



Billing Code 4810-AS-P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

[FISCAL-2019-0001]

RIN 1510-AB32

Federal Government Participation in the Automated Clearing House

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service) is

proposing to amend its regulation governing the use of the Automated Clearing House (ACH)

Network by Federal agencies. Our regulation adopts, with some exceptions, the Nacha

Operating Rules developed by Nacha, formerly known as NACHA – The Electronic Payments

Association (Nacha), as the rules governing the use of the ACH Network by Federal agencies.

We are issuing this proposed rule to address changes that Nacha has made to the Nacha

Operating Rules since the publication of the 2016 Nacha Operating Rules & Guidelines book.

These changes include amendments set forth in the 2017, 2018, and 2019 Nacha Operating Rules

& Guidelines books, including supplements thereto, with an effective date on or before June 30,

2021.

DATES: Comments on the proposed rule must be received by [INSERT DATE 30 DAYS

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments on this rule, identified by docket FISCAL-2019-0001, should only be

submitted using the following methods:

- *Federal eRulemaking Portal*: www.regulations.gov. Follow the instructions on the Web site for submitting comments.
- *Mail*: Ian Macoy, Bureau of the Fiscal Service, 3201 Pennsy Drive, Building E, Landover, MD 20785.

The fax and e-mail methods of submitting comments on rules to Fiscal Service have been decommissioned.

Instructions: All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number FISCAL-2019-0001 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. You can download this proposed rule at the following website: <https://www.fiscal.treasury.gov/ach/>.

In accordance with the U.S. government's eRulemaking Initiative, Fiscal Service publishes rulemaking information on www.regulations.gov. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

FOR FURTHER INFORMATION CONTACT: Ian Macoy, Director of Settlement Services, at (202) 874-6835 or ian.macoy@fiscal.treasury.gov; or Natalie H. Diana, Senior Counsel, at (202) 874-6680 or natalie.diana@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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 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. Rights and obligations among participants in the ACH Network are governed by the Nacha Operating Rules, which Part 210 incorporates by reference, with certain exceptions. From time to time, the Fiscal Service amends Part 210 in order to address changes that Nacha periodically makes to the Nacha Operating Rules or to revise the regulation as otherwise appropriate.

Currently, Part 210 incorporates the Nacha Operating Rules as set forth in the 2016 Nacha Operating Rules & Guidelines book. Nacha has adopted a number of changes to the Nacha Operating Rules since the publication of the 2016 Nacha Operating Rules & Guidelines book, as reflected in the 2019 Nacha Operating Rules & Guidelines book (2019 Rule Book) and supplements thereto. We are proposing to incorporate in Part 210 most, but not all, of these changes. We are also proposing one change to Part 210, related to reclamations, that does not stem from a change to the Nacha Operating Rules, and several non-substantive changes to reflect the renumbering of certain Nacha rules and appendices.

We are requesting public comment on all the proposed amendments to Part 210.

II. Summary of Proposed Rule Changes

A. 2017 Nacha Operating Rules & Guidelines Book (2017 Rules Book) Changes

The 2017 Rules Book contains a new rule, the Third-Party Sender Rule, which requires every Originating Depository Financial Institution (ODFI) either to register its Third-Party Sender customers with Nacha or to provide Nacha with a statement that it has no such customers.

The rule, which became effective on September 29, 2017, establishes deadlines for the initial provision and updating of registration information, and provides that Nacha may request from an ODFI certain additional information regarding a Third-Party Sender.

A Third-Party Sender is a type of third-party service provider that acts as an intermediary in transmitting entries between an Originator and an ODFI. Federal agencies and Fiscal Service do not utilize Third-Party Senders. Although Fiscal Service uses fiscal and financial agents (Federal Reserve Banks and depository financial institutions, respectively) in its ACH payments and collections operations, those entities are not providing services in a capacity as Third-Party Senders. Accordingly, the rule will not affect the Federal government. We are proposing to incorporate in Part 210 the Third-Party Sender Rule.

B. 2018 Nacha Operating Rules & Guidelines Book (2018 Rules Book) Changes

Nacha did not publish any new rules in the 2018 Rules Book. The 2018 Rule Book contains revisions related to the implementation of Phase 2 of Same Day ACH, which we adopted in 2017 (See 82 FR 42597), and the Third-Party Sender Rule discussed in Section A above.

C. 2019 Nacha Operating Rules & Guidelines Book (2019 Rules Book) Changes

The 2019 Rules Book contains changes related to the following amendments:

- Faster Funds Availability;
- Same Day ACH Dollar Limit Increase; and
- New Same Day ACH Processing Window.

We are proposing to incorporate in Part 210 all of the foregoing amendments.

1. Faster Funds Availability

The Faster Funds Availability rule will provide faster funds availability for many ACH credits. Funds from Same Day ACH credits processed in the first Same Day processing window will be made available to the Receiver for withdrawal by 1:30 p.m., Receiving Depository Financial Institution (RDFI) local time. Funds from all non-Same Day ACH credits that are made available to the RDFI by 5:00 p.m., RDFI local time, on the banking day before Settlement Date will be available to the Receiver for withdrawal by 9:00 a.m., RDFI local time, on Settlement Date.

Currently, funds from non-Same Day ACH credits are required to be made available to the Receiver for withdrawal by the end of the Settlement Date, which can be at any hour before the RDFI's close of business or by the end of day at an ATM. One exception is for Prearranged Payment and Deposit (PPD) credits made available to the RDFI by 5:00 p.m., RDFI local time, on the banking day before Settlement Date. The RDFI must provide funds availability for these credits by the opening of business on Settlement Date. This exception will now be the standard practice for any ACH credit made available to the RDFI by 5:00 p.m., RDFI local time, on the banking day before Settlement Date. This rule change also establishes a firm time of 9:00 a.m., RDFI local time, for such availability and eliminates references to "opening of business."

Receivers will have earlier funds availability for a large portion of ACH credits:

- Funds from non-Same Day ACH credits made available to the RDFI by 5:00 p.m., RDFI local time, on the banking day before settlement will be available to the Receiver for withdrawal on Settlement Date by 9:00 a.m., RDFI local time;
- Funds from Same Day credits received in the first Same Day ACH processing window will be available to the Receiver for withdrawal by 1:30 p.m., RDFI local time; and

- Funds from Same Day credits received in the second Same Day ACH processing window will be available to the Receiver for withdrawal by 5:00 p.m., RDFI local time.

This Nacha rule became effective on September 20, 2019. We are proposing to accept this amendment. Because the government is not a depository institution, the rule will not affect the government's receipt of ACH payments, but will mean that some recipients of government Same Day and non-Same Day ACH payments will have earlier access to their funds from their financial institutions.

2. Same Day ACH Dollar Limit Increase

The Same Day ACH Dollar Limit Increase rule will increase the per-transaction dollar limit for Same Day transactions from \$25,000 to \$100,000. At implementation, both Same Day ACH credits and Same Day ACH debits will be eligible for Same Day processing up to \$100,000 per transaction. Nacha's rule will become effective on March 20, 2020.

We are proposing to accept this rule. Acceptance of this rule will enable individuals and entities to make Same Day ACH payments of up to \$100,000 to the government, and will enable Federal agencies to make Same Day ACH payments of up to \$100,000.

3. New Same Day ACH Processing Window

The New Same Day ACH Processing Window rule will create a new processing window that will enable ODFIs and their customers to originate Same Day transactions for an additional two hours each banking day. The new window will allow Same Day ACH files to be submitted to the ACH Operators until 4:45 p.m. ET. RDFIs will receive files from this third window by 5:30 p.m. ET, with interbank settlement occurring at 6:00 p.m. ET. RDFIs will need to make funds available for credits processed in the new window by the end of their processing for that Settlement Date. All credits and debits, and all returns, will be eligible to be processed in the new

Same Day ACH window, with the exception of International ACH Transactions (IATs), Automated Enrollment Entries (ENRs), and forward entries in excess of the per-transaction dollar limit.

Currently, ODFIs can submit Same Day ACH files to the ACH Operators until 2:45 p.m. ET. ODFI processing arrangements that use payment processors and correspondent institutions have earlier deadlines. ACH end-users may have even earlier deadlines to submit Same Day ACH files to their ODFIs. These timing requirements can make it impractical for many ODFIs to offer, or for ACH end-users to adopt, Same Day ACH payments. Adding a third, later Same Day ACH processing window will provide greater access for all ODFIs and their customers.

Nacha's rule will become effective on March 19, 2021. We are proposing to accept this rule, which will give more individuals and entities the opportunity to pay the government by Same Day ACH. It will also make it possible for the government to originate Same Day ACH payments later in the day than is currently possible.

D. Supplement #2-2018 to the Nacha Operating Rules Changes

On November 2, 2018, the Nacha Voting Membership approved nine amendments to the Nacha Operating Rules. Because the nine amendments were approved just prior to publication of the 2019 Rules Book, the amendments are included in the rule book as a separate supplement rather than within the main body of the publication.

1. Return for Questionable Transaction

Before adoption of this amendment, an RDFI could return an ACH entry for any reason, except as otherwise provided in Article Three, Subsection 3.8.1 (Restrictions on RDFI's Right to Transmit Return Entries) of the Nacha Operating Rules. Defined return reasons included, among others, entries that were deemed unauthorized by the Receiver or those with an invalid account

number or no account at the RDFI. If an RDFI wanted to return an entry that did not have a valid account number and appeared to be questionable, suspicious, or anomalous in some way, the RDFI did not have a defined return reason code to communicate this information to the ODFI and Originator. Nacha guidance allowed RDFIs to use R17 to return questionable transactions that would otherwise be returned using a standard administrative return reason (R03 – No Account/Unable to Locate Account or R04 – Invalid Account Number Structure). However, none of these options enabled an ODFI or its Originator to differentiate questionable transactions from other routine account number errors.

Under the Return for Questionable Transaction rule, RDFIs are able (but not required) to use Return Reason Code R17 – File Record Edit Criteria to indicate that the RDFI believes the entry containing invalid account information was initiated under questionable circumstances. This use of R17 is optional at the discretion of the RDFI. Those RDFIs that elect to use R17 for this purpose are required to use the description “QUESTIONABLE” in the Addenda Information field of the return. This description in an R17 return differentiates returns that appear to be suspicious to the RDFI from those due to routine account number issues.

This rule became effective on June 21, 2019. We are proposing to accept this amendment, which may give agencies greater insight into transactions that are returned because they are suspicious or questionable.

2. Supplementing Fraud Detection Standards for WEB Debits

Under existing rules, Originators of Internet-initiated (WEB) debit entries must use a “commercially reasonable fraudulent transaction detection system” to screen WEB debits for fraud. This requirement is intended to help prevent fraudulent payments from being introduced

into the ACH Network, and to help protect RDFIs from posting fraudulent or otherwise incorrect or unauthorized payments.

With the implementation of the Supplementing Fraud Detection Standards for WEB Debits rule, the current screening requirement will be enhanced to make it explicit that “account validation” is part of a “commercially reasonable fraudulent transaction detection system.” The supplemental requirement will apply to the first use of an account number, or changes to the account number. For existing WEB debit authorizations, the rule will be effective on a going forward basis. Originators will have to perform account validations as there are updates to account numbers in existing authorizations.

Nacha’s rule will become effective on March 19, 2021. We are proposing to accept this rule, which can be expected to reduce unauthorized debits originated by agencies and resulting fraud losses to the government. However, the implementation of account validation will be costly for the government due to the need for systems changes, program changes at originating Federal agencies, and transactional fees for validation services incurred for the origination of WEB debits. Acceptance of the rule would not only result in significant additional costs to the government in the origination of WEB debits but could also have the unintended consequence of inciting agencies to encourage or restrict the public to use payment methods other than ACH that represent lower cost to the government or offer greater transaction certainty at a comparable cost. An initial assessment indicates the costs for WEB debit origination with account validation would approach the costs for acceptance of payment by debit cards, for example, which provide both account and funds availability validation through the authorization process. Given the anticipated costs of implementation, we are considering delaying the effective date of our acceptance of this Nacha rule change beyond Nacha’s March 19, 2021 effective date.

3. Supplementing Data Security Requirements

The existing ACH Security Framework requires Financial Institutions, Originators, Third-Party Service Providers, and Third-Party Senders to establish, implement and update security policies, procedures and systems related to the initiation, processing and storage of ACH entries. These policies, procedures, and systems must protect the confidentiality and integrity of protected information; protect against anticipated threats or hazards to the security or integrity of Protected Information; and protect against unauthorized use of Protected Information that could result in substantial harm to a natural person.

The Supplementing Data Security Requirements rule expands the existing ACH Security Framework to explicitly require large, non-financial institution Originators, Third-Party Service Providers, and Third-Party Senders to protect account numbers used in the initiation of ACH entries by rendering them unreadable when stored electronically. The rule aligns with existing language contained in Payment Card Industry (PCI) requirements, thus industry participants are expected to be reasonably familiar with the manner and intent of the requirement.

The rule applies only to account numbers collected for or used in ACH transactions and does not apply to the storage of paper authorizations. The rule also does not apply to depository financial institutions when acting as internal Originators, as they are covered by existing Federal Financial Institutions Examination Council (FFIEC) and similar data security requirements and regulations.

The amendment has a phased implementation period, with the following effective dates:

- Phase 1: Nacha Operating Rules language will become effective on June 30, 2020. Any Originator, Third-Party Service Provider, or Third-Party Sender that originates six

million or more ACH transactions in calendar year 2019 will need to be compliant by June 30, 2020.

- Phase 2: Nacha Operating Rules language will become effective on June 30, 2021. Any Originator, Third-Party Service Provider, or Third-Party Sender that originates two million or more ACH transactions in calendar year 2020 will need to be compliant by June 30, 2021.

Going forward after calendar year 2020, any Originator, Third-Party Service Provider, or Third-Party Sender that originates two million or more ACH transactions in any calendar year will need to be compliant with the rule by June 30 of the following calendar year.

Fiscal Service supports the expansion of existing security requirements to require large non-financial institution Originators to protect account numbers used to initiate ACH transactions by rendering them unreadable while stored electronically. We are proposing to accept this amendment.

4. ACH Rules Compliance Audit Requirements

Effective January 1, 2019, Nacha consolidated all requirements for an annual rules compliance audit within one section of the Nacha Operating Rules. Prior to the rule change, the general obligation for Participating Depository Financial Institutions (and certain Third-Party Service Providers and Third-Party Senders) to conduct an audit was located within Article One, Section 1.2.2 (Audits of Rules Compliance). However, the details pertaining to that audit obligation were separately located within Appendix Eight (Rules Compliance Audit Requirements). This amendment retained and combined the core audit obligation with the general administrative requirements for completion of such an audit into Article One of the Nacha Operating Rules.

Under 31 CFR 210.2(d), the rule compliance audit requirements are not applicable to Federal agencies. We are therefore proposing not to adopt this amendment.

5. Minor Rules Topics

These amendments change five specific areas of the Nacha Operating Rules to address minor issues. Minor changes to the Nacha Operating Rules have little-to-no impact on ACH participants and no significant economic impact. Nacha's minor rule amendments became effective on January 1, 2019.

i. ACH Operator Edits

The ACH Operator Edits amendment modifies edit criteria to permit ACH Operators to “pend” files as an alternative to rejecting files under various error conditions, primarily related to duplicate file detection. The rule incorporates language to clarify that ACH Operator edits defined within Appendix Two of the Nacha Operating Rules represent minimum standards required by the Nacha Operating Rules, and that additional edits can be adopted by each ACH Operator as part of its service agreement with its customers.

We are proposing to accept this amendment.

ii. Clarification of Telephone-initiated Entry (TEL) Authorization Requirements

This amendment clarifies that the general rules governing the form of authorization for all consumer debits apply to the authorization of TEL entries, including the obligation to include revocation language. Only Accounts Receivable (ARC), Back Office Conversion (BOC), Point-of-Purchase (POP), and Re-presented Check (RCK) entries are explicitly exempted from the requirement to include revocation language in the authorization. The Clarification of TEL Authorization Requirements rule also incorporates a reference that TEL

entries are consumer debits only, consistent with the language for other consumer debits.

We are proposing to accept this amendment.

iii. Clarification of RDFI Obligation to Return Credit Entry Declined by Receiver

This rule change reflects pre-existing practices regarding circumstances under which an RDFI is, or is not, obligated to return a credit entry that has been declined by a Receiver. The Clarification of RDFI Obligation to Return Credit Entry Declined by Receiver rule expressly identifies specific conditions under which the RDFI is excused from its obligation to return a credit:

- There are insufficient funds available to satisfy the return, including due to any third party lien or security interest.
- The return is prohibited by legal requirements.
- The RDFI itself has a claim against the proceeds of the credit entry, including by offset, lien, or security interest.

The rule change also modifies the rule language to refer to an entry being “declined” (rather than “refused”) by the Receiver.

We are proposing to accept this amendment.

iv. Clarification on Reinitiation of Return Entries

This amendment is an editorial change to the language of the general rule on Reinitiated Entries to clarify the intent of the Rules that reinitiation is limited to two times.

We are proposing to accept this amendment.

v. Clarification on RDFI Liability Upon Receipt of a Written Demand for Payment

This amendment contains editorial changes regarding conditions under which an RDFI may return a Reclamation Entry or reject a Written Demand for Payment. These changes also

clarify that an RDFI may reject a Written Demand for Payment only if it was not properly originated by the ODFI.

We are proposing to accept this amendment.

D. Differentiating Unauthorized Return Reasons

On April 12, 2019, Nacha Voting Membership approved Ballot #1-2019: Differentiating Unauthorized Return Reasons. The rule repurposes an existing, little-used return reason code (R11) that will be used when a receiving customer claims that there was an error with an otherwise authorized payment. Currently, return reason code R10 is used as a catch-all for various types of underlying unauthorized return reasons, including some for which a valid authorization exists, such as a debit on the wrong date or for the wrong amount. In these types of cases, a return of the debit still should be made, but the Originator and its customer (the Receiver) might both benefit from a correction of the error rather than the termination of the origination authorization. The use of a distinct return reason code (R11) enables a return that conveys this new meaning of “error” rather than “no authorization.”

The rule becomes effective in two phases. On April 1, 2020, the re-purposed return code becomes effective, and financial institutions will use it for its new purpose. A year later, on April 1, 2021, the re-purposed return code will become covered by the existing Unauthorized Entry Fee.

We are proposing to accept this amendment.

E. Actual or Constructive Knowledge of Death

31 CFR Part 210 Subpart B governs the reclamation of post-death Federal benefit payments from financial institutions. Under Subpart B, both agencies and RDFIs have obligations, rights and liabilities that are triggered by actual or constructive knowledge of the

death or incapacity of a recipient or death of a beneficiary. See § 210.10(c), (d); §210.11(a). An agency that initiates a request for a reclamation must do so within 120 calendar days after the date that the agency first has actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary. However, the definition of “actual or constructive” knowledge for this purpose is not explicitly addressed in the definition at § 210.2(b), which refers only to RDFIs.

Fiscal Service is proposing to revise the definition of “actual or constructive knowledge of death” at 31 CFR § 210.2(b) to apply the definition to agencies as well as RDFIs. In addition, we are proposing to add a sentence to the definition to address a specific situation that has arisen in recent years in which agencies sometimes stop recurring payments to a recipient and, many months or years after stopping the payments, initiate a reclamation. As revised, § 210.2(b) would require an agency that stops certifying recurring payments to a recipient because it has reason to believe that the recipient is deceased to investigate and determine whether to initiate a reclamation within 120 days following the first missed payment date. An agency may receive information or otherwise have reason to believe that a recipient is deceased before it takes action to stop payments. However, we believe that the first missed payment date preceding the initiation of a reclamation is the most apparent indicator that the agency has information of a recipient’s death that is sufficiently reliable to warrant stopping payments. Accordingly, the phrase “the time [the agency] stops certifying recurring payments to a recipient” refers to the first missed payment date.

The proposed language would not generally apply to or affect situations in which agencies stop payments due to fraud or loss of entitlement because in most of those cases agencies would not be initiating a reclamation. In addition, the proposed language would not generally affect

situations in which an agency stops payments due to a mistaken belief that the recipient was deceased, because those payments would be reinitiated upon discovery of the mistake. Moreover, in the event that an agency initiates a reclamation more than 120 days after stopping payments and can prove that it stopped payments for a reason other than actual or constructive knowledge of death, the agency can present evidence to rebut the presumption of knowledge, in which case the 120-day deadline would not be triggered by the date the agency stopped payments.

Agencies have indicated that sometimes they have difficulty obtaining definitive proof of death (i.e., a death certificate) within 120 days of receiving constructive knowledge of death, and that therefore they may wait for a protracted period of time before initiating a reclamation. However, the legal standard applicable to agencies initiating a reclamation is not receipt of a death certificate (actual knowledge), but actual or constructive knowledge. We request comment on this proposal, including whether the proposed revisions to § 210.2(b) are clear.

III. Section-by-Section Analysis

In order to incorporate in Part 210 the Nacha Operating Rule changes that we are accepting, we are replacing references to the 2016 Nacha Rules & Guidelines book with references to the 2019 Nacha Operating Rules & Guidelines book. The Nacha Operating Rule amendment that we are not proposing to incorporate is a modification to the audit compliance provisions of the Nacha Operating Rules, which are already excluded under Part 210. Other than replacing the references to the 2016 Nacha Operating Rules & Guidelines book, no change to Part 210 is necessary to exclude this amendment.

§ 210.2(b)

We are proposing to amend the definition of “actual or constructive knowledge” in order

to clarify that the definition applies to agencies as well as to RDFIs. We are also proposing to add a sentence to the definition to address situations in which agencies stop recurring payments to a recipient and subsequently initiate a reclamation. Under the revised definition, an agency is presumed to have constructive knowledge of death or incapacity at the time it stops certifying recurring payments to a recipient if the agency (1) does not re-initiate payments to the recipient and (2) subsequently initiates a reclamation for one or more payments made to the recipient. The presumption created under the definition is rebuttable in cases where an agency can demonstrate that it stopped certifying recurring payments to a recipient for a reason other than death.

§ 210.2(d)

We are proposing to amend the definition of “applicable ACH Rules” at § 210.2(d) by replacing the reference to Nacha’s 2016 Operating Rules & Guidelines with a reference to the ACH Rules with an effective date on or before June 30, 2021, as published in “2019 Nacha Operating Rules & Guidelines” and supplements thereto. We are proposing to delete the reference to Appendix Ten in subparagraph (1) because Appendix Eight is being removed in its entirety from the 2019 Rules Book, and Appendices Nine and Ten are being renumbered as Appendices Eight and Nine, respectively. We are proposing to delete subparagraph (7), which relates to the government’s original adoption of Same Day ACH in 2017, because it was in effect only until September 15, 2017, and is now obsolete.

§ 210.3(b)

We are proposing to amend § 210.3(b) by replacing the references to the 2016 Nacha Operating Rules & Guidelines with references to a 2019 Nacha Operating Rules & Guidelines.

§ 210.6

We are proposing to amend paragraph (g) by replacing the reference to the 2016 Nacha

Operating Rules & Guidelines with a reference to a 2019 Nacha Operating Rules & Guidelines.

§ 210.10(b)

We are proposing to amend § 210.10(b) to state that an agency is presumed to have constructive knowledge of death or incapacity at the time it stops certifying recurring payments to a recipient if the agency (1) does not re-initiate payments to the recipient and (2) subsequently initiates a reclamation for one or more payments made to the recipient.

IV. Incorporation by Reference

In this rule, Fiscal Service is proposing to incorporate by reference the 2019 Nacha Operating Rules & Guidelines book. The Office of Federal Register (OFR) regulations require that agencies discuss in the preamble of a proposed rule ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. In addition, the preamble of the proposed rule must summarize the material. 1 CFR 51.5(a). In accordance with OFR's requirements, the discussion in the Supplementary Information section summarizes the 2019 Nacha Operating Rules. Financial institutions utilizing the ACH Network are bound by the Nacha Operating Rules and have access to the Nacha Operating Rules in the course of their everyday business. The Nacha Operating Rules are available as a bound book or in online form from Nacha, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703-561-1100, info@nacha.org.

V. Procedural Analysis

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 proposed 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.

Regulatory Planning and Review

The proposed 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 proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule imposes on the Federal government a number of changes that Nacha has already adopted and imposed on private sector entities that utilize the ACH Network. The proposed rule does not impose any additional burdens, costs or impacts on any private sector entities, including any 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 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. We have determined that the proposed 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

For the reasons set out in the preamble, we propose to amend 31 CFR part 210 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. In § 210.2, revise paragraphs (b) and (d) to read as follows:

§ 210.2 Definitions.

* * * * *

(b) Actual or constructive knowledge, when used in reference to an RDFI's or agency's knowledge of the death or incapacity of a recipient or death of a beneficiary, means that the RDFI or agency received information, by whatever means, of the death or incapacity and has had a reasonable opportunity to act on such information or that the RDFI or agency would have learned of the death or incapacity if it had followed commercially reasonable business practices. For purposes of Subpart B, an agency is presumed to have constructive knowledge of death or

incapacity at the time it stops certifying recurring payments to a recipient if the agency (1) does not re-initiate payments to the recipient and (2) subsequently initiates a reclamation for one or more payments made to the recipient.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before June 30, 2021, as published in “2019 Nacha Operating Rules & Guidelines: A Complete Guide to Rules Governing the ACH Network” and supplements thereto, except:

(1) Sections 1.2.2, 1.2.3, 1.2.4, 1.2.5 and 1.2.6; Appendix Seven; Appendix Eight; and Appendix Nine (governing the enforcement of the ACH Rules and claims for compensation);

(2) Section 2.10 and Section 3.6 (governing the reclamation of benefit payments);

(3) The requirement in Appendix Three that the Effective Entry Date of a credit entry be no more than two Banking Days following the date of processing by the Originating ACH Operator (see definition of “Effective Entry Date” in Appendix Three);

(4) Section 2.2 (setting forth ODFI obligations to enter into agreements with, and perform risk management relating to, Originators and Third-Party Senders) and Section 1.6 (Security Requirements);

(5) Section 2.17.2.2-2.17.2.6 (requiring reduction of high rates of entries returned as unauthorized); and

(6) The requirements of Section 2.5.8 (International ACH Transactions) shall not apply to entries representing the payment of a Federal tax obligation by a taxpayer; and

* * * * *

3. In § 210.3, revise paragraph (b), redesignate paragraph (c) as paragraph (d), and add new paragraph (c) to read as follows:

§ 210.3 Governing law.

* * * * *

(b) *Incorporation by reference.* Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section the Service must publish a document in the FEDERAL REGISTER and the material must be available to the public. All approved material is available for inspection at the Bureau of the Fiscal Service, 401 14th Street SW., Room 400A, Washington, DC 20227, 202-874-6680, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(1) NACHA - The Electronic Payments Association, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703-561-1100, info@nacha.org.

(i) “2019 NACHA Operating Rules & Guidelines: A Complete Guide to Rules Governing the ACH Network,” copyright 2019. IBR approved for § 210.6

ii [Reserved]

2 [Reserved]

(c) Any amendment to the applicable ACH Rules approved by Nacha after publication of the 2019 Nacha Operating Rules & Guidelines 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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4. In § 210.6, revise paragraph (g) to read as follows:

§ 210.6 Agencies.

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(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. The requirements of the 2019 Nacha Operating Rules and Guidelines, incorporated by reference, see § 210.3(b)(2), 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.

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5. In § 210.10, revise paragraph (b) to read as follows

§ 210.10 RDFI liability

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(b) Actual or constructive knowledge, when used in reference to an RDFI's or agency's knowledge of the death or incapacity of a recipient or death of a beneficiary, means that the RDFI or agency received information, by whatever means, of the death or incapacity and has had a reasonable opportunity to act on such information or that the RDFI or agency would have learned of the death or incapacity if it had followed commercially reasonable business practices.

For purposes of Subpart B, an agency is presumed to have constructive knowledge of death or incapacity at the time it stops certifying recurring payments to a recipient if the agency (1) does not re-initiate payments to the recipient and (2) subsequently initiates a reclamation for one or more payments made to the recipient.

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Dated: December 11, 2019.

David A. Lebryk

Fiscal Assistant Secretary

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