

**List of Subjects in 21 CFR Part 520**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

**PART 520—ORAL DOSAGE FORM  
NEW ANIMAL DRUGS**

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.2640, add paragraph (b)(3); and revise paragraphs (a), (b)(1), (b)(2), (d)(2)(ii), (d)(3)(ii)(A), (d)(3)(ii)(B), and (d)(3)(iii) to read as follows:

**§ 520.2640 Tylosin.**

(a) *Specifications.* Each container of soluble powder contains tylosin tartrate equivalent to either 100 or 256 grams tylosin base.

(b) \* \* \*

(1) No. 000986 for use of a 100-gram jar as in paragraph (d) of this section.

(2) No. 016592 for use of a 100-gram jar or pouch as in paragraphs (d)(1), (d)(2), (d)(3)(i), (d)(3)(ii)(B), (d)(3)(iii), and (d)(4) of this section.

(3) No. 061623 for use of a 100- or 256-gram jar or pouch as in paragraphs (d)(1), (d)(2), (d)(3)(i), (d)(3)(ii)(B), (d)(3)(iii), and (d)(4) of this section.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) *Indications for use.* For maintaining weight gain and feed efficiency in the presence of infectious sinusitis associated with *Mycoplasma gallisepticum* sensitive to tylosin.

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

(A) For the treatment and control of swine dysentery associated with *Brachyspira hyodysenteriae* when followed immediately by tylosin phosphate medicated feed; and for the control of porcine proliferative enteropathies (PPE, ileitis) associated with *Lawsonia intracellularis* when followed immediately by tylosin phosphate medicated feed.

(B) For the treatment and control of swine dysentery associated with *Brachyspira hyodysenteriae*.

(iii) *Limitations.* Prepare a fresh solution daily. Do not administer within 48 hours of slaughter. As indicated in paragraph (d)(3)(ii)(A) of this section, follow with tylosin phosphate medicated feed as in

§ 558.625(f)(1)(vi)(c) of this chapter.

\* \* \* \* \*

Dated: September 20, 2011.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

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**DEPARTMENT OF THE TREASURY**

**Fiscal Service**

**31 CFR Part 210**

**RIN 1510-AB24**

**Federal Government Participation in the Automated Clearing House**

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury, Financial Management Service (FMS) is issuing this final rule which amends our regulation governing the use of the Automated Clearing House (ACH) network by Federal agencies. The rule adopts, with some exceptions, the 2009 ACH Rules published by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies. Among other things, the final rule includes new requirements to identify all international payment transactions using a new Standard Entry Class Code and to include certain information in the ACH record sufficient to allow the receiving financial institution to identify the parties to the transaction and to allow screening to comply with requirements administered by the Office of Foreign Assets Control (OFAC). In addition, the rule requires financial institutions to provide limited account-related customer information related to the reclamation of post-death benefit payments as permitted under the Payment Transactions Integrity Act of 2008. It also allows Federal payments to be delivered to pooled or master accounts established by nursing facilities for residents of those facilities or held by religious orders whose members have taken vows of poverty.

**DATES:** October 24, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Bill Brushwood, Director of the Settlement Services Division, at (202) 874-1251 or *bill.brushwood@fms.treas.gov*; Natalie H. Diana, Senior Counsel, at (202) 874-6680 or *natalie.diana@fms.treas.gov*; or

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**SUPPLEMENTARY INFORMATION:**

**I. Proposed Rulemaking**

We issued a Notice of Proposed Rulemaking (NPRM) on May 14, 2010, requesting comment on a number of proposed amendments to title 31 CFR part 210 (Part 210). 75 FR 27239. 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.

*International ACH Transactions*

In the NPRM, we proposed to incorporate in Part 210 some, but not all, of the changes that NACHA adopted in 2007 and 2008, as reflected in the 2009 ACH Rules book. Those changes include requirements to identify all international payment transactions using a new Standard Entry Class Code and to include in the ACH record certain information sufficient to allow the receiving financial institution to identify the parties to the transaction and the path of the transaction. Effective September 18, 2009, the ACH Rules required Originating Depository Financial Institutions (ODFIs) and Gateway Operators to identify all international payment transactions transmitted via the ACH Network for any portion of the money trail with a new Standard Entry Class Code for International ACH Transactions (IAT). IAT transactions must include the specific data elements defined within the Bank Secrecy Act's (BSA) "Travel Rule" so that all parties to the transaction have the information necessary to comply with U.S. law, including the laws administered by OFAC.

Previously, many payments that are international in nature were being introduced as domestic transactions into the U.S. ACH Network through correspondent banking relationships, making it difficult for processing depository financial institutions to identify them for purposes of complying with U.S. law. NACHA's IAT Standard Entry Class Code classifies international payments based on the geographical location of the financial institutions or

money transmitting businesses involved in the transaction, instead of the location of the originator or receiver. As defined in the 2009 ACH Rules, an International ACH Transaction (IAT) entry is:

A debit or credit Entry that is part of a payment transaction involving a financial agency's office that is not located in the territorial jurisdiction of the United States. For purposes of this definition, a financial agency means an entity that is authorized by applicable law to accept deposits or is in the business of issuing money orders or transferring funds. An office of a financial agency is involved in the payment transaction if it (1) holds an account that is credited or debited as part of the payment transaction; (2) receives payment directly from a Person or makes payment directly to a Person as part of the payment transaction; or (3) serves as an intermediary in the settlement of any part of the payment transaction.

See 2009 ACH Rules, Subsection 14.1.36. The 2009 Operating Guidelines provide various examples of transactions that would be classified as IAT entries. One example deals with pension or Social Security benefit payments delivered to the U.S. bank accounts of retirees residing offshore. If the U.S. bank to which such a payment is delivered further credits the payment to an offshore bank with which it has a correspondent relationship, the entry is to be classified by the ODFI as IAT. In other words, despite being destined to U.S. bank accounts, the transactions would be IATs because the ultimate destinations of the payments are accounts held with offshore banks or financial agencies. The 2009 Operating Guidelines indicate that it is the Originator's obligation to understand the legal domicile of its retirees and inquire whether they hold accounts in U.S. banks or with offshore financial institutions. See 2009 Operating Guidelines, Section IV, Chapter XI, Scenario F, p. 209. As applied to Federal payments, this would mean that an agency certifying a payment to a recipient residing overseas must inquire whether the payment, although directed to a domestic bank, will be further credited to a foreign correspondent bank. If so, the agency must classify the payment as IAT.

In the NPRM, we proposed to accept the IAT rule for Federal payments. For Federal benefit payments delivered to overseas recipients in Mexico, Canada and Panama through the FedGlobal ACH Payment Services, we have already implemented the requirements of the IAT rule. For other payments, however, we proposed an effective date of January 1, 2012 in order to allow for the system and operational changes necessary to

implement the IAT requirements. We further indicated that we planned to phase in IAT requirements in stages, based on the type of payment and the agency issuing the payment, as expeditiously as operationally possible. The January 1, 2012 effective date does not affect agencies' obligation to comply to the full extent of their authority with OFAC-administered sanctions programs when certifying payments to Treasury for disbursement.

Lastly, we stated that in implementing the IAT requirements, we anticipated that some agencies will format as an IAT entry any payment to an individual or entity with an address outside the territorial jurisdiction of the U.S. This may result in the identification of some transactions as IATs even though funds do not ultimately leave the United States. However, taking an "over-inclusive" approach to implementing IAT greatly eases the administrative burden that Federal agencies would otherwise face. We requested comment from agencies and financial institutions on this over-inclusive approach.

#### *NACHA Rules Enforcement*

Effective December 21, 2007, NACHA modified its rules to broaden the scope of Appendix Eleven (The National System of Fines). The Appendix was revised to (1) Allow NACHA to request data from ODFIs for an Originator or Third-Party Sender that appears to exceed a rate of one percent for debit entries returned as unauthorized; and (2) define the circumstances under which NACHA may submit violations related to the ODFI reporting requirement to the National System of Fines. Several other provisions of the National System of Fines were also modified.

Part 210 currently does not incorporate Appendix 11 of the NACHA Rules. See 31 CFR 210.2(d)(3). The Federal government is constrained from entering into arrangements that may result in unfunded liabilities. Moreover, we do not believe that subjecting Federal agencies to the System of Fines is necessary or appropriate in light of its underlying purpose. Accordingly, we proposed not to adopt the modifications to Appendix 11. In the event that a Federal agency were to experience a high rate of debit entries returned as unauthorized, we would work with the agency and coordinate with NACHA to address the situation.

#### *ODFI Reporting Requirements*

Effective March 20, 2009, NACHA amended its rules to incorporate new reporting requirements for ODFIs within Article Two (Origination of Entries).

These reporting requirements require ODFIs to provide, when requested by NACHA, certain information about specific Originators or Third-Party Senders believed to have a return rate for unauthorized debit entries in excess of 1 percent. The rule also requires ODFIs to reduce the return rate for any such Originator or Third-Party Sender to a rate below 1% within 60 days. The amendment replaced a reporting requirement for Telephone-Initiated (TEL) entries that was previously in the ACH Rules.

We proposed not to adopt these reporting requirements. When NACHA adopted the TEL reporting requirement in 2003, we did not adopt it, in part because we did not believe that agencies were likely to experience excessive rates of returned entries, which has proved to be true. Similarly, we do not believe that it is necessary or appropriate to subject Federal agencies to a formal reporting process for unauthorized entries.

#### *Automated Reclamations Process*

In addition to addressing ACH Rule changes, we proposed to amend Part 210 to streamline the reclamation process for post-death benefit payments. We requested comment on a proposal to replace the current manual, paper-based reclamation process with a process in which Treasury would proceed with an automatic debit to the financial institution's reserve account in cases where a reclamation is limited to payments received within 45 days after the recipient's death. In the current reclamation process, Treasury sends out a paper Notice of Reclamation to the financial institution. The financial institution must complete, certify and return the paper Notice of Reclamation to Treasury. We requested comment on an approach in which Treasury would proceed with an automatic debit to the financial institution's reserve account, following advance notice to the financial institution of the debit with a right to challenge. We proposed that the automated process apply to situations in which a notice of reclamation is limited to payments received within 45 days after the recipient's death, which constitutes 85% of all reclamations.

#### *Payment Transactions Integrity Act of 2008 Changes*

We proposed in the NPRM to require financial institutions to provide certain withdrawer information for all types of benefit payments being reclaimed. Prior to the enactment of the Payment Transactions Integrity Act of 2008, account-related information could be shared only for certain types of benefit

payments. Accordingly, Part 210 currently requires banks to provide only the name and address (not the phone number) of account owners and withdrawers, and only in connection with the reclamation of Social Security Federal Old-Age, survivors, and Disability Insurance benefit payments or benefit payments certified by the Railroad Retirement Board or the Department of Veterans' Affairs. We proposed to require Receiving Depository Financial Institutions (RDFIs) to provide the name and last-known address and phone number for account owners and others who have withdrawn, or were authorized to withdraw, funds subject to a reclamation.

#### *"In the Name of the Recipient" Requirements*

Finally, we proposed to add three exceptions to our long-standing requirement in Part 210 that non-vendor payments be delivered to a deposit account at a financial institution in the name of the recipient. Specifically, we proposed to allow the delivery of Federal payments to resident trust or patient fund accounts held by nursing homes; to accounts held by religious orders for members who have taken a vow of poverty; and to prepaid and stored value card accounts provided that the cardholder's balance is FDIC insured and covered by the consumer protections of the Federal Reserve's Regulation E. This final rule does not address the proposal relating to prepaid cards. We have addressed that proposal in a separate rulemaking published on December 22, 2010.<sup>1</sup> See 75 FR 80335.

Title 31 CFR 210.5(a) provides that, notwithstanding ACH rules 2.1.2, 4.1.3, and Appendix Two, section 2.2 (listing general ledger and loan accounts as permissible transaction codes), an ACH credit entry representing a Federal payment other than a vendor payment shall be deposited into a deposit account at a financial institution. For all payments other than vendor payments, the account at the financial institution

must be in the name of the recipient, subject to certain exceptions. Our long-standing interpretation of the words "in the name of the recipient," has been that the payment recipient's name must appear in the account title. See, e.g., 64 FR 17480, referring to discussion at 63 FR 51490, 51499. The requirement is not met if the recipient has an ownership interest in a pooled account and that individual's interest is reflected only in a subaccount record. The "in the name of the recipient" requirement is, in essence, a consumer protection policy designed to ensure that a payment reaches the intended recipient. See discussion at 63 FR 51490, 51499. We have had concerns in the past that a Federal benefit payment recipient could enter into, or otherwise be subject to, a master/sub account relationship in which the intended recipient has little control (if any) over the account to which their benefit payments is directed.

#### 1. Accounts Held by Nursing Facilities

On April 21, 2008, the Social Security Administration (SSA) published a **Federal Register** notice requesting comments on arrangements in which Social Security benefit payments are deposited into a third-party's "master" account when the third party maintains separate "sub" accounts for individual beneficiaries. See 73 FR 21403. SSA specifically asked if nursing homes would be able to receive and manage benefits for their residents without the use of master/sub accounts. The comments received by SSA indicated that the use of master/sub account arrangements by residents of nursing facilities is widespread, and that these arrangements are beneficial for recipients. Based on the comments received, SSA's view is that master/sub accounts held by nursing facilities serve useful purposes and do not present concerns. After consulting with SSA and upon review of the comments submitted to SSA, we proposed in the NPRM an exception to the "in the name of the recipient" requirement which would allow payments to be deposited to pooled accounts held by nursing homes.

In the NPRM, we described the specific requirements to which resident trust or patient fund accounts held by nursing facilities are subject under Federal statute and regulation, including the Federal Nursing Home Reform Act. For example, upon written authorization of a resident, facilities must "hold, safeguard, manage and account for" the personal funds of the resident deposited with the facility. 42 U.S.C. 1396r(c)(1)(B); 42 CFR

483.10(c)(2). The statute requires that residents be provided a written description of their legal rights that includes a description of the protection of personal funds and a statement that a resident may file a complaint with a state survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility. 42 U.S.C. 1396r(c)(1)(B); 42 CFR 483.10(b)(7)(i). Other statutory provisions address the management of personal funds, including requirements for maintaining separate accounts, the provision of a complete separate accounting of each resident's personal funds, and the maintenance of a written record of all financial transactions involving the personal funds of a resident deposited with the facility. 42 U.S.C. 1396r(c)(6)(B)(i); 42 U.S.C. 1396r(c)(6)(B)(ii). To protect personal funds of residents deposited with a nursing facility, the nursing facility must purchase a security bond to assure the security of all personal funds. 42 U.S.C. 1396r(c)(6)(C). Lastly, nursing facilities may not charge anything for these services. A facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicare or Medicaid. 42 U.S.C. 1396r(c)(6)(D).

In light of the extensive protections provided to residents of nursing facilities whose funds are maintained in resident trust or patient fund accounts, we proposed to establish an exception to the "in the name of the recipient" requirement in order to permit payments to be deposited into resident trust or patient fund accounts established by nursing facilities.

#### 2. Accounts for Members of Religious Orders Who Have Taken Vows of Poverty

We also proposed in the NPRM to allow payments disbursed to a member of a religious order who has taken a vow of poverty to be deposited to an account established by the religious order. SSA's **Federal Register** notice regarding master/sub accounts specifically requested comment on accounts established by religious orders for members of such orders who have taken vows of poverty. The comments received did not indicate that there are any problems associated with these accounts, and commenters recommended that they be permitted.

For purposes of defining who is a "member of a religious order who has taken a vow of poverty," we proposed to utilize existing guidance issued by the Internal Revenue Service (IRS). The

<sup>1</sup> On December 22, 2010 we published an interim final rule that allows the delivery of Federal payments to a prepaid card or access device, provided the account is not attached to a line of credit or loan agreement under which repayment from the account is triggered upon delivery of the Federal payments; and the account is set up to meet the requirements for pass-through deposit or share insurance such that the funds accessible through the card or access device are insured for the benefit of the recipient by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund; and the issuer of the card or access device provides the holder of the card with all of the consumer protections that apply to a payroll card account under the rules implementing the Electronic Funds Transfer Act.

treatment for Federal tax purposes of services performed by a member of a religious order who has taken a vow of poverty is addressed in IRS Publication 517 (2008). We requested comment on whether it is appropriate to define the phrase "member of a religious order who has taken a vow of poverty" in the same way that the phrase would be defined by IRS for Federal tax purposes.

## II. Comments and Analysis

We received 12 comments in response to the NPRM. The commenters represented a variety of perspectives. Comments were submitted by financial institutions, consumer advocacy groups, industry associations, the Senate Committee on Finance, and the House Committee on Ways and Means.

### *International ACH Transactions*

Several entities commented upon the proposal to amend Part 210 to accept NACHA's international ACH transaction (IAT) rule for Federal payments. Most of the commenters supported the application of the IAT rule to Federal payments, including the proposed effective date of January 1, 2012. However, the commenters generally opposed the use by Federal agencies of an "over-inclusive" approach to compliance with the IAT requirements in which, as discussed above, Federal agencies would use the IAT Standard Entry Class Code for all payments to individuals or entities with an address outside the territorial jurisdiction of the U.S. Commenters stated that Federal agencies should be expected to comply with the IAT rules in the same manner as the private sector. One commenter stated that the use of an over-inclusive approach "would result in a shift of the government's compliance costs to receiving depository financial institutions (RDFIs), which would be overly burdensome on and unfair to RDFIs."

Commenters indicated that IAT transactions are typically viewed as riskier than other transactions and are therefore subject to additional scrutiny, which may increase the time, effort and cost of processing the payments, and potentially may delay the delivery of funds to the recipient. Commenters argued that by overclassifying payments as IATs, the Federal government would be increasing the volume of IAT transactions that financial institutions must handle, which would result in needlessly excessive OFAC screening and other processing costs for financial institutions. Commenters also stated that the overclassification of payments as IATs may result in the delay of delivery of funds to the recipients in

some cases, due to the time required to investigate and clear any payments that potentially match the OFAC Specially Designated Nationals (SDN) List.

In view of commenters' concerns regarding the burdens to financial institutions that would result from agencies' use of an overinclusive approach, we have conducted research to quantify the anticipated burden. Based on our research, the burden to financial institutions appears to be minimal. SSA, which is the primary agency interested in pursuing an overinclusive approach, has identified approximately 170,000 benefit payments for recipients with a foreign address that are sent each month to domestic correspondent banks. We believe that most of these 170,000 would be properly classified as IAT entries if SSA undertook to query each payment recipient regarding the ultimate destination of the funds. The payments are generally being delivered to retirees who reside overseas and who, like other retirees, presumably use these benefits for their daily living expenses. SSA and FMS believe that many of these payments are likely to be further credited by U.S. financial institutions to accounts outside the U.S. through correspondent relationships. Therefore, it appears reasonable to assume that many of these 170,000 payments would be properly classified as IAT entries, meaning that the actual number of payments that are improperly classified—and that thus present an unnecessary processing burden for banks—is likely to be relatively insignificant.

Moreover, these 170,000 monthly payments are delivered to over 4,600 domestic financial institutions. Over 3,800 financial institutions receive fewer than 10 of these payments per month, which is a relatively inconsequential number for any particular financial institution. Only thirteen very large financial institutions receive more than 1,000 of these foreign benefit payments monthly. Accordingly, the potential burden to the vast majority of potentially affected financial institutions does not appear to be significant.

Finally, it's important to note that FMS will conduct OFAC screening of all 170,000 payments prior to their origination into the ACH network. FMS's service provider that conducts the OFAC screening will have information that may be used to assist financial institutions that are seeking to clear any of the payments that match the OFAC list. For these reasons, we believe that it is reasonable for agencies to classify payments made to individuals with foreign addresses as IAT entries.

In the NPRM, we discussed the IAT requirements from the perspective of payments made by the Federal government. The IAT requirements also affect collections made by the Federal government, including systems by which individuals or entities authorize the government to originate ACH debits to their domestic accounts for the collection amounts owed. After the effective date of the NACHA IAT rule changes, FMS learned that a few entries were being returned by domestic financial institutions based upon customer instructions to fund a Federal ACH collection debit from a foreign source of funds.

Generally, the IAT requirements will impact two collection systems operated by FMS: Pay.gov, which both originates ACH WEB entries online and ACH PPD, TEL and CCD entries received individually or in files from agencies; and FMS's Debit Gateway, through which ACH debit entries are presented and settled. We have determined that it will take a significant effort over an extended period to implement the changes necessary to process IAT entries. This effort will require that FMS coordinate with affected agencies and reallocate resources. Accordingly, we are establishing a new date of June 30, 2013, as of which the IAT requirements will be implemented into Pay.gov and the Debit Gateway. After June 30, 2013, FMS will work with agencies to transition them into compliance based upon the readiness of the systems involved and the business need of the agency. In an effort to continue progressing forward with implementing the IAT requirements, we expect to implement a limited IAT pilot in Pay.Gov and the Debit Gateway in late 2012.

Finally, we are exempting entries representing Federal tax payments made to the IRS from the IAT classification requirements due to their extremely low risk, and the need for taxpayers to receive timely credit for their payments made as a result of tax liabilities. IRS rules require receipt of funds on exact tax due dates, with substantial penalties and interest charged to individuals and corporations for late payments received. Millions of taxpayers authorize payment entries for tax payments using FMS's Electronic Federal Tax Payment System (EFTPS) with an enrollment process through which the taxpayer can authorize the origination of a debit entry to his or her bank account. The accounts from which EFTPS transactions are funded are accounts confirmed to be at domestic depository institutions as determined by the bank's routing number, and these accounts are

monitored for OFAC compliance by the account-holding financial institutions. In light of these facts and the unique nature of tax payments, as opposed to transactions involving the purchase of goods or services or other government fees, we believe the risk associated with tax payments processed through EFTPS is very low. We have consulted with OFAC staff regarding this matter and they have concurred that our approach toward tax payments is reasonable from a risk-based compliance perspective.

In the NPRM FMS proposed to adopt the IAT rule for Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal ACH Payment Service, effective immediately. For all other Federal payments, we proposed an effective date of January 1, 2012. We are finalizing this proposal for ACH credit entries originated by Federal agencies. For ACH debit entries originated by Federal agencies, we are establishing a later effective date of June 30, 2013.

#### *NACHA Rules Enforcement*

Two commenters provided comments regarding the proposed continued exclusion from NACHA's national system of fines. One commenter expressed a preference that the Federal government be subject to the NACHA National System of Fines (Appendix Eleven of the NACHA Operating Rules). The other commenter recognized that FMS has consistently excluded the Federal government from the national system of fines because the Federal government is prohibited from entering into agreements for contingent liabilities that might result in unfunded liabilities. The commenters did not identify any problems that have resulted from FMS's prior decisions to exempt the Federal government from Appendix Eleven.

We believe that modifying Part 210 to subject the Federal government to Appendix Eleven could contravene the government's obligation to avoid unfunded liabilities. Moreover, none of the commenters indicated that this position has caused undue hardship in the past. If an agency experiences a high rate of debit entries that are returned as unauthorized, or if an agency or FMS identifies an ACH rule issue, FMS remains willing to coordinate with NACHA and the agency to address the issue. Therefore, we are adopting this proposal without modification.

#### *ODFI Reporting Requirements*

Two commenters provided comments regarding FMS's proposal not to adopt NACHA's new reporting requirements for ODIs when certain Originators or Third-Party Senders are believed to

have a return rate for unauthorized debit entries in excess of one percent. One commenter expressed a preference that the Federal government be subject to the reporting requirements, whereas the other commenter recognized that FMS has consistently excluded the Federal government from the reporting requirements when those requirements may unduly burden the Federal government without yielding countervailing benefits. Neither commenter identified specific problems that would result from continuing to exempt the Federal government from these reporting requirements.

We are adopting this proposal without modification. We remain willing to coordinate with NACHA to address issues that may arise if an agency experiences an excessive unauthorized return rate.

#### *Automated Reclamations Process*

Several commenters submitted comments regarding our proposal for automating reclamations. Commenters were generally supportive of the objectives of achieving cost savings and efficiencies in the reclamations process. Some commenters acknowledged that the current paper-based process can be burdensome for FMS and financial institutions, and that an updated process could benefit both parties. However, commenters generally expressed significant concerns that the proposed process was not sufficiently developed or clear, would be burdensome for financial institutions and would add complexity to the current reclamation procedures, thereby negating efforts to streamline the process and reduce the amount of paper produced. Several commenters suggested that FMS work with affected financial institutions to further refine and test any proposed process before final implementation.

In light of commenters' concerns, which we agree are generally valid, and our desire to identify the most effective solution to respond to the issues identified by commenters, we are not finalizing the proposal to automate the reclamations process at this time. Instead, we will work to develop an approach that addresses the concerns raised by commenters, which we may publish for comment in a future notice of proposed rulemaking. During this period of further study, we plan to continue to expand and refine the use of the Centralized Reclamation Application currently in use.

#### *Payment Transactions Integrity Act of 2008 Changes*

Several commenters provided input on FMS's proposal to require RDFIs to provide the name, last-known address and phone number for account owners and others who have withdrawn, or were authorized to withdraw, funds subject to reclamation. The commenters stated that financial institutions may not have telephone numbers for all deposit account owners and authorized signers, or that financial institutions may not have accurate or current information. The commenters expressed concern that financial institutions would be held accountable for the accuracy of the information in their records or might even be required to obtain that information.

We are finalizing the requirement to provide the proposed information. To clarify that a financial institution is only required to provide information in its records, and would have no liability for the accuracy of that information, we have modified the wording of the regulation text to state that the RDFI must provide the name, last known address and phone number "as reflected on the RDFI's records."

#### *"In the Name of the Recipient" Requirements*

##### 1. Accounts Held by Nursing Facilities

The comments we received generally supported the proposed exception, which would allow a Federal payment that is disbursed to a resident of a qualifying nursing facility to be deposited into a resident trust or patient fund account established by the nursing facility. One commenter stated its belief that this change will assist nursing home residents. Another commenter suggested that the final rule further clarify that eligible nursing homes should be subject to certain types of oversight. Some financial institutions that commented expressed some concern that financial institutions could be held liable if funds are misapplied and suggested that the final rule either: (1) Specify that the payment be deposited into an account that is designated as a resident trust or patient fund account; or (2) allow the payment to be deposited into a deposit account established by the nursing facility.

We are finalizing the exception for accounts held by nursing facilities as proposed, with one change. We have revised the wording of the exception to provide that where a Federal payment is disbursed to a resident of a nursing facility, as defined in 42 U.S.C. 1396r, the payment may be deposited into a resident trust or patient fund account

established by the nursing facility “pursuant to requirements under Federal law relating to the protection of such funds.” We believe that this wording addresses commenters’ concerns by making clear that an eligible account is restricted to “a resident trust or patient fund account” established by “a nursing facility as defined in 42 U.S.C. 1396r” and that the account is subject to all of the requirements governing the protection of funds held in resident trust or patient fund accounts.

## 2. Accounts for Members of Religious Orders Who Have Taken Vows of Poverty

Commenters generally supported this proposal and none of the commenters criticized or voiced concerns regarding this proposal. In light of the comments and the reasons discussed above, we are finalizing this exception as proposed.

### III. Final Rule

#### Summary

In the final rule, we are adopting all of the proposed amendments to Part 210 set forth in the NPRM, except as follows:

1. *International ACH Transactions:* We are finalizing the effective date of the IAT rule as proposed in the NPRM for credit entries originated by Federal agencies. We are extending the effective date for the application of the IAT rule to debit entries originated by Federal agencies in Pay.gov and the Debit Gateway until June 30, 2013. We plan to implement a limited IAT pilot in late 2012, and then transition agencies into compliance after June 30, 2013, based upon the readiness of the systems involved and the business need of the agency.

2. *Automated Reclamations Process:* We are not finalizing the proposal to automate the reclamations process at this time. FMS plans to expand the use of the Centralized Reclamation Application to additional financial institutions and work with the financial industry to further streamline the reclamation process. We will continue to evaluate solutions to respond to commenters’ concerns about automating the reclamation process. If we decide to pursue changes to the reclamation process that require an amendment to Part 210, we will publish a new notice of proposed rulemaking with request for comment.

3. *Payment Transactions Integrity Act of 2008 Changes:* We are finalizing the requirement that RDFIs provide certain information in connection with a reclamation, but have added language to

make it clear that the financial institution’s obligation to provide the information is limited to information contained in its records and that the financial institution is not liable if that information is inaccurate.

4. *Prepaid Card Exception:* The final rule does not address the proposed exception to the “in the name of the recipient” requirement for prepaid cards. That proposal was addressed in a separate rulemaking published on December 22, 2010. See 75 FR 80335.

#### 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 2007 ACH Rules book with references to the 2009 ACH Rules book. No change to Part 210 is necessary in order to exclude the amendments to the rules enforcement provisions, since Part 210 already provides that the rules enforcement provisions of Appendix 11 of the ACH Rules do not apply to Federal agency ACH transactions. See § 210.2(d).

#### § 210.2(d)

The definition of applicable ACH Rules at § 210.2(d) is amended to refer to the rules published in NACHA’s 2009 Rules book. Section 210.2(d)(6) is revised to reflect a numbering change to the ACH Rules pursuant to which former ACH Rule 2.11.2.3 is now ACH Rule 2.12.2.3. Section 210.2(d)(7) is revised to remove a reference to former ACH Rule 2.13.3, which required reporting regarding unauthorized Telephone-Initiated entries. NACHA has replaced that reporting requirement with a broader reporting requirement (ACH Rule 2.18). Section § 210.2(d)(7) sets forth the broader reporting requirement, which we are not adopting.

Section 210.2(d)(8) has been added in order to exclude debit entries originated by agencies from ACH Rule 2.11 (International ACH Transactions) until June 30, 2013. Credit entries originated by agencies, other than Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal(SM) ACH Payment Service, are excluded from ACH Rule 2.11 until January 1, 2012. In addition, entries representing the payment of a Federal tax obligation are entirely excluded from ACH Rule 2.11.

#### § 210.3(b)

We are amending § 210.3(b) by replacing the references to the ACH Rules as published in the 2007 Rules book with references to the ACH Rules as published in the 2009 Rules book.

#### § 210.5(b)

New paragraphs (b)(6) and (b)(7) create additional exceptions to the requirement in paragraph (a) that all payments other than vendor payments be delivered to an account in the name of the recipient. Paragraph (b)(6) allows payments disbursed to a resident of a nursing facility, as defined in 42 U.S.C. 1396r, to be deposited into a resident trust or patient fund account established by the nursing facility. Paragraph (b)(7) allows payments disbursed to a member of a religious order who has taken a vow of poverty, as defined for purposes of IRS regulations, to be deposited to an account established by the religious order.

#### § 210.11

Section 210.11(b)(3)(i) requires RDFIs to provide the name, last-known address and phone number for account owners and others who have withdrawn, or were authorized to withdraw, funds from the account, as permitted by the Payment Transactions Integrity Act of 2008. The RDFI is only obligated to provide information shown on its records, and is not liable to the government if the information is inaccurate.

### IV. Procedural Requirements

#### Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

#### 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. We believe the rule will affect only a limited number of small entities and that any economic impact will be minimal. The rule requires financial institutions that hold accounts to which post-death benefit payments have been delivered to provide the government

with the name, address and phone number for account owners and others who have withdrawn funds. Financial institutions are already required to provide detailed information to the government in connection with such accounts by completing and returning Form FMS-133. In most cases financial institutions are already required to provide names and addresses on Form FMS-133 and the only additional information required will be a phone number. Financial institutions that commented on the rule did not indicate that the requirement would be burdensome or have any economic effect if they are only required to provide information contained in their records, which the final rule expressly provides. The Burden Estimate Statement on FMS-133 states that the estimated average time associated with filling out the form is 12 minutes. FMS does not believe that the requirement to provide a phone number or, in limited cases, the name and address of a withdrawer, will affect the 12 minute estimate.

The final rule will allow, but not require, the delivery of Federal non-vendor payments to certain types of pooled accounts held by nursing homes and religious orders, regardless of size. For nursing homes that do not wish to receive Federal payments on behalf of residents, there will be no economic impact. For nursing homes that wish to receive Federal payments to established patient funds accounts, there should be no economic impact because there is no cost to receive a direct deposit payment. For nursing homes that wish to receive Federal payments for patients but that have not already established patient fund accounts for the management of other patient funds, the costs would include the fees, if any, charged by a financial institution to maintain the account and the cost of obtaining a surety bond. The average monthly payment amount for a Supplemental Security Income (SSI) check recipient is \$545 and the average monthly payment amount for a Social Security (SSA) check recipient ranges from \$808-\$915. For small nursing homes that have, by definition, a small number of residents, the cost of a bond to insure against defalcation of these modest monthly payments should be insignificant. Any economic impact for these entities therefore is not expected to be significant. 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 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 forth 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. 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 18, 2009, as published in Parts IV, V and VII of the “2009 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network” (incorporated by reference, § 210.3) 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 2.12.2.3 (requiring that originating depository financial institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries);

(7) ACH Rule 2.18 (requiring reporting and reduction of high rates of entries returned as unauthorized); and

(8) ACH Rule 2.11 (International ACH Transactions), which shall not apply (i) until January 1, 2012 to credit entries other than Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal ACH Payment System; (ii) until June 30, 2013 for debit entries originated by agencies; and (iii) to entries representing the payment of a Federal tax obligation by a taxpayer.

\* \* \* \* \*

■ 3. In § 210.3, revise paragraph (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 18, 2009, as published in Parts IV, V, and VII of the “2009 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 “ACH Rules” are available from NACHA—The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, Virginia 20171. You may inspect a copy at the Financial Management Service, 401 14th Street, SW., Room 400A, Washington, DC 20227 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html) or call 202-741-6030.

(2) Any amendment to the applicable ACH Rules that is approved by NACHA—The Electronic Payments Association after January 1, 2009, 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.

\* \* \* \* \*

■ 4. In § 210.5, redesignate paragraph (b)(6) as (b)(8) and add new paragraphs (b)(6) and (b)(7) to read as follows:

**§ 210.5 Account requirements for Federal payments.**

\* \* \* \* \*

(b) \* \* \*

(6) Where a Federal payment is disbursed to a resident of a nursing facility, as defined in 42 U.S.C. 1396r, the payment may be deposited into a resident trust or patient fund account established by the nursing facility pursuant to requirements under Federal law relating to the protection of such funds.

(7) Where a Federal payment is disbursed to a member of a religious order who has taken a vow of poverty, the payment may be deposited to an account established by the religious order. As used in this paragraph, the phrase “member of a religious order who has taken a vow of poverty” is defined as it would be by the Internal Revenue Service for Federal tax purposes.

\* \* \* \* \*

■ 5. In § 210.11, revise paragraph (b)(3)(i) to read as follows:

**§ 210.11 Limited liability.**

\* \* \* \* \*

(b) \* \* \*

(3)(i) Provide the name, last known address and phone number, as shown on the RDFI’s records, of the following person(s):

(A) The recipient and any co-owner(s) of the recipient’s account;

(B) All other person(s) authorized to withdraw funds from the recipient’s account; and

(C) All person(s) who withdrew funds from the recipient’s account after the death or legal incapacity of the recipient or death of the beneficiary.

\* \* \* \* \*

Dated: September 12, 2011.

**Richard L. Gregg,**  
Fiscal Assistant Secretary.

[FR Doc. 2011–23898 Filed 9–22–11; 8:45 am]

**BILLING CODE 4810–35–P**

**CENTRAL INTELLIGENCE AGENCY**

**32 CFR Part 1907**

**Classification Challenge Regulations**

**AGENCY:** Central Intelligence Agency.

**ACTION:** Final rule.

**SUMMARY:** Consistent with Executive Order 13526, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public Classification Challenge regulations. As a result of this review, the Agency has revised its Classification Challenge regulations to more clearly reflect the current CIA organizational structure and policies and practices, and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedures Act for rules of agency procedure and interpretation and the CIA Act.

**DATES:** Effective September 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Joseph W. Lambert, (703) 613–1379.

**SUPPLEMENTARY INFORMATION:** Consistent with Executive Order 13526, the CIA has undertaken and completed a review of its public Classification Challenge regulations. As a result of this review, the Agency has revised its Classification Challenge regulations to more clearly reflect the current CIA organizational structure, record system configuration, and policies and practices and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedures Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation and Section 6 of the CIA Act, as amended, 50 U.S.C. 403g.

**List of Subjects in 32 CFR Part 1907**

Classification challenge, Classified information.

Accordingly, the CIA is amending 32 CFR part 1907 as follows:

**PART 1907—CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO SEC. 1.8 OF EXECUTIVE ORDER 13526**

■ 1. The authority citation for part 1907 is revised to read as follows:

**Authority:** Executive Order 13526 75 FR 707, 3 CFR 2010 Comp., P. 298–327; section 102 of the National Security Act of 1947; section 6 of the CIA Act of 1949.

■ 2. Revise the part heading to read as set forth above.

■ 3. Revise § 1907.01 to read as follows:

**§ 1907.01 Authority and purpose.**

(a) *Authority:* This Part is issued under the authority of and in order to implement section 1.8 of E.O. 13526, section 102 of the National Security Act of 1947, and section 6 of the CIA Act of 1949.

(b) *Purpose:* This part prescribes procedures for non-Agency personnel who are authorized holders of CIA information, to challenge the classification status, whether classified or unclassified, based on a good faith belief that the current status of CIA information is improper. This part and section 1.8 of Executive Order 13526 confer no rights upon members of the general public or individuals who are not authorized holders of CIA information.

■ 4. In § 1907.02, revise paragraphs (b) and (j) and add paragraphs (k) and (l) as follows:

**§ 1907.02 Definitions.**

\* \* \* \* \*

(b) *Authorized holder* means anyone who has satisfied the conditions for access to classified information stated in section 4.1(a) of Executive Order 13526 and who has been granted access to such information; the term does not include anyone authorized such access by section 4.4 of Executive Order 13526.

\* \* \* \* \*

(j) *The Order* means Executive Order 13526 of December 29, 2009 and published at 75 FR 707 (or successor Orders).

(k) *Chief, Classification Management and Collaboration Group* refers to the Agency official authorized to make the initial Agency determination with respect to a challenge of the classification status of CIA information.

(l) *Agency Release Panel* refers to the Agency’s forum for reviewing information review and release policy, the adequacy of resources available to all Agency declassification and release programs, and hearing appeals in accordance with this section.

■ 5. Revise § 1907.12 to read as follows:

**§ 1907.12 Requirements as to form.**

The challenge shall include identification of the challenger by full name, Executive Branch agency, title of position, and information required for verification of access, security clearance, and status as an authorized holder of the CIA information in question. In addition, the challenger must clearly identify documents or