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Rules and Regulations

DEPARTMENT OF THE TREASURY

Funds Management Division

Financial Management Service

31 CFR Part 210

RIN 1510-AB00

Federal Government Participation in the Automated Clearing House

73 FR 52578

DATE: Wednesday, September 10, 2008

ACTION: Final rule.

SUMMARY: We are amending our regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. The rule adopts, with some exceptions, the ACH Rules developed by NACHA--The Electronic Payments Association (NACHA) as the rules governing the use of the ACH Network by Federal [*52579] agencies. We are issuing this rule to address changes to the ACH Rules set forth in NACHA's 2006 ACH Rules book and 2007 ACH Rules book. We are adopting all of the changes that NACHA published in the 2006 ACH Rules book and 2007 ACH Rules book, except certain changes to the self-audit provisions of the ACH Rules, which we have previously determined are not appropriate for the Federal government. This rule follows publication of a January 9, 2008 proposed rule and adopts the provisions of the proposed rule without change.

In addition, the rule provides two exceptions to existing deposit account requirements. Generally, an ACH credit entry representing a Federal payment other than a vendor payment must be deposited into a deposit account at a financial institution in the name of the recipient. On April 25, 2005, Treasury waived this requirement in order to allow some or all of the amount to be reimbursed to a Federal employee for official travel credit card charges to be disbursed directly to the credit card issuing bank. The rule codifies this waiver. The rule also provides an exception from existing deposit account requirements in cases where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the **Financial Management** Service (Service).

EFFECTIVE DATE: This rule is effective October 10, 2008. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of October 10, 2008.

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

FOR FURTHER INFORMATION CONTACT: Bill Brushwood, Financial Program Specialist, at (202) 874-1251 or bill.brushwood@fms.treas.gov; or Natalie H. Diana, Senior Counsel, at (202) 874-6680 or natalie.diana@fms.treas.gov.

SUPPLEMENTARY INFORMATION: Title 31 CFR part 210 (Part 210) governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment related 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.

Proposed Rulemaking

On January 9, 2008, we published a notice of proposed rulemaking (NPRM) requesting comment on a number of proposed amendments to Part 210. *73 FR 1560*. We proposed to amend Part 210 to address changes to the ACH Rules set forth in the 2006 ACH Rules book and the 2007 ACH Rules book. We also proposed to amend Part 210 to codify a waiver allowing for split disbursements of Federal employee travel payments. In addition, we proposed to amend Part 210 to provide that where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Service, the Federal payment may be deposited to an account at a financial institution designated by the Service to operate the program as Treasury's financial or fiscal agent, and the Service may specify the title, access terms and other provisions governing the account.

We received two comment letters on the NPRM. NACHA submitted a comment letter generally supporting the amendments. NACHA requested clarification that the proposed amendments relating to payment card programs and split disbursement of Federal employee travel reimbursements would not impose any express or implied requirement on financial institutions to match the name on the entry to the name on the account. As discussed in Section II below, neither of these amendments in any way affects the right of financial institutions to rely on account numbers alone in posting entries.

The Association for Financial Professionals (AFP) also commented on the NPRM. AFP's comment letter primarily addressed the conversion of business checks to ACH debits. AFP supported the proposed incorporation of the ACH Rules regarding the conversion of checks at accounts receivable and back office locations. However, AFP expressed concern that the proposed rule would permit the conversion of business checks at points-of-purchase without written authorization. AFP

pointed out that business staff persons paying for purchases at points-of-purchase may not be authorized to make decisions about payment methods and may not be educated about the need to read posted notices. Although the Service recognizes that corporate staff may not be authorized to make decisions about payment methods at a point-of-purchase, businesses that do not want checks converted at points-of-purchase can prevent conversion by utilizing an identifier within the Auxiliary On-U's Field within the MICR line of the check. Accordingly, we do not believe that the unauthorized conversion of corporate checks at points-of-purchase is likely to be a significant problem.

Final Rule

We are adopting, without change, all of the changes to Part 210 that were proposed in the NPRM. Those changes consist of the following:

. The codification of a waiver allowing for split disbursements of Federal employee travel payments;

. The adoption of a provision stating that where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Service, the Federal payment may be deposited to an account at a financial institution designated as a financial or fiscal agent, and the Service may specify the title, access terms and other provisions governing the account; and

. The adoption of all changes to the ACH Rules set forth in the 2006 ACH Rules book and the 2007 ACH Rules book, except changes to the self-audit rules.

II. Discussion of Amendments to Part 210

Split Travel Reimbursements

Section 210.5 generally requires that an ACH credit entry representing a Federal payment to a payee (other than a vendor payment) be deposited into a deposit account at a financial institution in the name of the recipient. On August 5, 2005, the Office of Management and Budget (OMB) revised Circular No. A-123 (Management's Responsibility for Internal Control). This revision became effective in fiscal year 2006 (October 1, 2005). OMB Circular No. A-123, Appendix B (Improving the Management of Government Charge Card Programs), sec. 4.4 requires, as a general matter, that Federal executive branch agencies implement split disbursement when reimbursing employees for official travel charges. This requirement applies when the individual cardholder is responsible for making payment to the charge card vendor, i.e., the travel card issuing bank. Split disbursement "is the process of dividing a travel voucher reimbursement between the charge card vendor and traveler." OMB Circular No. A-123, Appendix B, sec. 4.4.1. Under split disbursement, the "balance owed [*52580] to each is sent directly to the appropriate party." Id.

In April 2005, the Department of the Treasury, under the authority of 31 CFR 210.5(b)(3), waived the section 210.5 requirement that an ACH entry be deposited into a deposit account at a financial institution in the name of the recipient for purposes of permitting split disbursement. This was necessary in order to implement OMB's split disbursement policy since an account maintained by the travel card issuing bank in the name of an employee is not a deposit account at a financial institution within the meaning of section 210.5. We are amending section 210.5 to codify the terms of the split disbursement waiver into the rule. n1

n1 The waiver issued by the Department of the Treasury in April 2005 also waived the sister deposit account regulation codified at 31 CFR part 208 (Management of Federal Agency Disbursements). We plan to issue a separate Notice of Proposed Rulemaking in the **Federal Register** for the purpose of amending part 208 to codify the terms of the split disbursement waiver into that rule as well.

From a general cash management perspective, the Service supports split disbursement because it may benefit Federal agencies by reducing the number of travel card delinquencies. Split disbursement may also benefit Federal employee travelers by facilitating payment of their travel card liabilities (although employees remain responsible for having their accounts current).

The **final rule** does not establish or amend substantive Federal regulations or policies pertaining to Federal employee travel or reimbursement for official travel expenses. Such regulations and policies are established by, among other authorities, the Federal Travel Regulation (FTR), 41 CFR chapters 300-304. The FTR is within the purview of the General Services Administration (GSA). GSA issued GSA Bulletin FTR 05-08 on December 2, 2005, which advised Federal agencies of OMB Circular No. A-123 requirements, including the requirement for split disbursement.

In its comment letter on the proposed rule, NACHA requested clarification that the use of split travel disbursements by agencies does not affect the right of financial institutions to rely on account numbers alone in crediting those entries. As is the case with any entry representing a Federal payment, financial institutions may rely on account numbers alone when posting entries.

Card Programs Established by the Service

In addition to amending section 210.5 to allow for split disbursement, we are amending section 210.5 to provide that where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Service, the Federal payment may be deposited to an account at a financial institution designated by the Service to operate the program as Treasury's financial or fiscal agent, and the Service may specify the title, access terms and other provisions governing the account. This provision applies only in those cases when the Service directs its financial or fiscal agent bank to set up a card program.

The requirement that an account to which Federal payments are delivered be a deposit account in the name of the recipient is designed to ensure that a payment reaches the intended recipient. In some cases in which the Service directs its financial or fiscal agent banks to set up a card program to facilitate the delivery of Federal payments, the most effective approach may be to utilize an account in which each cardholder's interest is recorded, but each individual's name is not included in the account title. In these programs, the Service can ensure that the beneficial interests of Federal payment recipients are protected because the Service controls the terms and conditions of the programs. The section 210.5 requirements serve little purpose in this context, and add to the complexity of operating these programs. We are therefore adopting an exception to section 210.5 which will provide the Service with greater flexibility in setting up payment card programs. We are also confirming, as requested by NACHA in its comment letter, that financial institutions may rely on account numbers alone when posting entries representing Federal payments to a card account.

ACH Rule Changes

Since we last addressed changes to the ACH Rules in 2005, NACHA has made a number of changes to the ACH Rules. The first set of changes was published in NACHA's 2006 ACH Rules book and a subsequent set of changes was published in NACHA's 2007 ACH Rules book. n2 We are adopting all of the changes set forth in the 2006 and 2007 ACH Rules books except those relating to the self-audit provisions of the ACH Rules, which we have previously determined not to incorporate in part 210. The rule changes that we are adopting consist primarily of modifications to the ACH Rules that have a minimal impact on participants in the ACH Network and that we believe will not significantly affect Federal agencies' use of the ACH Network. However, there are a few rule changes that could have a significant impact on the Federal government's use of the ACH Network.

n2 NACHA has promulgated additional rule changes since the publication of the 2007 ACH Rule book. We plan to address those changes in a future rulemaking.

A. Changes to ACH Rules Published in 2006 ACH Rules Book

The changes published in the 2006 ACH Rules book include a number of minor operational efficiency and return issues changes, and a more significant rule change related to the identification of business checks ineligible for conversion to ACH entries for Accounts Receivable (ARC) entries and Point-of-Purchase (POP) entries. The more significant rule change amended the ACH Rules to enable Receivers n3 to identify business checks that are not to be converted to ARC or POP entries. For ARC entries, the rule change allows a Receiver to notify the Originator n4 directly that the Receiver's checks are not to be converted, or to utilize checks that include an identifier within the Auxiliary On-Us Field within the MICR line. For POP entries, Receivers may opt out either by utilizing checks that include an identifier within the Auxiliary On-Us Field within the MICR line, or by refusing to sign the required written authorization. n5

n3 In an ARC or POP transaction, the Receiver is the person or entity making the payment (i.e., the remitter or payor) by presenting the check that is converted to an ACH debit.

n4 In an ARC or POP transaction, the Originator is the person or entity originating the debit entry to the account of the payor by accepting the payor's check and converting it to an ACH debit.

n5 Part 210 does not require written authorization for POP entries originated by Federal agencies. Consumers who wish to opt out of POP at an agency location may do so utilizing checks that include an identifier within the Auxiliary On-Us Field within the MICR line or by utilizing another payment method.

Part 210 allows agencies to convert business checks at points-of-purchase and lockboxes by using the Corporate Credit or Debit (CCD) entry format. However, the great majority of checks converted by agencies are consumer checks, and in 2004 we indicated that as we continued to implement check conversion we would not convert business checks at new over-the-counter or lockbox locations. NACHA's rule change provides a way for agencies to clearly identify, in an automated [*52581] fashion, whether a business check is ineligible for conversion to an ARC or POP entry. n6 We believe the rule change solves a problem that the ACH rules previously presented for agencies: how to identify business checks that are ineligible for conversion that are received in collection streams. Because NACHA's rule change eliminates the need to address the conversion of business checks in part 210, we are deleting those provisions from the regulation. The rule change does not mean that we intend to begin converting all eligible business checks to ACH entries. Rather, the

rule change allows for greater flexibility in determining the most advantageous way for the government to handle business checks. Thus, we may continue to process business checks by using image presentment or presenting the original items, as appropriate, but we will also have the option of converting eligible business checks in situations where it is more efficient and cost-effective to do so.

n6 In 2007, NACHA adopted a rule change to implement a new application for converting checks received at points-of-purchase and manned bill payment locations to ACH debit entries in a back-office environment (see discussion in Section II(B)). As with POP and ARC, Receivers may opt out of back-office conversion by utilizing checks that include an identifier within the Auxiliary On-U's Field within the MICR line.

The minor rule changes published in the 2006 Rules book include:

- . Changes related to the Company Name Field definition for ARC entries;
- . A requirement for the Originating Depository Financial Institution (ODFI) to enter into a contractual relationship with Third-Party Senders;
- . Removal of redundant language regarding use of encryption technology for Internet-initiated (WEB) entries;
- . Inclusion of language with respect to an ODFI's liability for breach of specific Telephone-initiated (TEL) warranties;
- . Addition of definitions for Automated Accounting Advice (ADV) and Notification of Change (COR) entries;
- . Minor modifications of definitions associated with various Return Reason codes; and
- . Consolidation of Dishonored Return Reason codes.

We are adopting all the foregoing rule changes, which we believe improve the operation of the ACH Network and the clarity of the ACH Rules.

B. Changes to ACH Rules Published in 2007 ACH Rules Book

The rule changes published in NACHA's 2007 Rules book involve a number of changes that have a minimal impact on ACH Network participants, as well as three rule amendments with a significant impact either on the private sector or on Federal agencies. Those three amendments are: changes to NACHA's voting and funding requirements; changes to the requirements for ARC entries and POP entries; and changes to implement a new application, Back Office Conversion (BOC) entries, for converting checks received at points-of-purchase and manned bill payment locations to ACH debit entries in a back-office environment.

Voting and Funding Requirements

Effective January 1, 2007, NACHA amended the ACH Rules to provide for the assessment of new Network administration fees to cover the costs related to management of the ACH Network. These fees include a per-entry fee for each commercial, inter-bank or Federal Government entry transmitted or received by the participating Depository Financial Institution (DFI). The amount of the transaction fee will be established from time to time by the NACHA Board of Directors based

on projected costs and volumes. For calendar year 2008, the per-entry fee is \$.0001. In addition to providing for fees, NACHA also modified the procedures for the amendment of the ACH Rules to clarify the specific allocation of votes required for approval of an amendment by the voting membership.

We support this rule change because of its importance in providing for the long term funding of NACHA's Network management activities, including risk management. The Service will pay these fees on behalf of agencies for which we disburse and collect payments.

ARC and POP Entries

NACHA has amended its check conversion rules to keep the rules consistent with Regulation E (12 CFR part 205) and its associated commentary, which the Federal Reserve revised by amendments effective January 1, 2007. NACHA's rule changes ensure that the ACH Rules are consistent with Regulation E by making corresponding changes to the check conversion applications established by the ACH Rules. Specifically, NACHA's amendment (1) modifies the ACH Rules with respect to the notice requirement for ARC entries, and (2) incorporates a notice obligation into the authorization requirements for POP Entries. This amendment also includes other minor revisions to the ACH Rules to clarify that (1) an ARC source document may not be presented for payment unless the ARC entry is returned by the Receiving Depository Financial Institution (RDFI); (2) ARC entries for which the Receiver opted out of check conversion constitute a valid reason for recredit to the Receiver and return by the RDFI; and (3) a POP entry is considered to be unauthorized if the requirements for both written authorization and notice are not met. In addition, effective March 16, 2007, the requirement that ARC source documents be destroyed within 14 days of the settlement of the entry has been deleted. A new rule has been added to provide that Originators must use commercially reasonable methods to securely store all source documents, as well as all banking information relating to ARC entries, until destruction. Finally, NACHA: (1) Modified the ARC and POP rules governing requirements for MICR capture of source document information, and (2) made corresponding modifications/additions to the audit requirements regarding MICR capture obligations for ARC and POP entries to ensure consistency of rule wording among various check conversion applications.

The ACH rule changes incorporate Regulation E safe harbor language for the notice required to be provided to Receivers whose checks are converted using ARC entries. Under the newly revised ACH Rules, agencies would be required to use the following language, or language that is substantially similar, for their notices:

"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."

Until January 1, 2010, the following or substantially similar additional language must be included: "When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution."

The new ACH Rule changes provide that an Originator may convert a check presented at a point-of-purchase, provided that a required notice is posted in a prominent and conspicuous loca-

tion, and that a copy of the notice is provided to the Receiver at the time of the transaction. The notice and copy of the notice must include the following or substantially similar language:

"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 [*52582] to process the payment as a check transaction."

Until January 1, 2010, the following or substantially similar additional language must be included in the notice: "When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day you make your payment, and you will not receive your check back from your financial institution."

Agencies are currently required by part 210 to use specifically worded disclosures for POP and ARC check conversion. Those disclosures, which are set out in Appendices A, B and C to part 210, are substantially similar to (but much longer than) the foregoing POP and ARC required notices. We are deleting Appendices A, B and C from part 210, which means that agencies may either continue to use the same disclosures they are currently using or, alternatively, begin using the shorter disclosures published in the ACH Rules.

Back Office Conversion Entries

Effective March 16, 2007, NACHA established a new electronic check conversion application, Back Office Conversion (BOC) entries, that will allow retailers and billers to accept checks at the point-of-purchase or at manned bill payment locations and convert the checks to ACH debits during back office processing. In order to use a check to originate a BOC entry, the Originator must post a notice in a prominent and conspicuous location that states: "When you provide a check as payment, you authorize us either to use the information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquiries, please call [retailer phone number]." Until January 1, 2010, the posted notice must also state: "When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day you make your payment, and you will not receive your check back from your financial institution." A copy of the notice, or language that is substantially similar, must be provided to the Receiver at the time of the transaction. In addition, the Originator must provide the Receiver the ability to opt out of the conversion of his check to an ACH debit entry. To opt out, the Receiver must notify the Originator at the time of purchase that the check being used to make payment does not authorize an ACH debit entry.

We are adopting most of the ACH rule changes implementing the BOC application. In 2003, we amended part 210 to allow agencies to convert checks to ARC entries in certain circumstances that fall outside typical accounts receivable and point-of-purchase settings. Our rule enabled Federal agencies to convert checks in circumstances in which check conversion would not have been possible under NACHA's then-existing ARC and POP rules. For example, when Army pay officers travel to remote, off-base locations in order to cash checks for soldiers, pay officers cannot bring along the necessary equipment to scan and return voided checks, as is required by the ACH rules governing POP entries. Nor could these checks be converted to ARC entries under the ACH rules, because a pay officer's acceptance of checks in these circumstances does not constitute an accounts receivable (lockbox) setting. To provide for the conversion of checks in a variety of circumstances falling outside typical accounts receivable and point-of-purchase settings, we adopted in part 210 a provision

to allow agencies to convert checks delivered in person in circumstances in which an agency cannot contemporaneously image and return the check.

Because the BOC application addresses the Government's need for flexibility in these situations, there is no longer a need to retain this provision in part 210. Instead, agencies can now convert these checks using the BOC application. We therefore adopt the rule changes implementing the BOC application, with the exception of the audit requirements associated with the BOC entry type as reflected within Appendix Eight (Rule Compliance Audit Requirements), Sections 8.2 and 8.3 of the ACH Rules.

Treasury needs to make the programming and operational changes necessary to implement the BOC application. Accordingly, we expect that for some period of time after the adoption of a **final rule**, it will be necessary to continue our existing process of converting items to ARC entries in circumstances other than typical lockbox and point-of-purchase settings.

Rules With a Minor Impact on the ACH Network

NACHA published in the 2007 Rules book the following amendments that have a minor impact on the ACH Network:

. *Description of Corrected Data Within Contested Dishonored Return Reason Code R74* -- Previously, the description of Return Reason Code R74 (Corrected Return), related to the correction of the Individual Identification Number/Identification Number Field within the Entry Detail Record, did not reflect all applicable SEC Codes that contain these fields. This amendment modified the description of Return Reason Code R74 within Appendix Five, Section 5.4 (Table of Return Reason Codes), as it relates to the Individual Identification Number/Identification Number, to add the following additional SEC Codes to be consistent with current industry practice: CBR, CTX, DNE, ENR, PBR, TEL, TRX, and WEB.

. *Direct Financial Institution and Payment Association Definitions* --The terms "Direct Financial Institution" and "Payment Association" were referenced within the procedures for amendment of the ACH Rules in Article Thirteen but not defined within the ACH Rules. This amendment added definitions for these terms to Article Fourteen (Definition of Terms) of the ACH Rules.

. *Time Frame to Re-initiate Entries* --Previously, the ACH Rules defined under what conditions an ACH entry that is returned may be re-initiated, but did not prescribe any limitations on the time period within which such re-initiation must occur. To preclude attempts to re-initiate extremely stale entries, NACHA amended the rules to establish the period of time after which returned entries cannot be re-initiated. Specifically, an entry may not be re-initiated more than 180 days after the settlement date of the original transaction.

. *Available ACH Characters* --This amendment modified the definition of "alphameric" within Article Fourteen and the data specification requirements within Appendix One to clarify that lower-case alpha characters are permitted within ACH entries, except where explicitly noted otherwise.

. *Name and Definition of Cash Concentration or Disbursement (CCD) Standard Entry Class Code* --This amendment modified the name and description of the CCD format to clarify that CCD entries can be used more broadly than just for intra-corporate payments. The name of the CCD format was changed from "Cash Concentration or Disbursement" to "Corporate Credit or Debit" and

the description was revised to indicate that this code may also be used for a transfer of funds from the account of one organization to the account of another organization.

. *Formatting Requirements for TEL (Telephone-Initiated) and WEB (Internet-Initiated) Entries* - This amendment redefined the Individual Name Field within the Entry Detail Record of both TEL and WEB entries (and related returns) from Required to [*52583] Mandatory to facilitate ACH Operators' use of various risk filters to monitor the field for possible fraudulent content. Operator edits within Appendix Three, as they relate to Return Reason Code R26 (Mandatory Field Error), were also modified to permit the return of any TEL or WEB entry within which this field contains all spaces or all zeros.

. *Additional Addenda Code for Dishonored Return Reason Code R69* --This amendment added, under the description of Return Reason Code R69 (Field Errors), an additional criterion under which an entry containing incorrect information may be dishonored. This change enables an ODFI to dishonor a return if the original Effective Entry Date was incorrectly copied from the forward entry.

We support the foregoing ACH Rules changes. The changes clarify certain ACH Rules that were previously unclear or ambiguous, and provide greater flexibility and operational efficiency for users of the ACH Network. We believe these changes are beneficial and are incorporating them into part 210.

III. Section-by-Section Analysis

In order to incorporate in part 210 the ACH rule changes that we are accepting, we are replacing references to the 2005 Rules book with references to the 2007 ACH Rules book.

Sec. 210.2(d)

We are amending the definition of applicable ACH Rules at § 210.2(d) to reference the rules published in NACHA's 2007 Rules book rather than the rules published in NACHA's 2005 Rules book.

Sec. 210.3(b)

We are amending § 210.3(b) by replacing the references to the ACH Rules as published in the 2005 Rules book with references to the ACH Rules as published in the 2007 Rules book.

Sec. 210.5

We are amending § 210.5(b) by adding a new paragraph (b)(3) to allow for the issuance of part or all of a Federal employee's travel reimbursement to the employee's travel card account at the card-issuing bank. We are also adding a new paragraph (b)(4), which provides that where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Service, the Federal payment may be deposited to an account at a financial institution designated as a financial or fiscal agent. The Service may specify the account title, access terms, and other account provisions, and thereby protect the interest of payment recipients. This paragraph would apply in those cases when the Service directs its financial or fiscal agent bank to set up a card program.

Sec. 210.6(g)

We are revising current § 210.6(g) to reflect the revision of the ACH Rules governing POP entries. We believe that, as revised, the ACH Rules governing POP entries are appropriate in most respects for agencies. Unlike the ACH Rules, however, part 210 will continue to allow agencies to originate POP entries without a written authorization, as long as a notice required by the ACH Rules is posted and the Receiver is provided with a copy of the notice. This approach is consistent with the authorization requirements of Regulation E.

Sec. 210.6(h)

We are deleting the text of current § 210.6(h). We believe that, as revised, the ACH Rules governing accounts receivable check conversion are appropriate for agencies, and therefore, a separate rule within part 210 is no longer necessary. We are revising the text of current § 210.6(i) and re-numbering it as § 210.6(h). The revision clarifies that in order to debit a Receiver's account for an insufficient funds service fee, the agency must have independent authority to collect fees for items returned due to insufficient funds. An agency that has such authority may originate an ACH debit entry to collect a one-time service fee in connection with an ARC, POP or BOC entry that is returned due to insufficient funds, provided that the agency discloses the service fee in the notices required for the ARC, POP or BOC entry. The required disclosure that must be given in order to debit an account for an insufficient funds service fee is unchanged, but has been relocated to § 210.6(h) from Appendices A, B, and C, which we are removing from the regulation.

IV. Procedural Requirements*Request for Comment on Plain Language*

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suite your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Regulatory Planning and Review

The rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. The changes to the regulation related to ARC, POP, and BOC check conversion will not result in significant costs for individuals or financial institutions affected by the changes, including financial institutions that are small entities. New ACH fees will be borne by the government, and will not affect other parties sending or receiving Federal ACH transactions, including small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$ 100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$ 100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 210

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

Words of Issuance

For the reasons set out in the preamble, we are amending **31 CFR part 210** as follows: [*52584]

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. In § 210.2, revise paragraph (d) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before September 21, 2007, as published in Parts II, III and VI of the "2007 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 Rules 1.2.4 and 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 2.11.2.3 (requiring that originating depository financial institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries); and

(7) ACH Rule 2.13.3 (requiring reporting regarding unauthorized Telephone-initiated entries).

* * * * *

3. In § 210.3, revise paragraph (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 21, 2007, as published in Parts II, III, and VI of the "2007 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 "2007 ACH Rules" are available from NACHA--The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, Virginia 20171, <http://www.nacha.org>. Copies also are available for public inspection at the **Financial Management** Service, 401 14th Street, SW., Room 400A, Washington, DC 20227, (202) 874-1251, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) Any amendment to the applicable ACH Rules that is approved by NACHA--The Electronic Payments Association after January 1, 2007 shall not apply to Government entries unless the Service expressly accepts such amendment by obtaining approval of the amended incorporation by reference from the Director of the Federal Register and publishing an amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service and approved by the Director of the Federal Register for incorporation by reference shall apply to Government entries on the effective date specified by the Service in the **Federal Register** rulemaking expressly accepting such amendment.

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4. In § 210.5, redesignate paragraph (b)(3) as paragraph (b)(5), and add new paragraphs (b)(3) and (b)(4) to read as follows:

§ 210.5 Account requirements for Federal payments.

* * * * *

(b)(3) Where an agency is issuing part or all of an employee's travel reimbursement payment to the official travel card issuing bank, as authorized or required by Office of Management and Budget guidance or the Federal Travel Regulation, the ACH credit entry representing the payment may be deposited to the account of the travel card issuing bank for credit to the employee's travel card account at the bank.

(4) Where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Service, the Federal payment may be deposited to an account at a financial institution designated by the Service as a financial or fiscal agent. The account title, access terms and other account provisions may be specified by the Service.

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5. In § 210.6, revise paragraphs (g) and (h) to read as follows, and remove paragraph (i):

§ 210.6 Agencies.

* * * * *

(g) *Point-of-purchase debit entries.* An agency may originate a Point-of-Purchase (POP) entry using a check drawn on a consumer or business account and presented at a point-of-purchase unless the Receiver opts out in accordance with the ACH Rules. The requirements of ACH Rules 2.1.2 and 3.12 shall be met for such an entry if the Receiver presents the check at a location where the agency has posted the notice required by the ACH Rules and has provided the Receiver with a copy of the notice.

(h) *Returned item service fee.* An agency that has authority to collect returned item service fees may do so by originating an ACH debit entry to collect a one-time service fee in connection with an ARC, POP or BOC entry that is returned due to insufficient funds. An entry originated pursuant to this paragraph shall meet the requirements of ACH Rules 2.1.2 and 3.5 if the agency includes the following statement in the required notice(s) to the Receiver: "If the electronic fund transfer cannot be completed because there are insufficient funds in your account, we may impose a one-time fee of \$ [____] against your account, which we will also collect by electronic fund transfer."

Appendices A Through C to Part 210 [Removed]

6. Remove Appendices A, B and C.

Dated: August 27, 2008.

Kenneth E. Carfine,

Fiscal Assistant Secretary, Department of the Treasury.

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