

strictly on a “hands-off” approach since the foreign consignee is understood to have the inherent capability to both design and produce the defense article and only lacks the necessary requirement information; and/or

(iii) *Basic Research*. “Basic Research”—means a systemic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and observable facts without specific applications towards processes or products in mind. It does not include “Applied Research” (*i.e.* a systemic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met. It is a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.); and

(iv) *Maintenance* (*i.e.*, inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item); and does not include

(v) *Design Methodology*, such as: The underlying engineering methods and design philosophy utilized (*i.e.*, the “why” or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (*e.g.* lessons learned); and the rationale and associated databases (*e.g.* design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (*e.g.*, performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article. (Final analytical results and the initial conditions and parameters may be provided.)

(vi) *Engineering Analysis*, such as: Analytical methods and tools used to design or evaluate a defense article’s performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities. (Final analytical results and the initial conditions and parameters may be provided.)

(vii) *Manufacturing Know-how*, such as: Information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article. (Information may be provided in a

build-to-print package identified in paragraph (c)(6)(i) of this section that is necessary in order to produce an acceptable defense article.)

(d) *Reexports/retransfer*. Rexport/retransfer in Canada to another end user or end use or from Canada to another destination, except the United States, must in all instances have the prior approval of the Office of Defense Trade Controls. Unless otherwise exempt in this subchapter, the original exporter is responsible, upon request from a Canadian-registered person for obtaining or providing reexport/retransfer approval. In any instance when the U.S. exporter is no longer available to the Canadian end user the request for reexport/retransfer may be made directly to Department of State, Office of Defense Trade Controls. All requests must include the information in § 123.9(c) of this subchapter. Rexport/retransfer approval is acquired by:

(1) If the reexport/retransfer being requested could be made pursuant to this section (*i.e.*, a retransfer within Canada to another eligible Canadian recipient under this section) if exported directly from the U.S., upon receipt by the U.S. company of a request by a Canadian end user, the original U.S. exporter is authorized to grant on behalf of the U.S. Government by confirming in writing to the Canadian requester that the reexport/retransfer is authorized subject to the conditions of this section; or

(2) If the reexport/retransfer is to an end use or end user that, if directly exported from the U.S. requires a license, retransfer must be handled in accordance with § 123.9 of this subchapter.

Notes to § 126.5:

1. In any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use other than by a qualified Canadian-registered person or for export to another foreign destination, other than the United States, in its original form or incorporated into another item, an export license must be obtained prior to the transfer to Canada.

2. Additional exemptions exist in other sections of this subchapter that are applicable to Canada, for example §§ 123.9, 125.4 and 124.2 which allows for the performance of defense services related to training in basic operations and maintenance, without a license, for defense articles lawfully exported, including those identified in paragraphs (b)(1) through (2) of this section.

Dated: January 24, 2001.

Colin L. Powell,

Secretary of State.

[FR Doc. 01–3877 Filed 2–15–01; 8:45 am]

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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: This rule amends our regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. The regulation 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’re issuing this interim rule to address changes that NACHA has made to the ACH Rules during the past year.

DATES: This interim rule is effective March 19, 2001. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of March 19, 2001.

ADDRESSES: You can download this interim rule at the following website: <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 website: <http://www.fms.treas.gov/greenbook>. You may also register at this website for e-mail notification of updates to the Green Book.

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, Senior Attorney, at (202) 874-6680 or natalie.diana@fms.treas.gov; Adam Martin, Financial Program Specialist, at (202) 874-6881 or adam.martin@fms.treas.gov; Michele Heine, Financial Program Specialist, at (202) 874-8645 or michele.heine@fms.treas.gov; or Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874-6590 or cindy.johnson@fms.treas.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Part 210 incorporates, with certain exceptions, the ACH Rules. 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. Part 210 currently provides that any amendment to the ACH Rules, as published in NACHA's 2000 rule book, that takes effect after September 15, 2000, will not apply to Federal government ACH entries unless we publish notice of acceptance of the amendment in the **Federal Register**. 31 CFR § 210.3(b)(2). NACHA recently published its 2001 rule book. 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.¹

II. Summary of Rule Changes

A. Changes to ACH Rules

The ACH Rules published in NACHA's 2001 rule book reflect changes to the ACH Rules published in NACHA's 2000 rule book related to five topics²

1. Telephone Initiated ACH Debit

NACHA has adopted a rule enabling an Originator to initiate a single entry ACH debit to a consumer's account for transactions initiated over the telephone. The rule requires the

¹ The 2000 ACH Rule changes were published in an interim rule with request for comment. 65 FR 18866 (April 7, 2000).

² NACHA also adopted in the 2001 rule book a rule that modifies the process by which amendments to the ACH Rules are approved. Under the new rule, approval of an amendment requires two thirds of the voting power cast on the amendment by members entitled to vote. The rule change became effective as of January 1, 2001. Since neither the Financial Management Service nor other Federal agencies vote on the amendment of the ACH Rules, this rule change does not affect the Federal government's participation in the ACH system and we do not believe it is necessary or appropriate to address this rule modification in Part 210.

Originator to receive oral authorization from the Receiver, and to retain that authorization for a period of two years from the termination or revocation of that authorization. The Originator must either tape record the authorization or provide the Receiver with written notice confirming the oral authorization prior to the settlement date of the entry. The rule permits the initiation of ACH debits by telephone in three sets of circumstances: When a consumer makes a telephone call to a company with which the consumer has an existing relationship, when a company makes a telephone call to a consumer with whom the company has an existing relationship, or when a consumer makes a telephone call to a company with which the consumer has no prior relationship. The rule change will become effective September 14, 2001.

2. Corrected Returns Time Frame

NACHA has adopted a rule that amends the ACH Rules to shorten the time frame for the transmission of corrected returns to two banking days from the settlement date of the dishonored return. This change will make the time frame consistent with that of the contested dishonored return process. This rule change will reduce the risk to the Originator and originating depository financial institution (ODFI) because corrected returns will be received more quickly than is currently required. The rule change will become effective March 16, 2001.

3. Internet-Initiated Entries

NACHA has adopted a rule that is intended to establish a foundation for promoting secure Internet-initiated ACH payments. The rule establishes a new Standard Entry Class (SEC) Code, WEB, that will specifically identify consumer ACH debit transactions initiated over the Internet. Among other things, the rule requires that Originators utilize commercially reasonable fraudulent transaction detection systems to screen entries; verify that routing numbers are valid; and establish secure Internet sessions prior to and during the key entry by consumers of banking information. The rule will become effective March 16, 2001.

4. Accounts Receivable Check Truncation

In 1999 NACHA adopted a short-term rule expanding the definition of the Prearranged Payment and Deposit Entry (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 of goods or services and convert them to ACH debit

entries. The implementation period for the rule ended on December 15, 2000. However, in order to allow for the continuation of pilot programs testing lockbox check truncation, NACHA has issued a revised short-term rule with an implementation period from December 15, 2000 through March 14, 2002. Unlike the original short-term rule, the revised short-term rule permits truncation of items exceeding \$2,500.

5. Cross-Border Payments

NACHA has amended the ACH Rules governing the transmission and receipt of cross-border entries to (1) include necessary legal protections for ACH network participants in light of modifications to the Cross-Border Payment Operating Rules that were adopted by the Cross-Border Council and (2) allow for the transmission and receipt of cross-border debit transactions. The amendment became effective September 15, 2000.

B. ACH Rule Changes That We Are Accepting

We are accepting the ACH Rules that address telephone-initiated ACH entries, corrected returns time frames, and cross-border payments. These rule changes are effective as of the effective date of this interim rule or NACHA's effective date for the rule change, whichever is later. In order to incorporate these rules in Part 210, the only change necessary to the current regulation is to replace references to the 2000 rule book with references to the 2001 rule book.

C. ACH Rule Changes That We Are Not Accepting

We are not accepting, at this time, the ACH Rules that address accounts receivable check truncation or Internet-initiated entries. We are currently evaluating Treasury initiatives in both of these areas and will publish a notice of proposed rulemaking in the near future in order to provide the public with an opportunity to comment before we adopt rules related to these transactions.

D. Section-by-Section Analysis 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 2001 rule book rather than the rules published in NACHA's 2000 rule book. We also are adding new subsection 210.2(d)(6) and (d)(7) to exclude the rules relating to accounts receivable check truncation and Internet-initiated entries from the definition of "applicable 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 2000 rule book with references to the ACH Rules as published in the 2001 rule book.

III. Procedural Requirements

Request for Comment

We invite comment on all aspects of the interim 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 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.

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 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. For these reasons, we find 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.

Executive Order 12866, Regulatory Planning and Review

This interim 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 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 September 14, 2001, as published in Parts II, III, and IV of the "2001 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," (see § 210.3(b)), 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) 2.1.4; 2.9; 3.6; 7.6.3; and 7.7.3 (governing PPD accounts receivable truncated check debit entries); and

(7) ACH Rule 2.10 and 3.8 (governing Internet-initiated entries) and Appendix Two (definition of WEB entry).

* * * * *

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

§ 210.3 Governing law.

* * * * *

(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 14, 2001, as published in Parts II, III, and IV of the "2001 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 "2001 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; and the Financial Management Service, 401 14th Street, SW., Room 420, Washington, DC 20227.

(2) Any amendment to the applicable ACH Rules that takes effect after September 14, 2001, 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.

* * * * *

Dated: February 8, 2001.

Richard L. Gregg, Commissioner.

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