

Rule 2.11.3 from the definition of applicable ACH rules. The effect of this amendment is to provide an exception to NACHA's TEL reporting requirements for Federal agencies. Because the ACH Rules relating to rules enforcement, ARC and WEB warranties, and audit requirements are already excluded from the definition of applicable ACH Rules, no change to part 210 is necessary in order to exclude from Part 210 NACHA's amendments to those 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 2002 rule book with references to the ACH Rules as published in the 2003 rule book.

III. Procedural Requirements

Request for Comment

We invite public comment on all aspects of this interim rule.

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

Notice and Comment and Effective Date

We find that good cause exists for issuing the 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 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 on an annual basis, 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.

Executive Order 12866

The 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.

Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required for the interim rule, it is not subject to the provisions of the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

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. Although the Unfunded Mandates Reform Act of 1995 does not apply to the interim rule, we have determined that it will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year.

Executive Order 13132—Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies, including FMS, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has federalism implications. Under the Order, a regulation has federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

In general, the Executive Order requires the agency to adhere strictly to Federal constitutional principles in

developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

The interim rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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 forth in the preamble, part 210 of title 31 of the Code of Federal Regulations 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.

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(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before June 13, 2003, as published in Parts II, III, and IV of the "2003 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," including the supplement thereto approved February 27, 2003 and effective June 13, 2003, 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);

(6) ACH Rule 2.10.2.2 (requiring that originating depository financial