

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 208**

RIN 1510-AA56

Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: Chapter 10 of the Omnibus Consolidated Rescission and Appropriations Act of 1996, Pub. L. 104-134, is the Debt Collection Improvement Act of 1996 (the "Act"). Section 31001(x) of the Act amends 31 U.S.C. 3332 to require Federal agencies to convert from checks to electronic funds transfer in two phases. Phase one affects newly-eligible recipients of Federal payments. During phase one, which begins on July 26, 1996, all recipients of Federal payments (other than payments under the Internal Revenue Code of 1986) who become eligible to receive those payments on or after July 26, 1996, must receive them electronically unless the recipient certifies that the recipient does not have an account at a financial institution or authorized payment agent.

Phase two covers the conversion from checks to electronic funds transfer for all Federal payments, except payments under the Internal Revenue Code. The Act provides that, subject to the Secretary of the Treasury's authority to grant waivers, all Federal payments made after January 1, 1999, must be made by electronic funds transfer.

The Financial Management Service (the "Service") is adopting an interim rule to implement Section 3332(e), as amended. The Service invites public comments on the interim rule and on issues related to implementation of the requirements that take effect on January 1, 1999.

This interim rule is designated as 31 CFR Part 208. The Service anticipates that Part 208 will contain all provisions relating to the management of Federal agency disbursements. Currently, 31 CFR Part 206 contains several provisions governing the timely collection and disbursement of funds by Federal agencies. When regulations are issued, sometime in 1997, to implement phase two, the Service will move those portions of Part 206 that deal with Federal agency disbursements into the new Part 208. In addition, all provisions relating to collections by Federal

agencies will be revised and consolidated into Part 206.

DATES: This rule is effective upon publication. Comments will be received until November 25, 1996.

ADDRESSES: All comments should be addressed to Cynthia L. Johnson, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street S.W., Washington, D.C. 20227.

A copy of the interim rule is being made available for downloading from the Financial Management Service home page at the following address: <http://www.ustreas.gov/treasury/bureaus/finman/>.

FOR FURTHER INFORMATION CONTACT:

Aurora Kassalow, Financial Program Specialist, at (202) 874-5742; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874-6657; Anne Wallace, Attorney-Advisor, at (202) 874-6681.

SUPPLEMENTARY INFORMATION:**(1) Background**

Section 31001 (x) of the Act amends 31 U.S.C. 3332 to require Federal agencies to convert from paper-based payment methods to electronic funds transfer in two phases under regulations prescribed by the Secretary of the Treasury (the "Secretary").

Enactment of the electronic funds transfer legislation is an important step in achieving Treasury's goal of an All-Electronic Treasury. Treasury began using electronic funds transfer more than 20 years ago and, over the years, has expanded its use of electronic payment methods for several reasons. First, the administrative cost of making payments by electronic funds transfer is far less than making payments by checks. Second, an electronic funds transfer is much safer than a check; an electronic payment is rarely lost, stolen or damaged and cannot be forged. However, on those few occasions when an electronic funds transfer is mis-routed, it can be traced and quickly rerouted to the recipient, usually within 24 hours. Third, the use of electronic funds transfer will enable the Federal Government to provide better service to recipients who claim their checks have been lost, stolen, damaged, or delayed during delivery by improving response time in tracing payments.

Current Federal law requires some recipients of Federal payments to receive those payments electronically. Specifically, 31 U.S.C. 3332 (a) through (d) require that Federal wage, salary, and retirement payments to individuals who began to receive such payments

after January 1, 1995, be paid by electronic funds transfer. In addition, 31 U.S.C. 3335 requires executive agencies to provide for the timely disbursement of funds in accordance with regulations prescribed by the Secretary.

As amended by the Act, section 3332 is broader than existing law in several respects. First, the definition of Federal payments in the new § 3332 (j)(3) covers all payments other than payments under the Internal Revenue Code. Second, the definition of Federal agency in the new section 3332 (j)(2) includes all departments, agencies, and instrumentalities of the United States Government, and corporations owned or controlled by the Government of the United States.

As amended, section 3332 contains several provisions to facilitate the transition from cash and checks to electronic funds transfer. In phase one, the head of each agency is directed to waive the electronic funds transfer requirement if the recipient certifies in writing that the recipient does not have an account with a financial institution or authorized payment agent. In phase two, which begins on January 1, 1999, the Secretary is authorized to waive the electronic funds transfer requirement for individuals or classes of individuals for whom compliance imposes a hardship; for certain categories of checks; and in other circumstances deemed necessary.

The Service intends to move quickly to implement the amendments to 31 U.S.C. 3332. In addition to adopting this interim rule, the Service plans to launch an extensive educational campaign to inform agencies, individuals, businesses, and the financial services industry about the provisions of the Act. The Service also will promote electronic funds transfer through increased marketing of Direct Deposit and other electronic payment options. Direct Deposit involves the transfer of funds from an agency to a recipient's account at a financial institution by means of the Automated Clearing House system. Direct Deposit is a safe, convenient, and economical method of making payments. A major challenge is reaching the millions of individuals, and some small businesses, that do not have an account at a financial institution. The Service looks forward to working with consumers and small businesses, as well as Federal agencies and the financial services industry, to meet this challenge.

The Service recently began working with the financial services industry on a marketing initiative called Direct Deposit Too. Direct Deposit Too involves the establishment of a simple, low-cost account at a financial

institution, such as an account that is accessible only through a plastic card used at automated teller machines and point-of-sale terminals.

In addition, the Service will work with agencies to implement other provisions of the Act. Specifically, section 31001 (y) of the Act amends 31 U.S.C. 3325 by adding a new subsection (d) which requires the head of each executive agency to include the Tax Identification Number (TIN) of each person receiving a payment in the certified voucher submitted to the disbursing official. This provision of the Act became effective April 26, 1996, the date the Act was signed into law. Treasury Financial Management Bulletin 95-10, which was issued on August 18, 1995, currently directs Federal agencies to provide the TIN when requesting the Service to make disbursement to vendors and Federal employees. The Service will amend Bulletin 95-10 in the near future in accordance with the provisions of section 3325 (d).

The Service is planning to meet with agencies to explain the requirements of the Act and the interim rule and to identify issues that need to be resolved. The Service also will form a task force of Federal agencies to obtain information that will be used in formulating a final rule and provide guidance to agencies on how to reach those individuals and small businesses who face barriers in converting to electronic funds transfer.

(2) Discussion

A. Section by Section Analysis of Interim Rule Implementing the July 26, 1996, Requirements

Section 208.1 Scope and Applicability

This section provides that Part 208 applies to all payments made by agencies and requires such payments to be made by electronic funds transfer, unless a waiver is granted. This section also provides that Part 208 does not apply to payments under the Internal Revenue Code of 1986.

Section 208.2 Definitions

31 U.S.C. 3332(j)(2), as added by section 31001(x) of the Act, defines Federal agency as “(A) an agency (as defined in section 101 of this Title); and (B) a Government corporation (as defined in section 103 of Title 5).” Section 101 of Title 31 provides that “agency” means a department, agency, or instrumentality of the United States Government. Section 103 of Title 5 defines Government corporation as a corporation owned or controlled by the Government of the United States. The

definition of agency in § 208.2(a) restates the statutory definition without change.

Section 3332(j)(2), as added by the Act, does not distinguish between agencies whose disbursements are made by the Department of the Treasury and those agencies with delegated or statutory disbursing authority, known as Non-Treasury Disbursing Offices (NTDOs). The Service believes that both types of agencies are subject to section 3332(e), as amended, and to Part 208. Further, in the opinion of the Service, the source of an entity's funds is not relevant in determining coverage under the Act: entities whose funds are derived from assessments or fees are covered by Part 208 to the same extent as entities using appropriated funds.

Section 3332(j)(3) provides that “Federal payments” includes “benefit payments,” but does not define the latter term. The Service has added a definition of benefit payment in § 208.2(b). This definition is substantially similar to the definition of benefit payment in 31 CFR 210.2.

The definition of “electronic funds transfer” in § 208.2(c) is based on the definition of this term in § 3332(j)(1), as added by the Act. The Act's definition of electronic funds transfer is similar to the definition of “electronic fund transfer” in the Electronic Fund Transfer Act (the “EFTA,” 15 U.S.C. 1693). However, the Service has added the phrase “includes, but is not limited to” in the definition of electronic funds transfer in the interim rule to signal its intention to interpret “electronic funds transfer” broadly so as to accommodate the use by the Federal Government of a wide range of payment methods—existing and emerging—that offer convenience, safety, and efficiency over paper-based methods. For example, under this definition a credit card transaction is an electronic payment.

The term “Federal payment” is defined in § 208.2(d) of the interim rule. The Service believes that all payments made by an entity covered by section 3332(e), as amended, are subject to the requirement to use electronic funds transfer. This requirement applies whether the payment is recurring or non-recurring.

The specific payments enumerated in the definition of Federal payment in section 3332(j)(3) are merely illustrative of the payments covered by section 3332(e), as amended. The definition of Federal payment in § 208.2(d) restates the statutory definition and, in order to clarify the broad scope of this term, provides examples of payments typically made by agencies. The category of Federal salary, wage, and

retirement payments includes, but is not limited to, thrift savings distributions, military wage and salary payments, Central Intelligence Agency annuities, military annuities, and Coast Guard retirement payments. The category of vendor payments includes any payment for goods or services. The category of expense reimbursement includes, but is not limited to, travel and expense disbursements and cash advances. Benefit payments, as defined in § 208.2(b), includes, but is not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Railroad Retirement Board Retirement and Annuity, Department of Veterans Affairs Compensation and Pension, and Worker's Compensation. The category of miscellaneous payments includes, but is not limited to, interagency payments, grants, loans, fees, principal, interest, and discounts related to U.S. transferable and non-transferable securities, refunds, and payments related to Federal insurance or guarantee programs for loans. The term “Federal payment” does not include payments under the Internal Revenue Code of 1986.

The term “financial institution” is not defined in section 31001(x) of the Act. The Service has added a definition of financial institution in § 208.2(e). The definition in the interim rule, which is identical to the definition of financial institution found in 31 CFR Part 210, is intended to cover all depository institutions regardless of the form of their organization or the nature of their charter.

The Service also has added a definition of the term “payment” in § 208.2(f) which is based on the definition of the same term found in 31 CFR Part 210.

Section 208.3 Agency Responsibilities

Section 208.3(a) implements section 3332(e), as amended, which supersedes 31 U.S.C. 3332 (a) through (d) (Federal wage, salary, and retirement payments) and 38 U.S.C. 5120 (a) and (d) (Veterans benefits); and thus requires all Federal payments to a recipient who becomes eligible for that type of payment starting on July 26, 1996, to be made by electronic funds transfer.

The Service is sensitive to the administrative burden that compliance with the Act may impose on agencies. Therefore, in several instances which are discussed below, the Service has interpreted the Act's requirements in a manner designed to facilitate compliance.

Section 3332(e), as amended, provides that all Federal payments to a recipient who becomes eligible for “that type of

payment" on or after July 26 must be made by electronic funds transfer. Section 208.3(a) of the interim rule provides that payments made to a recipient who becomes eligible for "the payment" on or after July 26 must be made electronically. The Service made this change to make clear that the payments that must be made electronically are only those for which the recipient becomes eligible on or after the trigger date of July 26, and not payments of the same type made by the paying agency for which the recipient became eligible prior to July 26. For example, if a recipient currently receives an interest payment, by check, on a Government security purchased before July 26 and, after July 26, the recipient purchases another Government security from the same agency, the interim rule requires the agency to pay interest on the security purchased after July 26 by electronic funds transfer. The agency would not be required to convert from check to electronic funds transfer the interest payment on the security purchased prior to July 26.

Since the phrase "becomes eligible for" is not defined in section 3332(j), and this phrase may have different meanings in the context of different types of payments, the Service has divided Federal payments into six categories and defined eligibility in the context of each class of payment. The interim rule is designed to minimize the burden of compliance by defining the triggering date for determining eligibility for receiving an electronic payment, as the time at which the agency and the recipient have direct contact, either to obtain the routing transit number, account number, and any other information the agency needs to make payments electronically or, alternatively, to give the recipient the opportunity to certify that the recipient does not have an account and thus qualifies for a waiver.

Under § 208.3(a)(1), all individuals who apply for benefit payments starting on July 26, 1996, are subject to the mandatory electronic funds transfer requirement. The Service chose the date of application rather than, for example, the date on which an individual attains a specified age, because the application process affords the agency an opportunity to have contact with the recipient. The agency can obtain account information during the application process and those recipients who do not have accounts can certify to that fact.

Section 208.3(a)(2) addresses eligibility in the context of Federal wage and salary payments. The interim rule

provides that a recipient who has a date of entry on duty with an agency on or after July 26, 1996, must receive wage and salary payments by electronic funds transfer, unless the recipient certifies that he or she does not have an account at a financial institution. Thus, an individual who begins working for an agency, transfers from one agency to another, or resumes Federal service after a break in employment on or after July 26, must receive such payments by electronic funds transfer, unless the recipient certifies that he or she does not have an account with a financial institution or authorized payment agent.

Currently, 31 U.S.C. 3332 (a) through (d) provide that Federal wage, salary, and retirement payments paid to individuals who began to receive such payments after January 1, 1995, must be paid by electronic funds transfer unless the recipient made a written request for another form of payment. In addition, section 3332(c)(1) authorized the Secretary to grant waivers for a group of recipients upon a request by the head of an agency. These provisions remain effective until July 26, 1996, when they are superseded by section 3332(e), as amended, and the interim rule. Consequently, Federal employees and retirees who become eligible to receive payments on or after July 26, 1996, must certify that they do not have an account at a financial institution or authorized payment agent in order to qualify for a waiver.

Section 208.3(a)(3) of the interim rule provides that, in the case of Federal retirement payments, "becomes eligible for" means a recipient applies for retirement from an agency on or after July 26, 1996. There may be special circumstances in which a recipient applies for retirement from an agency on or after July 26, while at the same time the recipient is already receiving retirement payments from a previous agency. In this circumstance, the recipient would be required to receive retirement payments from the second agency electronically.

Section 208.3(a)(4) addresses vendor payments. Under the interim rule, payments made under a contract or purchase order resulting from a solicitation issued on or after July 26, 1996, must be made electronically. This requirement applies to all contracts and purchase orders for goods and service whether or not they are covered by the Federal Acquisition Regulation. The interim rule does not require an agency to convert payments for contracts or purchase orders executed prior to July 26 to electronic funds transfer.

Section 208.3(a)(5) of the interim rule provides that, in the case of grants,

eligibility is determined by reference to the date on which a grant application is filed or renewed.

Section 208.3(a)(6) is a catch-all provision that applies to all other Federal payments, such as expense reimbursements and interest, not addressed in subsections (1) through (5). The Service expects agencies to fashion eligibility rules that are consistent with the spirit of the Act.

Section 208.3(b) provides that, for a recipient who becomes eligible to receive a Federal payment on or after July 26, the head of each agency must waive the requirement to be paid by electronic funds transfer if the recipient certifies in writing that the recipient does not have an account with a financial institution or authorized payment agent. The Appendix contains a model that may be used to make such a certification. The use of this model is optional; an agency may customize the model as needed.

The Service recognizes, however, that agencies may encounter obstacles in converting to electronic funds transfer. Section 208.3(c) provides that, if the head of an agency determines that the agency cannot make a Federal payment or class of Federal payment in accordance with § 208.3(a) due to the inability of the agency's system to make the payment(s) by electronic funds transfer, then the agency shall notify the Service immediately in writing and shall submit an implementation plan to the Service no later than January 1, 1997. The plan shall:

- (1) Identify the specific type of payment(s) that cannot be made by electronic funds transfer;
- (2) Describe the system problem that prevents the agency from making the payment(s) by electronic funds transfer; and
- (3) Outline a proposed solution and provide a time table for solving the problem.

Nothing in Part 208 should be construed to prevent an agency from continuing to make payments while the agency's plan is being developed, reviewed, and implemented. The Service will work with agencies to develop and implement the plan and provide any assistance the agency may need.

Section 208.4 Recipient Responsibilities

Section 208.4 implements sections 3332(e) (2) and (g) as amended by the Act and provides that (1) a recipient of a Federal payment must designate a financial institution or authorized payment agent through which a Federal payment may be made or certify in

writing that the recipient does not have an account with a financial institution or authorized payment agent; and (2) provide the agency with the information requested by the agency in order to effect the payment.

B. Regulations to Implement the January 1, 1999, Requirements

During the next two years, Treasury will work with agencies, the financial services industry, and representatives of individuals and the vendor community, to meet the challenge of delivering all Federal payments by electronic funds transfer. Efforts will include intensive marketing of Treasury's existing Direct Deposit program for individuals and businesses; new products such as Direct Deposit Too; and services such as Electronic Benefit Transfer (EBT). The Service will continue to develop, test, and implement innovative forms of electronic payment mechanisms. The Service also plans to hold forums at which the public, the financial service industry, Federal agencies, and other interested parties will be invited to share their views regarding implementation of the requirements that take effect on January 1, 1999.

In order to assess the current capabilities of agencies and to assess their future needs, the Service requests agencies to submit an implementation plan that addresses the points listed below. Agencies subject to the Chief Financial Officers Act of 1990 (31 U.S.C. 901) must submit the plan by January 1, 1997. All other agencies must submit the plan by July 1, 1997. The plan must:

(1) List the types of Federal payments the agency currently makes by check, especially those payments that the agency believes would be difficult to convert to electronic funds transfer;

(2) Describe the obstacles the agency has encountered, or expects to encounter, in converting payments made by check to electronic funds transfer. The Service invites comment on the cost-effectiveness of converting small dollar cash and check payments and non-recurring payments to electronic funds transfer;

(3) Provide suggestions for removing the obstacles for each type of payment and the electronic payment methods that could be used;

(4) Provide a timetable for the orderly and systematic conversion of check payments to electronic funds transfer; and

(5) Identify the assistance each agency anticipates it will need in order to convert payments currently made by check to electronic funds transfer.

The Service will use this information to assess the requirements for

converting from cash and checks to electronic funds transfer payments for each payment type and determine what assistance agencies need in order to meet the January 1999 implementation date.

As noted above, where the head of the agency determines that the agency cannot make a Federal payment or class of Federal payment in accordance with § 208.3(a) due to the inability of the agency's system to make the payment(s) by electronic funds transfer, then the agency must notify the Service immediately in writing and must submit a plan in accordance with § 208.3(c).

The Service would like to work with the financial services industry to expand and enhance existing electronic payment methods and, where necessary, develop new ones so as to facilitate the transition from checks to electronic funds transfer. The industry is invited to:

(1) Discuss the capability to process electronic payments and to provide the payment information customers need, especially for vendor payments; and

(2) Provide suggestions regarding improvements to the electronic payment methods currently available and ideas for new electronic payment methods to meet the needs of recipients who receive checks.

Members of the public are specifically invited to comment on the following:

(1) Obstacles to receiving payments electronically, such as geographical barriers and physical, mental, educational, or language barriers;

(2) The availability of banking services, especially for the segment of the public that is currently unbanked;

(3) Suggestions for improving the electronic payment methods currently available and ideas for new types of electronic payment methods;

(4) Suggestions for implementing the provisions relating to the use of an authorized payment agent for receipt of a Federal payment by means of electronic funds transfer, including qualifications for serving as an authorized payment agent and any limitations on the terms of the contractual relationship between the recipient and the authorized payment agent; and

(5) The needs of unbanked recipients when selecting an electronic payment method or a financial institution.

Section 3332(i)(2), as added by section 31001 (x) of the Act, provides that regulations issued by the Secretary shall ensure that individuals who are required to have an account at a financial institution because of the application of section 3332(f)(1) will have access to such an account at a

reasonable cost. Further, the Secretary is directed to ensure that such individuals are given the same consumer protections with respect to the account as other account holders at the same financial institution. All interested parties are invited to comment on these provisions.

Section 3332(f)(2) authorizes the Secretary to waive the electronic funds transfer requirement for individuals or classes of individuals for whom compliance poses a hardship, for classifications or types of checks or in other circumstances as may be necessary. The Service invites comment regarding these requirements.

In response to a Congressional request, the Service will study: (1) the socioeconomic and demographic characteristics of those recipients who currently receive checks to determine how best to increase electronic payment usage; and (2) the adequacy of consumer protections available to those individuals who will be required to obtain an account with a financial institution.

Special Analyses

The Service is promulgating the interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act (the "APA"), 5 U.S.C. 553, because the Service has determined, for the following reasons, that a comment period would be impracticable and contrary to the public interest. As noted above, until passage of the Act, only recipients of Federal wage, salary, and retirement payments were required to receive those payments by electronic funds transfer. However, 31 U.S.C. 3332 (e), as amended, requires recipients who become eligible for Federal payments on or after July 26, 1996, to receive such payments electronically. Therefore, recipients such as vendors doing business with agencies and benefit recipients may not be aware of the impact of the law. In addition, the law requiring agencies to disburse Federal funds expeditiously, 31 U.S.C. 3335, applies only to agencies in the executive branch, whereas the amended section 3332 (e) applies to departments, agencies, and instrumentalities of the United States Government and to corporations owned or controlled by the Government of the United States.

In addition, since the Act was passed, the Service has received numerous requests for guidance from affected agencies. Many of the questions relate to the meaning of the phrase "becomes eligible for," which determines the applicability of section 3332. As noted above, this phrase has different

meanings in the context of different types of payments. The Service believes that, absent an implementing regulation, there will be substantial confusion and noncompliance. Since the interim rule provides critical guidance which will facilitate compliance, the Service believes that it is in the public interest to issue the interim rule without opportunity for prior public comment.

The public is invited to submit comments on the interim rule. As noted above, within the next twelve months, the Service expects to publish a Notice of Proposed Rulemaking to implement the provisions of section 3332 that take effect in January 1999. Therefore, there will be an opportunity to take into account any comments received on the interim rule.

The Service has determined that good cause exists to make the interim rule effective upon publication without providing the 30 day period between publication and the effective date contemplated by the APA, 5 U.S.C. 553 (d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, both agencies and recipients of Federal payments must comply with the Act when it takes effect on July 26, 1996, and, as noted above, there may be considerable confusion concerning its application. Inasmuch as the interim rule provides important clarification that is expected to facilitate compliance with the new law, the Service believes that good cause exists to make the rule effective upon publication.

Since the interim rule is being issued without prior notice and public procedure pursuant to the APA, the collection of information contained in the interim rule has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507 (j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1510-0066. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Comments concerning the collection of information should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Financial Management Service, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to Jacqueline Perry, Public Reports Clearance Officer, Financial Management Service, 3361 75th

Avenue, Landover, Maryland 20785. Any such comments should be submitted not later than September 24, 1996. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques and other forms of information technology.

The collection of information in this regulation is in § 208.4. The information (name of financial institution, account number and routing transit number or certification that the recipient does not have an account with a financial institution) is required to enable an agency to pay the recipient of a Federal payment by electronic funds transfer. The collection of information is mandatory. 31 U.S.C. 3332 (g), as amended, requires recipients of Federal payments to "provide to the Federal agency that makes or authorizes the payments information necessary for the recipient to receive electronic funds transfer payments." The likely respondents are individuals who are employed by the Service on or after July 26, 1996; existing employees of the Service who become eligible to receive, for example, travel reimbursement payments on or after July 26, 1996; individuals who apply for retirement from the Service on or after July 26, 1996; and individuals and businesses that become eligible to receive a vendor payment from the Service on or after July 26, 1996.

The estimated total annual reporting burden is 325 hours. The estimated burden hours per respondent is 0.25 hours. The estimated number of respondents is 1,300. These figures represent the burden imposed by the Service. The reporting burden imposed by other agencies will be addressed by those agencies.

Although it has been determined that the interim rule is a significant regulatory action as defined in E.O. 12866, the Office of Management and Budget (OMB) has waived the preparation of a Regulatory Assessment. One substantive change was made to the regulation subsequent to its submission to OMB. At the suggestion of OMB, the

Service added § 208.3 (c), which requires that an agency notify the Service immediately in writing if it determines that it is unable to make a payment or class of payments by electronic funds transfer due to the inability of the agency's system to make the payment(s) electronically.

List of Subjects in 31 CFR Part 208

Accounting, Banks, Banking, Electronic Funds Transfer.

Authority and Issuance

For the reasons set out in the preamble, Part 208 of Title 31 is added to read as follows:

PART 208—FEDERAL AGENCY DISBURSEMENTS

Sec.

- 208.1 Scope and application.
- 208.2 Definitions.
- 208.3 Agency responsibilities.
- 208.4 Recipient responsibilities.

Appendix A to Part 31—Model certification

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3301, 3302, 3321, 3325, 3327, 3328, 3332, 3335, and 6503.

§ 208.1 Scope and application.

This part applies to all Federal payments made by an agency and requires such payments to be made by electronic funds transfer, unless a waiver is granted. This part does not apply to payments under the Internal Revenue Code of 1986.

§ 208.2 Definitions.

(a) *Agency* means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States.

(b) *Benefit payment* means a payment for a Federal Government entitlement program or for an annuity (other than a Federal retirement payment), including, but not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Railroad Retirement Board Retirement and Annuity, Department of Veterans Affairs Compensation and Pension, and Worker's Compensation.

(c) *Electronic funds transfer* means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Automated Clearing House transfers, Fedwire transfers, and transfers made at

automated teller machines and point-of-sale terminals.

(d) *Federal payment* means any payment made by an agency.

(1) The term includes, but not is limited to:

(i) Federal wage, salary, and retirement payments;

(ii) Vendor and expense reimbursement payments;

(iii) Benefit payments; and

(iv) Miscellaneous payments, including but is not limited to, interagency payments, grants, loans, fees, principal, interest, and discounts related to U.S. transferable and non-transferable securities, overpayment reimbursements, and payments under Federal insurance or guarantee programs for loans.

(2) The term "Federal payment" does not apply to payments under the Internal Revenue Code of 1986.

(e) *Financial institution* means any bank, savings bank, savings and loan association, credit union, or similar institution.

(f) *Payment* means a sum of money transferred to a recipient in satisfaction of an obligation.

§ 208.3 Agency responsibilities.

(a) *Paying by electronic funds transfer.* Subject to § 208.3 (b), and notwithstanding any other provision of law, all Federal payments made by an agency to a recipient who becomes eligible for the payment on or after July 26, 1996, shall be made by electronic funds transfer. For purposes of this subsection, "becomes eligible for" means:

(1) In the case of benefit payments, the recipient applies for that type of benefit on or after July 26, 1996;

(2) In the case of Federal wage or salary payments, the recipient has a date of entry on duty with the agency on or after July 26, 1996;

(3) In the case of Federal retirement payments, a recipient applies for retirement from an agency on or after July 26, 1996;

(4) In the case of vendor payments, the payment is made under a contract or purchase order resulting from a solicitation issued on or after July 26, 1996;

(5) In the case of grants, an application is filed or renewed on or after July 26, 1996; and

(6) For all other Federal payments, as determined by the agency.

(b) *Waiver.* The head of an agency shall waive the application of subsection 208.3 (a) only upon receipt of written certification that the recipient does not have an account with a financial institution or an authorized payment agent.

(c) *Agency implementation plan.* If the head of an agency determines that the agency cannot make a Federal payment or class of Federal payment in accordance with § 208.3 (a) due to the inability of the agency's system to make the payment(s) by electronic funds transfer, then the agency shall notify the Service immediately in writing and shall submit an implementation plan to the Service no later than January 1, 1997. The plan shall:

(1) Identify the specific type of payment(s) that cannot be made by electronic funds transfer;

(2) Describe the system problem that prevents the agency from making the payment(s) by electronic funds transfer; and

(3) Outline a proposed solution and provide a time table for solving the problem.

§ 208.4 Recipient responsibilities.

Each recipient of a Federal payment shall designate a financial institution or authorized payment agent through which a Federal payment may be made or certify in writing that such recipient does not have an account with a financial institution or an authorized payment agent; and provide the agency with the information requested by the agency in order to effect the payment.

Appendix A to Part 208—Model Certification

This appendix contains model language which may be used to qualify for a waiver under § 208.3(b). Use of the model language is optional. An agency may customize the model language by making appropriate changes.

Any payment that we make to you will be made by electronic funds transfer unless you certify in writing that you do not have an account with a financial institution or an authorized payment agent.

I certify that I do not have an account with a financial institution or an authorized payment agent.

Signature

Dated: July 23, 1996.

Russell D. Morris,

Commissioner.

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