

**§ 301.6081-2T Automatic extension of time for filing an information return with respect to certain foreign trusts (temporary).**

(a) *In general.* A trust required to file a return on Form 3520-A, "Annual Information Return of Foreign Trust with a U.S. Owner," will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the trust files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), a trust must—

(1) Submit a complete application on Form 7004, "Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns," or in any other manner prescribed by the Commissioner; and

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the trust a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the trust's last known address. For further guidance regarding the definition of last known address, see § 301.6212-2 of this chapter.

(d) *Penalties.* See section 6677 for failure to file information returns with respect to certain foreign trusts.

(e) *Effective dates.* This section is applicable for applications for an automatic extension of time to file an information return with respect to certain foreign trusts listed in paragraph (a) of this section filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: October 26, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary (for Tax Policy).*

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**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Fiscal Service****31 CFR Part 210**

**RIN 1510-AB04**

**Federal Government Participation in the Automated Clearing House**

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule amends our regulation at 31 CFR part 210 (Part 210), which governs the use of the Automated Clearing House (ACH) system by Federal agencies. Part 210 adopts, with some exceptions, the ACH Rules developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH system by Federal agencies. We are issuing this rule to address changes that NACHA has made to the ACH Rules since the publication of NACHA's 2003 rule book.

**DATES:** Comments on the interim final rule are due January 6, 2006. This rule is effective January 6, 2006. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of January 6, 2006.

**ADDRESSES:** You can download this interim final rule at the following Web site: <http://www.fms.treas.gov/ach>. You may also inspect and copy this rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

You can view Treasury's procedural guidelines for ACH payments in the Green Book at the following Web site: <http://www.fms.treas.gov/greenbook>. You may also register at this Web site for e-mail notification of updates to the Green Book.

You may submit comments on the rule by any of the following methods. You may go to the Government-wide rulemaking Web site <http://www.regulations.gov> and follow the instructions for sending your comments electronically. Alternatively, you may email your comments to FMS at 210 [comments@fms.treas.gov](mailto:comments@fms.treas.gov). You may also mail your comments to Matthew Friend, Financial Management Service, 401 14th Street, SW., Room 401, Washington, DC 20227.

**FOR FURTHER INFORMATION CONTACT:** Matthew Friend, at (202) 874-1251 or

[matthew.friend@fms.treas.gov](mailto:matthew.friend@fms.treas.gov); or Natalie H. Diana, Senior Counsel, at (202) 874-6680 or [natalie.diana@fms.treas.gov](mailto:natalie.diana@fms.treas.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

Part 210 governs the use of the ACH system by Federal agencies. The ACH system is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend part 210 in order to address changes that NACHA periodically makes to the ACH Rules or to revise the regulation as otherwise appropriate.

We are issuing an interim final rule amending part 210 to reflect certain changes that NACHA has made to the ACH Rules since the publication of NACHA's 2003 rule book. We are publishing this interim final rule in order to indicate which amendments to the ACH Rules we are accepting and which amendments we are rejecting.

**II. Summary of Rule Changes**

Since 2003, NACHA has published two sets of changes to the ACH Rules. The first set of changes was published in NACHA's 2004 rule book (2004 ACH Rule Book), and the second set of changes was published in NACHA's 2005 rule book (2005 ACH Rule Book). We are adopting all of the rule changes except those relating to the audit provisions of the ACH Rules, which we have previously determined not to incorporate in part 210. The rule changes that we are adopting are largely technical operational changes that will have little or no impact on Federal agencies' use of the ACH system. For example, the changes discussed below to the title and description of Return Reason Code R12 and the expansion of the Automated Accounting Advice Standard Entry Class code are changes that we believe are beneficial to the ACH system, but that do not significantly affect the government's use of the ACH system. In addition, some changes merely clarify existing provisions of the ACH rules (such as the addition of a warranty relating to authentication of receivers of Internet-Initiated Entries) or impose requirements that do not affect or change government ACH processes (such as ACH Operator and Third Party Processor requirements).

### A. Changes to ACH Rules Published in 2004 ACH Rule Book

1. *Arbitration Procedures.* Effective December 12, 2003, the ACH Rules governing the arbitration process were modified to (1) Revise the classifications of disputes handled under such procedures; (2) establish criteria under which participation in an arbitration proceeding is mandatory once a dispute has been submitted to arbitration; (3) revise the number of arbitrators and stipends for each arbitration procedure; and (4) expand the time frame in which a dispute may be submitted for arbitration. Arbitration is voluntary under the ACH Rules.

We are adopting these modifications to the arbitration provisions of the ACH Rules.

2. *Copy of Source Document for Accounts Receivable (ARC) Entries.* In the 2004 ACH Rule Book, NACHA published a modification to the rules governing ARC entries to eliminate the requirement that an Originator retain a copy of the back of the source document used for an ARC entry. The rule change became effective December 12, 2003. We are adopting this rule change. We do not anticipate that this rule change will affect government ARC check conversion, since we will continue to scan the backs of checks in order to make it possible to present an item for payment through the check system in the event the item cannot be converted to an ACH entry.

3. *Operational Efficiency Issues—Excused Delay.* In the 2004 ACH Rule Book, NACHA published changes to the ACH Rules that clarify that an operational outage at a Depository Financial Institution (DFI) and ACH Operator due to the general failure or interruption of communication or computer facilities or other equipment does not constitute an excused delay. This rule became effective March 12, 2004. We agree that DFIs and ACH Operators should have contingency backup systems and that a system failure should not excuse the DFI or ACH Operator from the time limits prescribed by the ACH Rules unless the system failure is due to circumstances beyond their control. Accordingly, we are adopting this ACH rule clarification.

4. *Operational Efficiency Issues—Return Reason Code R12 & Check Serial Number XCK in Audit.* NACHA amended the ACH Rules, effective March 12, 2004, to modify the title and description of Return Reason Code R12 from “Branch Sold to Another DFI” to “Account Sold to Another DFI” to more accurately reflect that this code is used to return an entry that is destined to a

specific account that has been sold. The amendment also expanded the audit provisions of the ACH Rules to require a Receiving Depository Financial Institution (RDFI) to verify that it includes the Check Serial Number of XCK entries on the consumer’s bank account. We are adopting the amendment modifying the title and description of Return Reason Code R12. We are not adopting the expansion of the audit provisions because the audit provisions are not incorporated in part 210 and do not apply to agencies’ use of the ACH system. See 31 CFR 210.2(d)(3); 65 FR 18866 (April 7, 2000).

5. *Operational Efficiency Issues—Automated Accounting Advices.* The ACH Rules were modified, effective September 10, 2004, to modify the Automated Accounting Advice (ADV) Standard Entry Class code. The ADV Standard Entry Class code is used for an optional service offered by ACH Operators in which accounting information is provided to participating DFIs in machine-readable format. The amendment expanded the Total Credit Entry Dollar Amount and Total Debit Entry Dollar Amount Fields within the ADV Company/Batch Control Record from 12 characters to 20 characters to accommodate ADV entries with larger dollar values and created a new File Control Record that is unique to ADV entries. We are incorporating this amendment in part 210.

### B. Changes to ACH Rules Published in 2005 ACH Rule Book

1. *Consumer Opt-Out of ARC Check Conversion.* Effective June 4, 2004, NACHA amended the ACH Rules to require Originators of ARC entries to allow Receivers to opt out of ARC check conversion. Originators must ensure that they have established reasonable procedures under which Receivers may notify Originators that their checks are not to be converted to ARC entries. We are adopting this amendment.

FMS provides ARC check conversion services for agencies through a centralized back-end processing operation. We have developed an automated process for identifying checks that are not to be converted, so that those items can be presented for payment as checks rather than as ACH entries. In order to provide flexibility and convenience to the public, we are working with agencies to develop several ways in which remitters can choose to contact the government to instruct that their checks not be converted, including telephone, fax, e-mail and/or regular mail. Agencies are responsible for notifying their remitters that they may opt out of ARC check

conversion and for providing remitters with specific opt-out instructions.

2. *ACH Data Security Requirements.* In the 2005 ACH Rule Book, NACHA published an amendment to the ACH rules to expand the data security requirements by requiring all ACH transactions, regardless of the Standard Entry Class Code, that involve the exchange or transmission of banking information via Unsecured Electronic Networks to be either (a) encrypted using a commercially reasonable security technology that, at a minimum, is equivalent to 128-bit RC4 encryption technology, or (2) transmitted via a secure session utilizing a commercially reasonable security technology that provides a level of security that, at a minimum, is equivalent to 128-bit RC4 encryption technology. Prior to this amendment, the ACH Rules defined specific data security requirements only for Internet-Initiated (WEB) Entries. This amendment took effect on September 10, 2004.

We agree that ACH transactions that involve the transmission of banking information via an Unsecured Electronic Network should be subject to data security requirements even if the Originator obtains information from the Receiver by telephone and then key-enters the information via the Internet. We are incorporating these requirements in part 210.

3. *Returns Issues—ACH Operator Requirements.* Effective September 10, 2004, the ACH Rules were amended to (1) remove the ACH Operator mandatory field error edit on the Original Receiving DFI Identification Field within the addenda records of dishonored return and contested dishonored return entries since this field is defined as a required, rather than mandatory, field, and (2) establish a requirement within the ACH Rules that prohibits ACH Operators from settling return entries prior to the effective entry date in the Company/Batch Header record of the original entry, as reflected in the return Entry Detail Record. This amendment, which generally affects only ACH Operators, was developed in order to correct an inconsistency in the ACH Rules related to the Original Receiving DFI Identification Field in the addenda records for returns. We do not believe that this amendment has any impact on agencies or Federal payment recipients. We are adopting this amendment.

4. *Third Party Service Provider Issues.* NACHA amended the ACH Rules, effective December 10, 2004, to impose specific obligations and processing requirements for certain types of Third-Party Service Providers (referred to as “Third-Party Senders”) that act as

intermediaries between an Originator and an Originating Depository Financial Institution (ODFI). We believe it is appropriate to establish a legal framework within the ACH Rules to support a widely-used business practice in which some Originators do not have agreements directly with the ODFI. We are adopting this amendment to the ACH Rules.

5. *Internet Issues*. Effective March 18, 2005, NACHA modified the ACH Rules to (1) add a new ODFI warranty specific to the requirement that an Originator of WEB entries use commercially reasonable methods of authentication to verify the identity of the Receiver, and (2) uniquely identify this requirement under the Originator's obligations with respect to WEB entries. Prior to this modification, the use of verification procedures was implicit in the ACH Rules but was not set forth as an explicit warranty. We are adopting this modification to the ACH Rules.

6. *Returns for Unauthorized Debits to Consumer Accounts Using a Corporate SEC Code*. The ACH Rules were amended, effective March 18, 2005, to reactivate Return Reason Code R05 to accommodate the return of unauthorized debit entries to consumer accounts when those debits were transmitted using a corporate Standard Entry Class Code.

We agree that if an Originator transmits an ACH entry to a consumer account that is erroneously formatted using an incorrect SEC Code, the RDFI should be permitted to apply the return rules and time frames for returning unauthorized debits to consumer accounts, notwithstanding the incorrect SEC Code contained within the entry. Accordingly, we are incorporating this rule in part 210.

### C. Section-by-Section Analysis

In order to incorporate in part 210 the ACH rule changes that we are accepting, the only change necessary to the current regulation is to replace references to the 2003 rule book with references to the 2005 ACH Rule Book. No change to part 210 is necessary in order to exclude the amendments to the audit provisions, since part 210 already provides that the ACH audit requirements do not apply to Federal agency ACH transactions.

#### Section 210.2(d)

We are amending the definition of "applicable ACH Rules" at § 210.2(d) to reference the rules published in NACHA's 2005 rule book rather than the rules published in NACHA's 2003 rule book. There have been changes in the numbering of the ACH Rules that are reflected in some of the enumerated

exceptions in § 210.2(d). For example, the numbering of the ACH Rules governing the reclamation of benefit payments that are referenced in § 210.2(d)(4) has changed from ACH Rules 2.2.1.8 and 4.7 to ACH Rules 2.2.1.10 and 4.8, respectively. Other numbering changes include: ACH Rule 2.2.1.12, referenced in § 210.2(d)(3), was previously ACH Rule 2.2.1.10; ACH Rule 9.3, referenced in § 210.2(d)(5), was previously ACH Rule 8.3; and ACH Rule 2.10.2.3, referenced in § 210.2(d)(6), was previously ACH Rule 2.10.2.2.

#### Section 210.3(b)

We are amending § 210.3(b), "Incorporation by reference—applicable ACH Rules," by replacing the references to the ACH Rules as published in the 2003 rule book with references to the ACH Rules as published in the 2005 rule book.

#### Section 210.6

We are updating several references to ACH Rules to reflect numbering changes that have been made to the ACH Rules.

#### Section 210.8(b)

We are replacing a reference to ACH Rule 7.7.2 with a reference to ACH Rule 7.7.3 to reflect a numbering change.

### III. Procedural Requirements

#### *Request for Comment*

We invite comment on all aspects of the interim final rule.

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

#### *Notice and Comment; Effective Date*

We find that good cause exists for issuing this interim final 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 and agencies 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, we received many comments expressing concern over the potential consequences of such a time lag. Those consequences include uncertainty as to the rules governing government ACH transactions, as well as the inability of financial institutions to segregate the processing of those transactions. For these reasons, we find that we have good cause for issuing this interim final rule without prior notice and comment. Nevertheless, we are inviting comment and will consider the comments received.

#### *Executive Order 12866, Regulatory Planning and Review*

This interim final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866.

#### *Regulatory Flexibility Act*

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

#### *Paperwork Reduction Act*

This interim final rule contains no new collections of information. Therefore, the Paperwork Reduction Act does not apply.

#### 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, 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(d) to read as follows:

#### **§ 210.2 Definitions.**

\* \* \* \* \*

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or

before March 18, 2005, as published in Parts II, III, and IV of the "2005 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network":

- (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; 2.2.1.12; Appendix Eight and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);
- (4) ACH Rules 2.2.1.10; 2.6; and 4.8 (governing the reclamation of benefit payments);
- (5) ACH Rule 9.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of "Effective Entry Date" in Appendix Two);
- (6) ACH Rule 2.10.2.3 (requiring that originating depository financial institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries); and
- (7) ACH Rule 2.11.3 (requiring reporting regarding unauthorized Telephone-initiated entries).

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

\* \* \* \* \*

(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 March 18, 2005, as published in Parts II, III, and IV of the "2005 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 "2005 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, DC 20002; and the Financial Management Service, 401 14th Street, SW., Room 401, Washington, DC 20227.

(2) Any amendment to the applicable ACH Rules that takes effect after March 18, 2005, 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** notice expressly accepting such amendment.

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#### § 210.6 [Amended]

- 4. Amend § 210.6 as follows:
- a. Amend the first sentence of § 210.6 by deleting "7.7.2" and inserting "8.7.2."
- b. Amend paragraph (g) by deleting "3.4" and "3.10" and inserting "3.5" and "3.12," respectively.
- c. Amend paragraph (h)(1) by deleting "3.6.1" and inserting "3.7.1."
- d. Amend paragraph (h)(2) by deleting "3.10" and inserting "3.12."
- e. Amend paragraph (i) by deleting "3.4" and "3.10" and inserting "3.5" and "3.12," respectively.

#### § 210.8 [Amended]

- 5. Amend paragraph (b) introductory text of § 210.8 by deleting "7.7.2" and inserting "8.7.2."

**Richard L. Gregg,**

*Commissioner.*

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## DEPARTMENT OF DEFENSE

### Department of the Army

#### 32 CFR Part 581

RIN 0702-AA51

#### Personnel Review Board

**AGENCY:** Assistant Secretary of the Army for Manpower and Reserve Affairs, DoD.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Army amends its regulation on Army Board for Correction of Military Records to be in compliance with the United States District Court for the District of Columbia decision (*Daniel J. Lipsman v. Secretary of the Army*—Civil Action No. 02-0151 (RMU), Document Nos. 18, 20, decided September 7, 2004, 2004 U.S. Dist. LEXIS 17866).

**DATES:** *Effective Date:* December 7, 2005.

**ADDRESSES:** The Army Review Boards Agency, ATTN: SFMR-RBR, 1901 South Bell Street, 2nd Floor, Arlington, Virginia 22202-4508.

**FOR FURTHER INFORMATION CONTACT:** Hubert S. Shaw, 703-607-1779.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

This rule has previously been published. Section 581.3 contained in

32 CFR part 581 provides Department of the Army policy, criteria and administrative instructions regarding an applicant's request for the correction of a military record. The Administrative Procedure Act, as amended by the Freedom of Information Act, requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this part fall into that category. The Department of the Army received no responses to its notice of proposed rule change published on August 3, 2005; therefore, no substantive changes were made to the proposed rule.

#### B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule change does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

#### C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule change does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of \$100 million or more.

#### D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule change does not have an adverse impact on the environment.

#### E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule change does not involve collection of information from the public.

#### F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule change does not impair private property rights.

#### G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this