account requirements for Federal payments.

(a) Notwithstanding ACH Rules 2.1.2, 4.1.3, and Appendix Two, section 2.2 (listing general ledger and loan accounts as permissible transaction codes), an ACH credit entry representing a Federal payment other than a vendor payment shall be deposited into a deposit account at a financial institution. For all payments other than vendor payments, the account at the financial institution shall be in the name of the recipient, except as provided in paragraph (b) of this section.

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Dated: April 4, 2000.

Richard L. Gregg,
Commissioner.

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