

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510-AA89

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 to amend 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 (ACH Rules) developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH system by Federal agencies. We're amending part 210 to address changes that NACHA has made to the ACH Rules during the past year. We are requesting public comment on all aspects of the interim rule.

DATES: The interim rule is effective July 7, 2003. Comments on the interim rule must be received by August 4, 2003. The incorporation by reference of the publication listed in the interim rule is approved by the Director of the Federal Register as of July 7, 2003.

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

You may send comments on the interim rule electronically to the following address:

210comments@fms.treas.gov. You may also mail your comments to Stephen M. Vajs, Director, Risk Management Division, Financial Management Service, U.S. Department of the Treasury, Room 423, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT:

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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're issuing an interim rule amending part 210 to reflect certain changes that NACHA has made to the ACH Rules since the publication of NACHA's 2002 rule book. The interim rule addresses the following seven NACHA rulemaking actions: (1) Voting on ACH Rule Amendments; (2) Rules Enforcement; (3) Accounts Receivable (ARC) Entry and Internet-Initiated (WEB) Entry Warranties; Re-presented Check (RCK) Entries Eligible Items; (4) Change Codes; ARC Stop Payments; ARC Individual Name Field; (5) Unauthorized Corporate Debits; Copies of Authorization; Definitions of Point-of-Purchase (POP) Entries and RCK Entries; Destroyed Check (XCK) Entry Check Serial Number Field; ACH Operator Edit Criteria; Elimination of Automated Return (RET) Entry Code; (6) Audit Requirements and (7) Telephone-Initiated (TEL) Reporting. We are requesting comment on all of these topics.

As discussed above, part 210 incorporates the ACH Rules, with certain exceptions. 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. Part 210 currently provides that any amendment to the ACH Rules published in NACHA's 2002 rule book that takes effect after March 15, 2002 will not apply to Federal government ACH entries unless we publish a notice of acceptance of the amendment in the **Federal Register**. 31 CFR 210.3(b)(2). NACHA published its 2003 rule book earlier this year. We're publishing this interim rule in order to incorporate in part 210 all of the amendments to the ACH Rules set forth in NACHA's 2003 rule book (including the supplement thereto approved February 27, 2003 and effective June 13, 2003), other than those relating to rules enforcement, ARC and WEB warranties, audit requirements, and TEL reporting.

We have not previously sought comment on the issues addressed in this interim rule. We are requesting comment on all aspects of the interim rule discussed below.

1. Voting on ACH Rule Amendments

NACHA has amended its rules by eliminating a provision that allows certain depository financial institutions that are members of a Regional Payments Association to vote directly with NACHA on amendments to the rules. Amendments to the ACH Rules will continue to be voted on by NACHA's Payments Association members and Direct Financial Institution members. This rule amendment became effective January 1, 2003.

Federal agencies do not vote on ACH Rule amendments and this rule change does not affect Federal agencies' use of the ACH system. There is no need to provide an exception to this ACH Rule for Federal agencies and we therefore are accepting this ACH rule change.

2. Rules Enforcement

NACHA has amended its rules regarding the enforcement process for violations of the ACH Rules, including the fines that may be imposed when a financial institution violates the ACH Rules. Specifically, this ACH Rule amendment:

- Eliminates the second warning provided to an alleged offender before a recurrence is considered for a fine;
- Increases the amounts of the fines assessed for violations of the ACH rules;
- Enables recurrences to be tracked not only to the Originating Depository Financial Institution (ODFI) and its Originator, but also to any third-party service provider that is responsible for the violation;
- Extends the time period for subsequent violations to be counted as recurrences of the initial violation;
- Requires that ACH Operators provide statistical data on ACH returns to NACHA on a monthly basis to address potential fraud; and
- Enables NACHA staff to present an alleged rules violation that significantly harms other financial institutions to the ACH Rules Enforcement Panel immediately for its review and consideration.

These changes became effective on June 14, 2002.

The national system of fines does not apply to ACH entries originated or received by Federal agencies. 31 CFR 210.2(d)(3). Accordingly, we are not incorporating in Part 210 these changes to the enforcement provisions of the ACH Rules.