need for the Bloodborne Pathogens Standard (29 CFR 1910.1030), its impact on small businesses, its effectiveness in protecting workers, and all other issues raised by Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866. It would be particularly helpful for commenters to suggest how the Standard could be modified to reduce the burden on employers while maintaining or improving employee protection. Furthermore, comments would be appreciated on the following topics:

- Exposures in non-hospital settings;
- Recent technological advances in needlestick prevention;
- Effectiveness of needlestick prevention programs;
- New, emerging health risks from bloodborne pathogens; and
- Any other experiences related to compliance with the standard.

Public comments will assist the Agency in determining whether to retain the Standard unchanged, to initiate rulemaking to revise or rescind it, or to develop improved compliance assistance.

Comments must be submitted by August 12, 2010. Comments should be submitted to the addresses and in the manner specified at the beginning of the notice.

Authority: This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under Section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) and Section 5 of Executive Order 12866 (58 FR 51735, October 4, 1993).

Signed at Washington, DC on May 11, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–11579 Filed 5–13–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA–H054a-2006–0064]

RIN 1218–AC43

Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards

AGENCY: Occupational Safety and Health Administration (OSHA): Department of Labor.

ACTION: Proposed rule; withdrawal.

SUMMARY: With this notice, OSHA is withdrawing the proposed rule that accompanied its direct final rule (DFR) amending the employee notification requirements in the exposure determination provisions of the Hexavalent Chromium (Cr(VI)) standards.

DATES: Effective May 14, 2010, the proposed rule published March 16, 2010 (75 FR 12485), is withdrawn.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries contact Ms. Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1999. For technical inquiries, contact Maureen Ruskin, Office of Chemical Hazards—Metals, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1950; *fax:* (202) 693–1678.

Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice and other relevant documents are available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: On March 17, 2010, OSHA published a DFR amending the employee notification requirements in the exposure determination provisions of the Cr(VI) standards at 29 CFR 1910.1026, 29 CFR 1915.1026, and 29 CFR 1926.1126 (75 FR 12681). OSHA also published a companion proposed rule proposing the same changes to the Cr(VI) standards. (75 FR 12485, March 16, 2010). In the DFR, OSHA stated that it would withdraw the companion proposed rule and confirm the effective date of the DFR if no significant adverse comments were submitted on the DFR by April 16, 2010.

OSHA received eight comments on the DFR, which the Agency has determined were not significant adverse comments. OSHA is publishing a notice announcing and explaining this determination and confirming the effective date of the DFR as June 15, 2010. Accordingly, OSHA is not proceeding with the proposed rule and is withdrawing it from the rulemaking process.

List of Subjects

29 CFR Part 1910

Exposure determination, General industry employment, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health.

29 CFR Part 1915

Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health, Shipyard employment.

29 CFR Part 1926

Construction employment, Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice under the following authorities: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR part 1911.

Signed at Washington, DC, on May 11, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–11583 Filed 5–13–10; 8:45 am]

BILLING CODE 4510–9–P

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: Notice of proposed rulemaking with request for comment.

SUMMARY: The Department of the Treasury, Financial Management Service (Service) is proposing to amend our regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. Our regulation adopts, with some exceptions, the ACH Rules developed by NACHA—The Electronic Payments

Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies. We are issuing this proposed rule to address changes that NACHA has made to the ACH Rules since the publication of NACHA's 2007 ACH Rules book. These changes include 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 Office of Foreign Assets Control (OFAC) screening.

In addition, we are proposing to streamline the process for reclaiming post-death benefit payments from financial institutions; to require 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; to allow Federal payments to be delivered to pooled or master accounts established by nursing facilities for residents or held by religious orders whose members have taken vows of poverty; and to allow Federal payments to be delivered to stored value card, prepaid card or similar card accounts meeting certain consumer protection requirements.

DATES: Comments on the proposed rule must be received by July 13, 2010.

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

In accordance with the U.S. government's eRulemaking Initiative, the Service publishes rulemaking information on *http://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.

Comments on this rule, identified by docket FISCAL–FMS–2009–0001, should only be submitted using the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Mail:* Bill Brushwood, Financial Management Service, 401 14th Street, SW., Room 400A, Washington, DC 20227.

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

Instructions: All submissions received must include the agency name ("Financial Management Service") and docket number FISCAL–FMS–2009–0001 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.

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

NACHA has adopted a number of changes to the ACH Rules since the publication of the 2007 ACH Rules book. We are proposing to incorporate in Part 210 some, but not all, of the changes to the ACH Rules. The changes to the ACH Rules include new 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. In addition, NACHA amended the ACH Rules to allow NACHA to request data from Originating Depository Financial Institutions (ODFIs) for an Originator or Third-Party Sender that exceeds a rate of 1 percent for debit entries returned as unauthorized.

In addition to addressing NACHA Rule changes, we are proposing to amend Part 210, effective January 1, 2012, to streamline the reclamation process for post-death benefit payments. Currently, the reclamation process is a manual, paper-based process in which Treasury sends out a Notice of Reclamation (FMS Form 133) that the financial institution must complete, certify and return. Under Part 210, a financial institution generally is liable for the total amount of payments sent within 45 days of the recipient's death even if the financial institution was not aware of the death. In light of the fact that the great majority of reclamations are limited to just this "45-day Amount," consisting of one or two post-death payments for which the financial institution will ultimately be liable, we are requesting 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. This process would apply only to situations in which a notice of reclamation is limited to payments received within 45 days after the recipient's death. As discussed in Section II below, we believe this change would result in operational efficiencies for both Treasury and financial institutions.

For reclamations limited to the 45-day Amount, financial institutions would no longer be required to provide customer account-related information related to the disposition of the post-death payments. For reclamations of payments received more than 45 days after the recipient's death, we are proposing to require financial institutions to provide the last-known telephone number of account holders and withdrawers, in addition to name and address. Also, as now permitted pursuant to the Payment Transactions Integrity Act of 2008, financial institutions would be required to provide withdrawer information for all types of benefit payments being reclaimed. Prior to the enactment of the Payment Transactions Integrity Act, account-related information could be shared only for certain types of benefit payments.

Finally, we are proposing to amend 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. The proposed amendment would 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.

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

II. Summary of Rule Changes

International ACH Transactions

Effective September 18, 2009, the NACHA Rules require ODFIs and Gateway Operators to identify all international payment transactions transmitted via the ACH Network for any portion of the money trail as International ACH Transactions using a new Standard Entry Class Code (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.

OFAC has stated that financial institutions need to safeguard the U.S. financial system from terrorist and other sanctions abuses involving international ACH payments processed through the domestic U.S. ACH Network. In the domestic payment environment, ODFIs and Receiving Depository Financial Institutions (RDFIs) can rely on each other to ensure compliance with OFAC obligations with regard to their own customers. For international payments, however, Depository Financial Institutions (DFIs) cannot rely on international counterparts for compliance with U.S. law.

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 DFIs to identify them for purposes of complying with U.S. law. NACHA's new 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. Each IAT entry is accompanied by mandatory Addenda Records conveying the following information:

- Name and physical address of the Originator.
- Name and physical address of the Receiver.
- Account number of the Receiver.
- Identity of the Receiver's bank.
- Foreign Correspondent Bank name, Foreign Correspondent Bank ID number, and Foreign Correspondent Bank Branch Country Code.

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 term "Person" means a natural person or an organization. 2009 ACH Rules, Subsection 14.1.52. The term "payment transaction" is not defined within the ACH Rules, but the 2009 Operating Guidelines state that within the IAT definition, payment transaction refers to: "An instruction of a sender to a bank to pay, or to obtain payment of, or to cause another bank to pay or obtain payment of, a fixed or determinate amount of money that is to be paid to, or obtained from, a receiver, and any and all settlements, accounting entries, or disbursements that are necessary or appropriate to carry out the instruction." 2009 Operating Guidelines, Section IV, Chapter XI, p. 202.

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.

We are proposing 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 do not foresee any difficulty in implementing the IAT rule. For other payments, however, we anticipate that it may take until January 1, 2012 to make the system and operational changes necessary to implement the IAT, due in part to the dedication of operational resources to the delivery of Economic Recovery Act payments in 2009. We plan to phase in IAT requirements in stages, based on the type of payment and the agency issuing the payment, as expediently as operationally possible, and we have already ceased originating Consumer Cross Border (PBR) and Corporate Cross Border (CBR) entries. Accordingly, we are proposing to adopt the IAT rule for Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal℠ ACH Payment Service. For all other Federal payments, we are proposing an effective date of January 1, 2012.

The proposed January 1, 2012 effective date does not affect agencies' existing and ongoing obligation to perform OFAC screening of all payments that they certify to Treasury for disbursement, and in fact presupposes that agencies are screening all payments prior to certification. As set forth in the Treasury Financial Manual, agencies must not make or certify payments, or draw checks or warrants, payable to an individual or organization listed on the Specially Designated National and Blocked Person list, and agencies must consult the list before making payments. *See* Treasury Financial Manual, Vol. I, Part 4, Chapter 1000, sec. 1020.

Lastly, in implementing the IAT requirements, we anticipate that some agencies will format as an IAT transaction 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 IAT 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 be faced with. We do not believe this over-inclusive approach would create any compliance issues, but we request comment from agencies and financial institutions on this approach.

B. 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 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 are proposing 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.

C. 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 percent within 60 days. The amendment replaced a reporting requirement for Telephone-Initiated (TEL) entries that was previously in the ACH Rules.

We are proposing not to adopt the new 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. However, in the event that NACHA were to bring to our attention an excessive return rate at any agency, we would work with the agency and coordinate with NACHA to address the situation.

D. Reclamations

Currently, based on instructions from the Social Security Administration (SSA) and other Federal agencies that pay recurring benefit payments, Treasury sends paper Notices of Reclamation to RDFIs in order to reclaim post-death benefit payments. RDFIs must respond to these notices by providing information on the notices and returning them to Treasury within a specific time frame. Depending on the circumstances of a reclamation, the RDFI would be liable for either the full amount or a partial amount of the post-death payments that were issued. In general, an RDFI is liable to Treasury for the total amount of all benefit payments received after the death or legal incapacity of a recipient or death of a beneficiary unless the RDFI can limit its liability. An RDFI can limit its liability to the total amount of payments sent within 45 days after the recipient's death if it: (1) Certifies that it did not have actual or constructive knowledge of the recipient's death or incapacity at the time the RDFI received one or more benefit payments; (2) returns all post-death benefit payments it receives after it learns of the death; and (3) responds to the FMS–133, Notice of Reclamation, within 60 days from the date of the Notice. Since most benefit payments are issued on a monthly basis, the "45-day Amount" consists of either one or two payments.

Currently, after receiving the completed Notice of Reclamation from the RDFI, Treasury debits the RDFI for the 45-day Amount less any amount the RDFI has returned with the completed Notice of Reclamation. In some cases, the Federal agency that issued the payment(s) (*e.g.,* SSA) may be able to collect an amount from whoever withdrew the funds after they were deposited, thereby reducing the 45-day Amount. In such cases, the amount of the reclamation debit against the RDFI's reserve account is sometimes less than the 45-day Amount.

Approximately 85 percent of all reclamation notices sent to RDFIs are for payments disbursed within 45 days after death or legal incapacity of the recipient. Of this 85 percent figure, RDFIs return the full 45-day Amount approximately 89 percent of the time. For the other 11 percent of reclamation notices, in many cases the RDFIs eventually remit any remaining portion of the 45-day Amount.

Example: To illustrate, assume that for a given month the Service sends 100 reclamation notices to RDFIs. Of those 100 notices, approximately 85 notices will request reclamation of only payments disbursed within 45 days after death or legal incapacity. Of those 85 notices, RDFIs will return the 45-day Amount in response to 76 notices. The RDFIs will eventually return the 45-day Amount for most of the other 9 notices.

As the example illustrates, in the vast majority of cases, the amount of the reclamation is the 45-day Amount, which represents one or two post-death payments, and the vast majority of RDFIs return that amount with their response to the Notice of Reclamation.

To achieve cost savings and efficiencies for both the Federal government and RDFIs, we are proposing to automatically debit RDFIs for the 45-day Amount, following a 30-day advance notice of the debit. RDFIs could choose to return the 45-day Amount after receiving the notice, or could elect to let the debit proceed. By automatically originating a debit for the 45-day Amount (less any amount collected by the paying agency), rather than issuing forms that must be manually processed, the Service would create a more streamlined process with reduced processing, paperwork, and postage. The Service would not need to expend resources manually processing reclamation notices and RDFIs would not be required to expend resources processing notices and returning funds to Treasury. The proposed change, which would take effect on January 1, 2012, would affect only the procedure used to process a reclamation, and not the amount of an RDFI's liability. In order to provide RDFIs with a process for challenging any debit for a 45-day Amount, we are proposing to adopt a formal procedure for protesting such debits. An RDFI that believes that a debit was or would be improper, either entirely or in part, would be able to submit a notice that it is disputing the reclamation either before the debit is carried out or within 90 days after the debit to its reserve account. The Service would be required to make a determination within 60 days of receipt of the dispute notice, subject to a 60-day extension if necessary. If the RDFI files a dispute notice before the debit is carried out, the Service would not proceed with the debit until a final

determination is made that the debit is proper.

Only reclamations limited to the 45-day Amount would be subject to this process. As discussed above, 15 percent of all reclamation actions are for an amount that exceeds the 45-day Amount. For these reclamations, the current paper-based manual process would be continued, meaning that RDFIs would receive and need to respond to a Notice of Reclamation as they currently do.

E. Payment Transactions Integrity Act of 2008 Changes

Last year Congress enacted the Payment Transactions Integrity Act of 2008. The Payment Transactions Integrity Act amended the Right to Financial Privacy Act of 1978, which had prohibited Treasury and other Federal agencies from obtaining from banks information contained within the financial records of any customer, with limited exceptions. Under the Payment Transactions Integrity Act, Treasury and other agencies are now permitted to obtain customer information in connection with the investigation or recovery of an improper Federal payment. We are proposing to amend § 210.11(b)(3)(i) in order to require 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. Currently, Part 210 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. The proposed change would require financial institutions to provide information for other types of benefit payments, such as Civil Service benefit payments and Supplemental Security Income payments, as now permitted under the Payment Transactions Integrity Act. As discussed above, the Service is proposing to discontinue the collection of such information for all reclamations that do not exceed the 45-day Amount. Accordingly, information would be collected in connection with reclamations only for the approximately 15 percent of total reclamations involving more than the 45-day Amount.

F. "In The Name Of The Recipient" Requirements

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.[1] As we indicated in the preamble of the **Federal Register** notice promulgating § 210.5, 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. From time to time financial institutions and other payment service providers have urged Treasury to opine that the "in the name of the recipient" requirement is met if the recipient has an ownership interest in a pooled account and that individual's interest is reflected in a subacccount record, even if the recipient's name is not included in the title of the account. To date we have declined to adopt this interpretation.

The "in the name of the recipient" requirement is, in essence, a consumer protection policy. The requirement that an account be in the name of the recipient is 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 Federal benefit payment recipients could enter into master/sub account relationships in which they have little control over the account to which their benefit payments are directed.

The Service's "in the name of the recipient" requirement was last opened for public comment in the late 1990's during the rulemaking process for 31 CFR part 208. It was at this time that Treasury reaffirmed that the policy applies not only to benefit payments, but also to wage, salary and retirement payments, and that the account must be at a financial institution, with specific exceptions provided for authorized payment agents and investment accounts. The exclusion of vendor payments was a result of the comments received during the comment period and accepted in the final rule.

[1] Identical requirements appear in 31 CFR 208.6. In the event that we finalize the proposed amendment to § 210.5, we will amend 31 CFR 208.6 to create an identical exception.

Currently, there are four exceptions to the "in the name of the recipient" requirement of § 210.5(a), which are set forth in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4). Paragraph 210.5(b)(1) allows deposits into an account held by an "authorized payment agent" and titled in accordance with the regulations governing the authorized payment agent. An authorized payment agent is defined as a representative payee or fiduciary appointed to act on behalf of an individual under agency regulations. 31 CFR 210.2(e). Section 210.5(b)(2) allows deposits into investment accounts established through a registered securities broker or dealer. Section 210.5(b)(3) allows Federal agency employee travel reimbursement payments to be credited to the account of the travel card issuing bank for credit to the employee's travel card account. Section 210.5(b)(4) allows deposits to an account held by a fiscal or financial agent designated by the Service for card programs established by the Service and provides that the account title, access terms and other account provisions may be specified by the Service. We are proposing to add three additional exceptions to the "in the name of the recipient" requirements: (1) An exception for payments to individuals residing in nursing facilities; (2) an exception for payments to members of religious orders who have taken a vow of poverty; and (3) an exception for payments to prepaid debit and stored value card accounts meeting certain consumer protection requirements.

1. Accounts Held by Nursing Facilities

On April 21, 2008, 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. 73 FR 21403. The issue of master/sub accounts had come to SSA's attention in the context of concerns regarding the use of master/sub accounts by "payday lenders" who solicit Social Security beneficiaries to take out high-interest loans. SSA requested comments on the use of master/sub accounts not only by beneficiaries, lenders, advocates, and other members of the public, but also 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 residents

(particularly for the elderly population needing assistance with banking or for whom it can be difficult to make trips to the bank). None of the commenters noted any abuses associated with these arrangements. Based on the comments received, SSA's view is that master/sub accounts held by nursing facilities serve useful purposes and do not present the concerns raised by payday lender account arrangements.

Nursing facilities are highly regulated entities, and resident trust or patient fund accounts held by nursing facilities are fiduciary accounts subject to specific requirements and protections under Federal statute and regulation. The Federal Nursing Home Reform Act, which was part of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), revised Federal standards for nursing home care established in the 1965 creation of both Medicare and Medicaid. 42 U.S.C. 1395i–3, 42 U.S.C. 1396r. OBRA '87 created a set of national minimum standards of care and rights for people living in nursing facilities. Detailed regulations at 42 CFR part 483 implement the statute. The Centers for Medicare and Medicaid Services (CMS) provides additional detailed guidance as part of its oversight and compliance enforcement. *See http://www.cms.hhs.gov/GuidanceforLawsandRegulations/12_NHs.asp.*

One element of the revised standards was to mandate that nursing facilities manage and account for the personal funds residents often deposit with the facility. Residents have the right to manage their financial affairs, and nursing facilities are prohibited from requiring residents to deposit their personal funds with the facility. 42 U.S.C. 1396r(c)(6); 42 CFR 483.10(c)(1). At the same time, 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, as follows:

- The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account that is separate from any of the facility's operating accounts and all interest earned on that separate account must be credited to resident's account balance. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund. 42 U.S.C. 1396r(c)(6)(B)(i).
- The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record. 42 U.S.C. 1396r(c)(6)(B)(ii).
- The facility must notify each resident receiving medical assistance under the state plan when the amount in the resident's account reaches $200 less than the dollar amount determined under 42 U.S.C. 1382(a)(3)(B) and of the fact that, if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section, the resident may lose eligibility for such medical assistance or for certain other benefits. 42 U.S.C. 1396r(c)(6)(B)(iii).

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 cannot 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). It can only offset the bank service fee on the patient fund account against the interest earned.

In light of the extensive protections provided to residents of nursing facilities whose funds are maintained in resident trust or patient fund accounts, we believe it is appropriate to permit the delivery of Federal benefit payments to these accounts, which are typically master/sub accounts. We are therefore requesting comment on a proposed amendment to the existing "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

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. Accordingly, we are proposing 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.

For purposes of defining who is a "member of a religious order who has taken a vow of poverty," we are proposing to utilize existing guidance issued by the Internal Revenue Service (IRS). The 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). For example, IRS Publication 517 states that a member of a religious order who has taken a vow of poverty is exempt from Self-Employment (SE) tax on earnings for services performed for the member's church or its agencies. For purposes of Federal income tax withholding and employment tax (FICA), a member of a religious order who has taken a vow of poverty may be entitled to receive Social Security benefits if the order (or an autonomous subdivision of the order) has elected coverage for its current and future vow-of-poverty members. In that case, the religious order pays all FICA taxes, including the employee's share. *See* IRS Publication 517 (2008). Organizations and individuals may request rulings from IRS on whether they are religious orders, or members of a religious order, respectively, for FICA, SE tax and Federal income tax withholding purposes. We request 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.

3. Prepaid Debit and Stored Value Card Accounts

The utilization of prepaid debit cards and stored value cards has expanded substantially over the last decade, and cards have become a vital payment delivery mechanism for the under-banked. Typically, prepaid card programs are set up so that cardholders' funds are pooled in a master account with each individual cardholder having a subaccount established in the underlying records maintained by the financial institution. Thus, in most cases the individual cardholder's name is not on the title of the deposit account in which the funds are held, even though the cardholder's name may be

embossed on the card itself. We believe that the "in the name of the recipient" requirement may be impeding the use of prepaid card programs that may be beneficial to the unbanked and underbanked populations. In view of developments in the prepaid and stored value card industry during the past ten years, we are proposing to add an exception to the "in the name of the recipient" requirement of § 210.5 to adjust to the changing payment environment and the financial products that support the private sector. As part of this proposal, we are seeking comment on whether the "in the name of the recipient" requirement unduly hampers account options for Federal payment recipients. We request comment from consumers and consumer groups, industry associations, Federal agencies, financial institutions and payment services providers on this issue.

The "in the name of the recipient" requirement was put in place to ensure that the payment reaches the intended recipient through a deposit account, and that the recipient has the usual consumer control and protections associated with a deposit account. We believe that account structures underlying prepaid and stored value cards can be set up to ensure that the recipient receives and has control of payments, even if the cardholder's name is not on the account title in which the funds are held. In this regard, we have taken into consideration the Federal Deposit Insurance Corporation's (FDIC) issuance in 2008 of New General Counsel's Opinion No. 8 (GC8). *See* 73 FR 67155. The FDIC's Legal Division, noting that stored value cards now commonly serve as the delivery mechanism for vital funds such as employee payroll and government payments such as benefits and tax refunds, clarified that deposit insurance coverage would be provided to the holders of prepaid and stored value cards. The FDIC's Legal Division concluded that funds underlying prepaid and stored value cards that are held for cardholders' benefit at insured depository institutions should always be treated as deposits, without regard to whether the funds are accessed by a plastic card or a paper check. Under GC8, all funds underlying stored value cards and other nontraditional access mechanisms will be treated as "deposits" to the extent that the funds have been placed at an insured depository institution. If cardholders' funds are commingled in a pooled account, each cardholder will be treated as the insured owner of the funds held on his or her behalf in the pooled account, provided that the three requirements for pass-through insurance are met. Those requirements are:

(1) The account records of the insured depository institution must disclose the existence of the agency or custodial relationship. This requirement can be met by opening the account under a title such as: "ABC Company as Custodian for Cardholders;"

(2) The records of the insured depositor institution or records maintained by the custodian or other party must disclose the identities of the actual owners and the amount owned by each such owner; and

(3) The funds in the account actually must be owned (under the agreements among the parties or applicable law) by the purported owners and not by the custodian or other party. *See* GC8, 73 FR67157. *See* 73 FR 67155, 67157.

We are proposing to allow the delivery of Federal payments to prepaid and stored value card accounts, provided that the card bears the cardholder's name and meets the following requirements:

- The account accessed by the card is held at an insured depository institution and meets the requirements for pass-through insurance under 12 CFR part 330 such that the cardholder's balance is FDIC insured to the extent permitted by law; and
- The card account constitutes an "account" as defined in 12 CFR 205.2(b) such that the consumer protections of Regulation E apply to the cardholder.

Stored value or prepaid cards that do not meet the foregoing requirements would not fall under the proposed exception. For example, some merchants, such as book stores and coffee shops, offer prepaid cards that function in the same manner as gift certificates. These cards do not typically bear the cardholder's name, do not provide access to money at a depository institution and do not meet the FDIC's requirements for pass-through insurance. *See* 73 FR 67156. These types of cards also are not covered by the Federal Reserve's Regulation E. Therefore, they could not be used to deliver certain Federal payments, such as Federal benefit payments.

We request comment on the implications of allowing delivery of Federal benefit payments to accounts that meet the requirements listed above. We are mindful of concerns that account arrangements may be structured to facilitate payday lending and similar arrangements that are inappropriate for Federal benefit recipients, and we are particularly interested in comment on whether the consumer protections required in the proposed exceptions are adequate to prevent potential abuses. In addition, we request comment on whether to revise the wording in 31 CFR 210.5(a) which provides that "an ACH credit entry representing a Federal payment other than a vendor payment shall be deposited into a deposit account at a financial institution." We are considering revising that sentence to read "an ACH credit entry representing a Federal payment other than a vendor payment shall be deposited into a deposit account held by a financial institution and directly *accessible by the recipient.*" The purpose of the revision would be to make it clear that accounts established by payday lenders or other third parties under terms that prevent the recipient from being able to freely withdraw or access funds in the account do not satisfy the requirements of 31 CFR 210.5.

III. 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)

We are proposing to amend the definition of applicable ACH Rules at § 210.2(d) to reference the rules published in NACHA's 2009 Rules book rather than the rules published in NACHA's 2007 Rules book. Proposed § 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. In addition, we are proposing to revise 210.2(d)(7) 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 which we are proposing not to adopt. Proposed § 210.2(d)(7) sets forth ACH Rule 2.18, which contains those broader reporting requirements and which we are proposing not to adopt.

Proposed § 210.2(d)(8) has been added in order to exclude entries other than Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal℠ ACH Payment Service

from ACH Rule 2.11 (International ACH Transactions) until January 1, 2012.

§ 210.3(b)

We are proposing to amend § 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)

We are proposing to redesignate paragraph (b)(5) as paragraph (b)(8) and to add new paragraphs (b)(5), (b)(6) and (b)(7), which 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. Proposed paragraph (b)(5) would allow 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. Proposed paragraph (b)(6) would 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. Proposed paragraph (b)(7) would allow payments to be deposited to an account accessed through a stored value card, prepaid card or similar card that bears the cardholder's name and meets certain requirements. The requirements include that the account meets the FDIC's pass-through insurance requirements so that cardholder's balance is FDIC insured to the cardholder, and that the card constitutes an "account" for purposes of requiring compliance with the Federal Reserve's Regulation E.

§ 210.10

Proposed § 210.10(a) retains certain provisions not affected by the proposed changes to the reclamation process. RDFIs must return all payments after becoming aware of the death or incapacity of a recipient. Also, an RDFI must notify an agency issuing payments if it learns of the death or legal incapacity of a recipient or beneficiary from a source other than the agency.

Proposed § 210.10(b) sets forth the automated reclamation process for payments not exceeding the 45-day Amount. Proposed § 210.10(c) sets forth the process for payments exceeding the 45-day Amount, which is unchanged from the current process.

Proposed §§ 210.10(d), 210.10(e) and 210.10(f) contain the language currently located in current §§ 210.10(c), 210.10(d) and 210.10(e), without any changes. Proposed § 210.10(f) sets forth the procedure by which financial institutions can protest a debit carried out under proposed § 210.10(b).

Proposed §§ 210.10(b) and (f) would not become effective until January 1, 2012.

§ 210.11

We are proposing to amend § 210.11(b)(3)(i) in order to require 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 from the account, as permitted by the Payment Transactions Integrity Act of 2008. This requirement applies only to reclamations for an amount exceeding the 45-day Amount.

IV. 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 these 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 changes to the regulation related to automating reclamations may nominally reduce costs for financial institutions, including financial institutions that are small entities, because the costs of completing reclamation forms and mailing them back to Treasury would be eliminated. However, the economic impact of this cost reduction would be minimal. 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. Revise § 210.2, 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" 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 until January 1, 2012 to entries other than Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal℠ ACH Payment Service.

* * * * *

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

* * * * *

(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 "2009 ACH Rules" are available from NACHA—The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002; and the Financial Management Service, 401 14th Street, SW., Room 400A, Washington, DC 20227.

(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)(5) as (b)(8) and add new paragraphs (b)(5), (b)(6) and (b)(7), to read as follows:

§ 210.5 Account requirements for Federal payments.

* * * * *

(b) * * *

(5) 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.

(6) 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.

(7) Where a Federal payment is to be deposited to an account accessed through a stored value card, prepaid card or similar card that bears the cardholder's name and meets the following requirements:

(i) The account accessed by the card is held at an insured depository institution and meets the requirements for pass through insurance under 12 CFR part 330 such that the cardholder's balance is FDIC insured to the extent permitted by law; and

(ii) The card account constitutes an "account" as defined in 12 CFR 205.2(b) such that the consumer protections of Regulation E apply to the cardholder.

* * * * *

5. Revise § 210.10 to read as follows:

§ 210.10 RDFI liability.

(a) *RDFI obligations.* An RDFI must return any benefit payments received after RDFI becomes aware of the death or legal incapacity of a recipient or the death of a beneficiary, regardless of the manner in which the RDFI discovers such information. If the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency issuing payments to the recipient, the RDFI must immediately notify the agency of the death or incapacity. The proper use of the R15 or R14 return reason code shall be deemed to constitute such notice.

(b) *Liability for 45-day Amount.* An RDFI is liable to the Federal Government for the full amount of all benefit payments received by the RDFI from an agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary (45-day Amount). When an agency notifies the Service that benefit payments in an amount not exceeding the 45-day Amount were originated to a deceased or incapacitated recipient, the Service will instruct the appropriate Federal Reserve Bank to debit the RDFI's reserve account for the 45-day Amount. The Service will notify the RDFI at least 30 days prior to the debit. If the RDFI returns the amount specified in the notice during the 30-day period, the Service will not proceed with the debit. If the RDFI files a reclamation dispute notice during the 30-day period before the debit is carried out, the Service will not proceed with the debit until a final decision has been reached, in accordance with paragraph (g), that the debit is proper.

(c) *Liability for amounts exceeding 45-day Amount.* An RDFI is liable to the Federal Government for the full amount of all benefit payments received by the RDFI after 45 days following the death or legal incapacity of the recipient or death of the beneficiary unless the RDFI has the right to limit its liability under 210.11 of this part. When an agency notifies the Service that benefit payments in an amount exceeding the 45-day Amount were originated to a deceased or incapacitated recipient, the Service will send a notice of reclamation to the RDFI. Upon receipt of the notice of reclamation, the RDFI must provide the information required by the notice of reclamation and return the amount specified in the notice of reclamation in a timely manner.

(d) *Exception to liability rule.* An RDFI shall not be liable for post-death benefit payments sent to a recipient acting as a representative payee or fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI did not have actual or constructive knowledge of the death of the beneficiary.

(e) *Time limits.* 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. An agency may not reclaim any post-death or post-incapacity payment made more than six years prior to the date of the notice of reclamation; provided, however, that if the account balance at the time the RDFI receives the notice of reclamation exceeds the total amount of post-death or post-incapacity payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all post-death or post-incapacity payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity to act on the notice (not to exceed one business day).

(f) *Debit of RDFI's account.* If an RDFI does not return the full amount of the outstanding total or any other amount for which the RDFI is liable under this subpart in a timely manner, the Federal Government will collect the amount outstanding by instructing the

appropriate Federal Reserve Bank to debit the account utilized by the RDFI. The Federal Reserve Bank will provide advice of the debit to the RDFI.

(g) *Reclamation disputes.* Where the Service, in accordance with paragraph (b) of this section, has instructed a Federal Reserve Bank to debit the account of a financial institution for the 45-day Amount, the financial institution may file a dispute notice challenging the reclamation. A dispute notice filed under this paragraph must be in writing, and must be sent to the Claims Manager, Department of the Treasury, Financial Management Service, at the address listed on the notice of the debit, or to such other address as the Service may publish in the Green Book. The reclamation dispute notice must include supporting documentation. The Service will not consider reclamation dispute notices received more than 90 days after the date on which the financial institution's reserve account was debited. The Claims Manager, or an authorized designee, will make every effort to decide any dispute notice submitted under this section within 60 days. If it is not possible to render a decision within 60 days, the Claims Manager or an authorized designee will notify the financial institution of the delay and may take up to an additional 60 days to render a decision. If, based on the evidence provided, the Claims Manager, or an authorized designee, finds that the financial institution has proved, by a preponderance of the evidence, that debit was improper or excessive, the Service will notify the financial institution in writing and, within ten days of the decision, recredit the financial institution's reserve account for the amount improperly debited. Such notice shall serve as the final agency determination under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*). No civil suit may be filed until the financial institution has filed a dispute notice under this section, and the Service has provided notice of its final determination.

6. Revise § 210.11, paragraph (b)(3)(i) to read as follows:

§ 210.11 Limited liability.

* * * * *

(b) * * *

(3)(i) Provide the name and last known address and phone number 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: May 10, 2010.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

[FR Doc. 2010–11492 Filed 5–13–10; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

Gap in Termination Provisions; Inquiry

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public inquiry; request for comments; extension of comment period.

SUMMARY: The Copyright Office is extending the time in which reply comments may be filed on the topic of the application of Title 17 to the termination of certain grants of transfers or licenses of copyright, specifically those for which execution of the grant occurred prior to January 1, 1978 and creation of the work occurred on or after January 1, 1978.

DATES: The comment period for initial comments on the Notice of Inquiry and Requests for Comments published on March 29, 2010 (75 FR 15390) closed on April 30, 2010. Reply comments are due on or before May 21, 2010.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/termination.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–1027 for special instructions.

FOR FURTHER INFORMATION CONTACT: Maria Pallante, Associate Register, Policy and International Affairs, by telephone at 202–707–1027 or by electronic mail at *mpall@loc.gov.*

SUPPLEMENTARY INFORMATION: The United States Copyright Office is extending the reply comment period for commenting on the topic of the application of Title 17 to the termination of certain grants of transfers or licenses of copyright, specifically those for which execution of the grant occurred prior to January 1, 1978 and creation of the work occurred on or after January 1, 1978. This action is being taken in order to allow interested parties adequate time to give input on this important issue. Reply comments are due by 5 p.m. on May 21, 2010.

Subject of Inquiry

The Copyright Office seeks comment on the question of whether and how Title 17 provides a termination right to authors (and other persons specified by statute) when the grant was made prior to 1978 and the work was created on or after January 1, 1978. For purposes of illustration, please note the following examples:

Example 1: A composer signed an agreement with a music publisher in 1977 transferring the copyrights to future musical compositions pursuant to a negotiated fee schedule. She created numerous compositions under the agreement between 1978 and 1983, some of which were subsequently published by the publisher-transferee. Several of these achieved immediate popular success and have been economically viable ever since. The original contract has not been amended or superseded.

Example 2: A writer signed an agreement with a book publisher in 1977 to deliver a work of nonfiction. The work was completed and delivered on time in 1979 and was published in 1980. The book's initial print run sold out slowly, but because the author's subsequent works were critically acclaimed, it was released with an updated cover last year and is now a best seller. The rights remained with the publisher all along and the original royalty structure continues to apply.

Questions

In order to better understand the application of sections 304(c), 304(d) and 203 to the grants of transfers and licenses discussed above, the Copyright Office seeks comments as follows:

A. *Experience.* Please describe any experience you have in exercising or negotiating termination rights for pre-1978 grants of transfers or licenses for