

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 240**

RIN 1510-AA99

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Financial Management Service (FMS) is publishing for comment an interim rule amending 31 CFR part 240 (part 240) in order to permit financial institutions to present Treasury checks for payment by providing an electronic image of the check in lieu of a paper check. The rule establishes the procedures that the U.S. Department of the Treasury (Treasury) will follow to invoke an indemnity arising under the Check Clearing for the 21st Century Act for a breach of warranty or in situations in which the receipt of a substitute Treasury check rather than the original check results in a loss to the Federal Government. The rule also establishes a similar indemnity and procedures when an electronic image of a Treasury check is utilized. In addition, the rule requires that financial institutions that create substitute Treasury checks or electronic images of Treasury checks prevent unauthorized access to the underlying paper checks until they are destroyed.

DATES: *Effective Date:* This rule is effective October 28, 2004.

Comment Date: Comments on the interim rule are due on or before January 18, 2005.

ADDRESSES: You can download the interim rule at the following World Wide Web address: <http://www.fms.treas.gov/checkclaims/regulations.html>. You may also inspect and copy the interim rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1318, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

You may submit comments on the interim rule by any of the following methods: *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically. *FMS Web site:* Go to <http://www.fms.treas.gov/checkclaims/regulations.html> and follow the

instructions for sending your comments electronically. *Email:* You may email your comments to check21@fms.treas.gov. *Mail:* You may mail your comments to FMS, 3700 East West Highway, Attention: Ronald Brooks, Room 725-D, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

On October 28, 2003, Congress enacted the Check Clearing for the 21st Century Act, 12 U.S.C. 5001-5018, applicable portions of which take effect on October 28, 2004 (Check 21 Act). The Check 21 Act creates a new negotiable instrument called a substitute check, which is a paper reproduction of an original check that contains an image of the front and back of the original check and is suitable for automated processing in the same manner as the original check. Under the Check 21 Act, a substitute check is the legal equivalent of the original check for all purposes and all persons. When the Check 21 Act takes effect, financial institutions will be able to present substitute checks to Treasury for payment in lieu of original Treasury checks. Although the Check 21 Act obviates the need for physical transfer of original checks, it does not make electronic check images legally equivalent to original checks. Thus, financial institutions will not be able to exchange checks electronically and eliminate the physical presentment of paper items except where they have an agreement with the paying bank to do so.

FMS strongly supports the underlying goal of the Check 21 Act, which is to modernize the U.S. payments system by facilitating the electronic exchange of images for presentment. FMS believes that giving financial institutions the option of presenting for payment an electronic image of a Treasury check rather than the original check or a substitute check will enhance the efficiency of processing Treasury checks. FMS therefore is creating in the interim rule a legal framework to support the presentment of electronic images of Treasury checks without the need for subsequent delivery of original or substitute checks. The interim rule does not require electronic image presentment of Treasury checks, but

makes this option possible for those financial institutions that wish to present Treasury checks in this manner.

The interim rule establishes the rights and obligations of financial institutions that present electronic images to Treasury. The legal framework established by the rule mirrors the terms and conditions established by the Check 21 Act pursuant to which substitute checks are treated as the legal equivalent of original checks, and follows the Check 21 Act's general principles. For example, the interim rule is structured so that a loss associated with an electronic image will be borne by the financial institution that created the image, in keeping with the Check 21 Act principle that a loss associated with a substitute check is to borne by the party that caused the problem with the substitute check.

In contrast to the Check 21 Act, which establishes the legal equivalence of substitute checks for all persons and all purposes, the interim rule establishes the legal equivalence of electronic checks only as between Treasury and a financial institution that presents an electronic image of a Treasury check to Treasury for payment. The rule does not create for financial institutions the right to transfer, return or present an electronic image of a Treasury check to any other person.

In addition to establishing a framework for the presentment of electronic images of Treasury checks, the interim rule also establishes certain procedures relating to the processing of substitute Treasury checks created pursuant to the Check 21 Act. Under the Check 21 Act, a financial institution that for consideration transfers, presents or returns a substitute check makes certain warranties and indemnities with respect to the check. The interim rule sets forth the procedures that Treasury will follow if there is a breach of one of these warranties, as well as the procedures that apply if the Federal government incurs a loss due to the receipt of the substitute check rather than the original check.

Finally, the interim rule requires that a financial institution that creates a substitute Treasury check or electronic image of a Treasury check prevent unauthorized access to the paper check that was truncated if the financial institution chooses to retain the check rather than to destroy it. The interim rule does not dictate the destruction of Treasury checks that are truncated, or otherwise limit or curtail the discretion afforded to banks under the Check 21 Act to destroy or retain original Treasury checks. However, in light of the important public interest in

ensuring that information on Treasury checks is not used for fraudulent purposes, the rule provides that checks that are truncated and retained must be stored in a manner consistent with federal banking agency guidelines for safeguarding customer information.

FMS specifically requests comment on whether this provision of the interim rule is necessary. For example, if financial institutions expect to routinely apply their existing customer information security procedures to all truncated checks, then a safekeeping provision specific to truncated Treasury checks may be unnecessary. In addition, FMS requests comment on whether this requirement will be burdensome for financial institutions, or in any way interfere with or add costs to the creation of substitute checks.

FMS also requests comment on whether, in addition to requiring the physical safekeeping of truncated checks, FMS should take steps to restrict the use of information appearing on truncated checks. FMS is concerned not only with the potential fraudulent use of check information, but also that this information could be used by financial institutions or other entities in ways that FMS believes are inappropriate, such as for marketing or other commercial purposes. Financial privacy laws that generally restrict the use and disclosure of consumer information by financial institutions contain exceptions that may permit the use of such information by a financial institution or its affiliates for marketing or other purposes. FMS is concerned that the use of Treasury check information in this manner could undermine the public's confidence in the integrity and security of Treasury check information, or be perceived as intrusive. FMS requests comment on whether there is a need to prohibit financial institutions from making truncated paper checks available to third parties, and from disclosing or using information on the checks for commercial or business purposes.

Section-by-Section Analysis

A number of sections and paragraphs have been revised to reflect renumbering, but do not have substantive changes. The Section-by-Section analysis discusses substantive changes to the regulation.

Section 240.1 Scope of Regulations

New paragraph (c) of § 240.1 provides that nothing in the regulation supercedes the rights or obligations of Treasury or any other person that are set forth in the Federal Reserve's Regulation CC, 12 CFR part 229, with respect to

substitute checks. The purpose of this paragraph is to clarify that provisions of part 240 relating to substitute checks do not displace any provision of Regulation CC or the Check 21 Act. For example, the Check 21 Act and Regulation CC provide that a warranty claim or indemnity claim on a substitute check must be brought within one year of the date on which the cause of action accrues. 12 CFR 229.56(c). A cause of action accrues as of the date on which the injured party first learns, or reasonably should have learned, of the facts and circumstances giving rise to the cause of action. *Id.* It is possible that Treasury could learn of facts giving rise to a substitute check claim after the expiration of the reclamation deadline, but within the Check 21 deadline, as illustrated by the following example: If a Treasury substitute check representing a benefit payment were presented and paid on 1/1/05, and Treasury learned on 2/2/06 that the payee had died before the check was issued, Treasury would be unable to institute a reclamation action due to the expiration of the one-year period beginning on the date the check was processed for payment. However, if the original check were not available and it were necessary to examine the original check in order, for example, to support a legal action to recover funds from the payee's spouse by proving that the payee's spouse had forged the payee's indorsement, Treasury would be within the deadline for bringing a Check 21 indemnity claim, i.e., one year beginning on 2/2/06, when the cause of action accrued. Paragraph (c) is intended to make it clear that although Treasury could not pursue the claim through the reclamation process, that deadline does not prevent Treasury from pursuing the claim outside the reclamation process.

As another example, Regulation CC provides that a loss resulting in whole or in part from an indemnified party's negligence shall reduce the amount recoverable by the indemnified party. 12 CFR 229.53(b)(2). Although part 240 doesn't address comparative negligence for losses arising from substitute checks, this defense could be available to a financial institution in connection with a reclamation or declination of a substitute check.

Section 240.2 Definitions

Paragraph (d) contains a revised definition of "check" that makes it clear that the term check includes not only an original paper check issued by Treasury, but also a substitute check or an electronic check relating to an original check.

Paragraph (l) is revised to provide a definition of "electronic check." An electronic check is defined as an electronic image of a Treasury check, together with information describing the check, that meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars. The image need not be created directly from the original check in order to qualify as an electronic check for purposes of part 240. If an original check is truncated and replaced with a substitute check, and the substitute check is subsequently imaged and the image is presented to Treasury for payment, the image will constitute an electronic check.

Paragraph (w) defines an "original check" to mean the first paper check drawn on the United States Treasury with respect to a particular payment transaction.

Paragraph (bb) revises the definition of "reasonable efforts" in existing paragraph (z) to reflect the fact that the Treasury watermark, which appears on authentic original checks issued by Treasury, may not appear on a substitute check or an electronic check. Because the watermark may not survive truncation, a reclamation debtor's obligation to verify the existence of the watermark does not extend to a substitute check or electronic check presented to the reclamation debtor.

Paragraph (hh) provides a definition of "substitute check" for purposes of part 240. The definition is identical to the definition of substitute check in Regulation CC, except that the part 240 definition is more narrow in that it defines a substitute check as a paper reproduction of a Treasury check rather than a paper reproduction of any check. The term "substitute check" for purposes of part 240 has a different meaning than the term "substitute check" as used in 31 U.S.C. 3331 and our regulation at 31 CFR part 248. For purposes of 31 U.S.C. 3331 and 31 CFR part 248, a substitute check is a check issued by Treasury to replace a Treasury check that has been lost, stolen, destroyed or defaced. The definition of "substitute check" in paragraph (hh) does not apply to the term "substitute check" as used in 31 U.S.C. 3331 or 31 CFR part 248.

Paragraph (kk) defines "truncate" as the removal of a paper check (whether the check is an original check or a substitute check) from the forward collection or return process and the replacement of that check with either a substitute check or an electronic check.

Section 240.3 *Electronic Checks and Substitute Checks*

Section 240.3 provides that an electronic check is the legal equivalent of an original check or a substitute check for purposes of part 240 if the presenting bank provides the guarantees described in § 240.4 and if the electronic check accurately represents all of the information on the front and back of the check that the presenting bank truncated. Because an electronic check is legally equivalent to an original or substitute check for purposes of part 240, a financial institution may effect presentment of a Treasury check by presenting an electronic check without subsequent delivery of the original check or a substitute check. Financial institutions may decide whether to retain or destroy paper checks that are truncated to create electronic checks.

The legal equivalence of electronic checks arising under paragraph (a) exists only as between Treasury and a financial institution that presents an electronic image of a Treasury check to Treasury for payment. The rule does not create for financial institutions the right to transfer, return or present an electronic image of a Treasury check to any other person. For example, Treasury may return a check to a presenting bank if the one-year limit on payability has expired or if the check is not payable because it was issued after the payee's death. If that check was presented to Treasury in the form of an electronic check, Treasury may effect the return by using an electronic check. However, part 240 does not give the presenting bank the right to return the check to the depositor using an electronic image. The presenting bank will need to return either the original check or a substitute check to the depositor unless the bank has the right, by agreement with the depositor, to make the return using an electronic image.

The legal equivalence of substitute checks is not addressed in part 240 because legal equivalence is established by the Check 21 Act and addressed in Regulation CC.

Paragraph (b) requires financial institutions that create substitute checks or electronic checks to prevent unauthorized access to paper checks that are truncated by storing the checks, until their destruction, in a manner consistent with federal banking agency guidelines for safeguarding customer information. The term "person" in this context is not intended to include a financial institution's own employees or agents who handle the check in the normal course of processing or bank operations. For example, a financial

institution is not prohibited from making truncated checks available to a vendor or contractor hired by a bank to shred or store the checks.

The phrase "federal banking agency guidelines for safeguarding customer information" in paragraph (b) refers to guidelines that are issued from time to time by the federal banking agencies (the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation) and the Board of Governors of the Federal Reserve System, and the National Credit Union Administration (NCUA). In 2001 the federal banking agencies and the NCUA issued substantively identical guidelines establishing standards for physical safeguards for customer records and information. See *Interagency Guidelines Establishing Standards For Safeguarding Information* (February 1, 2001), 66 FR 8616 and *Guidelines for Safeguarding Member Information* (January 30, 2001), 66 FR 8152-01 (Interagency Guidelines). The Interagency Guidelines, among other things, establish standards that financial institutions must follow to protect against unauthorized access to, or use of, customer information that could result in substantial harm or inconvenience to any customer. The standards include physical safeguarding of customer records. Because the federal banking agencies indicated that they plan to issue guidance and other revisions to applicable regulations in order to supplement the Interagency Guidelines, paragraph (b) refers generically to federal banking agency guidelines. See 66 FR 8616, 8618.

Currently, Treasury checks that have been negotiated are stored securely by Treasury until their destruction. This practice prevents the misappropriation of the checks or the misuse of information on the checks. Because Treasury will not have possession of Treasury checks that are truncated, FMS is concerned that the checks, or the information on them, could be used in ways that would raise significant concerns for Treasury and check recipients. Treasury checks contain not only the names and addresses of Federal benefit recipients, but also, following negotiation, may contain other identifying information such as payees' bank account numbers, driver's license numbers and Social Security numbers. FMS is concerned that the failure to safeguard this information could lead to identity theft. Therefore, FMS believes that it is critical that Treasury checks that are truncated be stored securely, and that access to such checks be restricted.

Although financial institutions are subject to statutory and regulatory requirements to safeguard customer information, FMS does not believe that these requirements are adequate to protect against potential misuse of Treasury checks that are truncated. For example, financial institutions that create substitute checks may not have a "customer" relationship with Treasury check payees, meaning that the procedures that financial institutions must follow to protect against unauthorized access to, or use of, customer information would not apply. For purposes of the Interagency Guidelines, the definition of "customer" is limited to a consumer who has established a continuing relationship with a financial institution. Check recipients who cash their checks at banks where they do not have accounts, as well as recipients who cash checks at check casher or other non-bank locations, may not be viewed to be customers for purposes of financial institution privacy requirements because they may not have a continuing relationship with the depository bank.

In enacting the Check 21 Act, Congress expressly recognized the broad and long-standing authority of the Secretary of the Treasury to establish and administer the rules that govern payments disbursed by Treasury, including Treasury checks. See S. Rep. No. 108-79, at 6. The Check 21 Act does not affect the Secretary's authority to regulate Treasury checks, to the extent such regulations are not inconsistent with the Check 21 Act. *Id.* FMS is exercising this authority to ensure the continued security of Treasury checks in a manner that is consistent with the Check 21 Act.

The Check 21 Act is silent with regard to the disposition of original checks that are truncated by financial institutions. Accordingly, under the Check 21 Act, financial institutions that create substitute checks may choose whether to retain or destroy the original checks. Paragraph (b) preserves the discretion of financial institutions that create substitute checks to destroy or retain the original Treasury checks. FMS does not believe that requiring financial institutions to prevent unauthorized access to truncated Treasury checks by storing them in a manner consistent with their usual procedures for safeguarding customer information should in any way interfere with, burden or add costs to the creation of substitute checks. As discussed above, financial institutions that create substitute checks will be required to prevent unauthorized access to most original checks that they retain pursuant

to the Interagency Guidelines. The interim rule operates to ensure that certain Treasury checks that might otherwise be treated as non-customer items will be included in each financial institution's usual customer record security procedures.

Section 240.4 Presentment Guarantees

Paragraph (e) provides that a bank that presents an electronic check for payment makes certain presentment guarantees that parallel the warranty and indemnity provisions for substitute checks set forth in §§ 229.52 and 229.53 of Regulation CC.

Paragraph (f) incorporates in part 240, as presentment guarantees, the substitute check warranty and indemnity provisions of Regulation CC and thereby establishes, in conjunction with reclamation provisions, the process by which Treasury will invoke the substitute check indemnity provided by § 229.53 of Regulation CC. Paragraph (f) does not limit or expand Regulation CC's warranty and indemnity provisions, but simply frames those provisions as presentment guarantees so as to make the procedure for invoking a substitute check indemnity part of the declination or reclamation process.

A breach of either of these warranties will be a basis for reclamation of the check pursuant to new § 240.8(a) or declination of the check pursuant to new § 240.6(c).

Section 240.6 Provisional Credit; First Examination; Declination; Final Payment

Existing § 240.5 is redesignated as § 240.6, and paragraph (c) of this section is revised by the addition of paragraph (c)(3), which provides that Treasury may decline payment on a check if Treasury has already received presentment of, and made payment on, a substitute check, electronic check or original check relating to the check being presented, such that Treasury is being requested to make payment on a check it has already paid. In addition, new paragraph 240.6(c)(4) provides that, in the case of an electronic check, Treasury may decline payment if it cannot determine whether the check contains a material defect or alteration without examining the original check or a better quality image of the check and if Treasury is on notice of a question of law or fact about whether the check is properly payable. New paragraph 240.6(c)(5) allows Treasury to decline payment in the case of a substitute check as to which Treasury has a warranty or indemnity claim arising under 12 CFR 229.52 or 229.53.

FMS does not anticipate that there will be many situations in which an original check will be required in order to determine whether a substitute check or an electronic check is properly payable. Nevertheless, in our experience, there are a small number of cases in which the original check must be examined in order to assess, for example, the pen pressure and other signature characteristics that are used to determine the authenticity of an endorsement.

Section 240.7 Declination Protest

Existing § 240.6 is redesignated as § 240.7, and paragraph (b) of this section is revised by the addition of paragraphs (b)(5) and (b)(6). Paragraph (b)(5) provides that a presenting bank may offer evidence that the check has not already been presented to, and paid by, Treasury, following Treasury's declination of the check for this reason. Paragraph (b)(6) provides that a presenting bank may offer an original check or a copy of the check that is sufficient to support a determination that the check does not contain a material defect or alteration where a check is declined for this reason. The provision of an original check will be sufficient to successfully protest a declination based on § 240.6(c)(4). If the original check is not available, the presenting bank can provide a better image, if available, but a better image may not in all cases be sufficient to successfully protest a declination based on § 240.6(c)(4).

Section 240.9 Reclamation Procedures; Reclamation Protests

Existing § 240.8 is redesignated as § 240.9, and paragraph (b)(2) of this section is revised by the addition of paragraphs (b)(2)(v) and (b)(2)(vi), which correspond to the new presentment guarantees at § 240.4(e) and (f) relating to double presentment and adequacy of image quality. These reclamation protest provisions parallel the declination protest provisions at § 240.7(b)(5) and (6).

Section 240.12 Processing of Checks

Existing § 240.11 is redesignated as § 240.12, and paragraph (a)(3)(iii) of this section is revised by deleting the word "original" from the term "original checks." Paragraph (a)(3)(iv) is revised by addition of a reference to substitute checks.

Procedural Matters

Executive Order 12866, Regulatory Planning and Review

It has been determined that this interim rule is not a significant

regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Clarity of the Regulations

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this interim rule easier to understand.

Notice and Comment and Effective Date

We find that good cause exists for issuing the interim rule without prior notice and comment and for dispensing with the delayed effective date required by 5 U.S.C. 553. Under the Administrative Procedure Act, an agency is permitted to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. 5 U.S.C. 553(b)(B). An agency also is permitted to publish a rule with an effective date of less than 30 days when the agency finds good cause for doing so. 5 U.S.C. 553(d). The publication of this rule as an interim rule with an effective date of less than 30 days will ensure that procedures are in place to support the operation of the Check 21 Act's warranties and indemnities with respect to Treasury checks when the Check 21 Act takes effect on October 28, 2004. Publishing this rule as an interim rule with an October 28, 2004 effective date also will allow financial institutions the option of using electronic checks as an alternative to substitute Treasury checks immediately upon the effective date of the Check 21 Act.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply. Nevertheless, to assist small business entities in understanding the implications of the interim rule, the following discussion explains why the rule will not have a significant impact on a substantial number of small business entities.

The interim rule applies to all financial institutions, regardless of their size. The revisions to part 240 in this interim rule permit, but do not require, financial institutions to present Treasury checks for payment by providing an electronic image of the check in lieu of a paper check. Financial institutions that choose to create electronic images of Treasury checks are required to store the paper checks that are truncated, until their destruction, in a manner consistent with federal

banking agency guidelines for safeguarding customer information. No financial institution is required to create or accept electronic images of Treasury checks and therefore no cost or burden is imposed on any financial institution as a result of the electronic check image provisions of this rule.

The rule also should not result in any significant costs for financial institutions that choose to create substitute checks as permitted by the Check 21 Act. The interim rule establishes the procedures that Treasury will follow to invoke an indemnity arising from a breach of a substitute check warranty or in situations in which the receipt of a substitute Treasury check rather than the original check results in a loss to the Federal Government. The rule does not create this indemnity, which is a statutory right arising under the Check 21 Act. The rule simply incorporates a process for invoking the indemnity into Treasury's existing declination and reclamation procedures.

Moreover, the requirement that financial institutions safeguard truncated Treasury checks by storing them in accordance with their usual procedures should not significantly increase the cost of creating substitute checks for financial institutions of any size. All financial institutions are already required to have in place customer information security programs, and financial institutions that choose to create substitute checks will be required under existing law and regulation to prevent unauthorized access to customer checks that they truncate. The interim rule requires financial institutions to apply their existing customer information security programs to certain Treasury checks that might otherwise fall outside the application of those laws and regulations. The rule does not require that financial institutions modify their existing programs, or require financial institutions to retain original checks for any period of time or in any specified manner.

List of Subjects in 31 CFR Part 240

Banks, Banking, Checks, Counterfeit checks, Federal Reserve system, Forgery, Guarantees.

Authority and Issuance

■ For the reasons stated in the preamble, Part 240 of title 31 is revised to read as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

General Provisions

Sec.

- 240.1 Scope of regulations.
- 240.2 Definitions.
- 240.3 Electronic checks and substitute checks.
- 240.4 Presentment guarantees.
- 240.5 Limitations on payment; cancellation and distribution of proceeds of checks.
- 240.6 Provisional credit; first examination; declination; final payment.
- 240.7 Declination protest.
- 240.8 Reclamation of amounts of paid checks.
- 240.9 Reclamation procedures; reclamation protests.
- 240.10 Offset.
- 240.11 Treasury Check Offset.
- 240.12 Processing of checks.

Indorsement of Checks

- 240.13 Indorsement by payees.
 - 240.14 Checks issued to incompetent payees.
 - 240.15 Checks issued to deceased payees.
 - 240.16 Checks issued to minor payees.
 - 240.17 Powers of attorney.
 - 240.18 Lack of authority to shift liability.
 - 240.19 Reservation of rights.
- Appendix A to Part 240—Optional Forms for Powers of Attorney and Their Application

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321, 3327, 3328, 3331, 3334, 3343, 3711, 3712, 3716, 3717; 332 U.S.C. 234 (1947); 318 U.S.C. 363 (1943).

General Provisions

§ 240.1 Scope of regulations.

(a) The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury based on claims arising from the breach of presentment guarantees by presenting banks and other indorsers of Treasury checks when checks bearing material defects or alterations or forged disbursing officer (drawer) signatures are presented for payment and are paid.

(b) Standards contained in this regulation supersede existing Federal common law to the extent that they are inconsistent with Federal common law rules relating to counterfeit checks.

Under the provisions of this regulation, the risk of loss on certain counterfeit checks is placed on presenting banks and other indorsers unless Treasury fails to timely reclaim on a check payment in accordance with 31 U.S.C. 3712(a) and § 240.8 of this regulation. Treasury will reclaim on counterfeit checks that are deemed paid under § 240.6(d) of this regulation when a

presenting bank or other indorser fails to make all reasonable efforts to ensure that a check is an authentic Treasury check.

(c) Nothing in this regulation supercedes the rights or obligations of Treasury or any other person that are set forth in Regulation CC, 12 CFR part 229, with respect to substitute checks, as defined therein.

§ 240.2 Definitions.

(a) *Administrative offset* or *offset*, for purposes of this section, has the same meaning as defined in 31 U.S.C. 3701(a)(1) and 31 CFR part 285.

(b) *Agency* means any agency, department, instrumentality, office, commission, board, service, or other establishment of the United States authorized to issue Treasury checks or for which checks drawn on the United States Treasury are issued.

(c) *Certifying agency* means an agency authorizing the issuance of a payment by a disbursing official in accordance with 31 U.S.C. 3325.

(d) *Check or checks* means an original check or checks; an electronic check or checks; or a substitute check or checks.

(e) *Check payment* means the amount paid to a presenting bank by a Federal Reserve Bank.

(f) *Counterfeit check* means a document that purports to be an authentic check drawn on the United States Treasury, but in fact is not an authentic check.

(g) *Days* means calendar days. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or Federal holiday; the first day is not included. For example, if a reclamation was issued on July 1, the 90 day protest period under § 240.9(b) would begin on July 2. If the 90th day fell on a Saturday, Sunday or Federal holiday, the protest would be accepted if received on the next business day.

(h) *Declination* means the process by which Treasury refuses to make final payment on a check, *i.e.*, declines payment, by instructing a Federal Reserve Bank to reverse its provisional credit to a presenting bank.

(i) *Declination date* means the date on which the declination is issued by Treasury.

(j) *Disbursing official* means an official, including an official of the Department of the Treasury, the Department of Defense, any Government corporation (as defined in 31 U.S.C. 9101), or any official of the United States designated by the Secretary of the Treasury, authorized to disburse public money pursuant to 31 U.S.C. 3321 or another law.

(k) *Drawer's signature* means the signature of a disbursing official placed on the front of a Treasury check as the drawer of the check.

(l) *Electronic check* means an electronic image of a check drawn on the United States Treasury, together with information describing that check, that meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars.

(m) *Federal Reserve Bank* means a Federal Reserve Bank (FRB) or a branch of a Federal Reserve Bank.

(n) *Federal Reserve Processing Center* means a Federal Reserve Bank center that images Treasury checks for archiving check information and transmitting such information to Treasury.

(o) *Financial institution* means:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(6) Any financial institution outside of the United States if it has been designated by the Secretary of the Treasury as a depository of public money and has been permitted to charge checks to the General Account of the United States Treasury.

(p) *First examination* means Treasury's initial review of a check that has been presented for payment. The

initial review procedures, which establish the authenticity and integrity of a check presented to Treasury for payment, may include reconciliation; retrieval and inspection of the check or the best available image thereof; and other procedures Treasury deems appropriate to specific circumstances.

(q) *Forged or unauthorized drawer's signature* means a drawer's signature that has been placed on the front of a Treasury check by a person other than:

(1) A disbursing official; or

(2) A person authorized to sign on behalf of a disbursing official.

(r) *Forged or unauthorized indorsement* means:

(1) An indorsement of the payee's name by another person who is not authorized to sign for the payee; or

(2) An indorsement of the payee's name made by another person who has been authorized by the payee, but who has not indorsed the check in accordance with § 240.4 and §§ 240.13 through 240.17; or

(3) An indorsement added by a financial institution where the financial institution had no authority to supply the indorsement; or

(4) A check bearing an altered payee name that is indorsed using the payee name as altered.

(s) *Guarantor* means a financial institution that presents a check for payment and any prior indorser(s) of a check.

(t) *Material defect or alteration* means:

(1) The counterfeiting of a check; or

(2) Any physical change on a check, including, but not limited to, a change in the amount, date, payee name, or other identifying information printed on the front or back of the check (but not including a forged or unauthorized drawer's signature); or

(3) Any forged or unauthorized indorsement appearing on the back of the check.

(u) *Minor* means the term minor as defined under applicable State law.

(v) *Monthly statement* means a statement prepared by Treasury which includes the following information regarding each outstanding reclamation:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest, penalties, and administrative costs.

(w) *Original check* means the first paper check drawn on the United States Treasury with respect to a particular payment transaction.

(x) *Payee* means the person that the certifying agency designated to receive payment pursuant to 31 U.S.C. 3528.

(y) *Person* means an individual, institution, including a financial

institution, or any other type of entity; the singular includes the plural.

(z) *Presenting bank* means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depository which is authorized to charge checks directly to Treasury's General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

(aa) *Provisional credit* means the initial credit provided to a presenting bank by a Federal Reserve Bank. Provisional credit may be reversed by Treasury until the completion of first examination or final payment is deemed made pursuant to § 240.6(d).

(bb) *Reasonable efforts* means, at a minimum, verifying the existence of the Treasury watermark on an original check. Based upon the facts at hand, including whether a check is an original check, a substitute check or an electronic check, reasonable efforts may require the verification of other security features.

(cc) *Reclamation* means a demand for the amount of a check for which Treasury has requested an immediate refund.

(dd) *Reclamation date* means the date on which a reclamation is issued by Treasury. Normally, demands are sent to presenting banks or other indorsers within two business days of the reclamation date.

(ee) *Reclamation debt* means the amount owed as a result of Treasury's demand for refund of a check payment, and includes interest, penalties and administrative costs assessed in accordance with § 240.8.

(ff) *Reclamation debtor* means a presenting bank or other indorser of a check from whom Treasury has demanded a refund in accordance with §§ 240.8 and 240.9. The reclamation debtor does not include a presenting bank or other indorser who may be liable for a reclamation debt, but from which Treasury has not demanded a refund.

(gg) *Recurring benefit payment* includes but is not limited to a payment of money for any Federal Government entitlement program or annuity.

(hh) *Substitute check* means a paper reproduction of a check drawn on the United States Treasury that meets the definitional requirements set forth at 12 CFR 229.2(aaa).

(ii) *Treasury* means the United States Department of the Treasury, or when authorized, an agent designated by the Secretary of the Treasury or his delegee.

(jj) *Treasury Check Offset* means the collection of an amount owed by a presenting bank in accordance with 31 U.S.C. 3712(e).

(kk) *Truncate* means to remove a paper check from the forward collection or return process and send to a recipient, in lieu of such paper check, a substitute check or an electronic check.

(ll) *U.S. securities* means securities of the United States and securities of Federal agencies and Government corporations for which Treasury acts as the transfer agent.

(mm) *Writing* includes electronic communications when specifically authorized by Treasury in implementing instructions.

§ 240.3 Electronic checks and substitute checks.

(a) *Legal equivalence of electronic checks.* An electronic check for which a presenting bank has provided the guarantees described in § 240.4 is the legal equivalent of an original or substitute check for purposes of this part if the electronic check accurately represents all of the information on the front and back of the check that the presenting bank truncated. If a financial institution presents an electronic check for payment and the check is subject to return, Treasury may effect the return using an electronic check, but this part does not create any right for the presenting bank to return the check to the payee or any other person using an electronic check.

(b) *Safekeeping of original checks.* Any financial institution that creates a substitute check or electronic check shall prevent unauthorized access to the original or substitute check that was truncated by storing the check, until it is destroyed, in a manner consistent with federal banking agency guidelines for safeguarding customer information.

§ 240.4 Presentment guarantees.

The guarantors of a check presented to the Treasury for payment are deemed to guarantee to the Treasury all of the following:

(a) *Indorsements.* That all prior indorsements are genuine, whether or not an express guarantee is placed on the check. When the first indorsement has been made by one other than the payee personally, the presenting bank and the indorsers are deemed to guarantee to the Treasury, in addition to other guarantees, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

(b) *Alterations.* That the check has not been materially altered.

(c) *Drawer's signature.* That the guarantors have no knowledge that the signature of the drawer is forged or unauthorized.

(d) *Authenticity.* That the guarantors have made all reasonable efforts to ensure that a check is an authentic Treasury check, not a counterfeit check.

(e) *Electronic check.* If the check is an electronic check, that—

(1) The check accurately represents all of the information on the front and back of the original or substitute check that was truncated and meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars;

(2) Treasury will not receive presentment of, or otherwise be charged for, the electronic check, the original check, or a substitute check (or a paper or electronic reproduction of any of the foregoing) such that Treasury will be asked to make payment based on a check it already has paid; and

(3) Treasury's receipt of the electronic check instead of the original or substitute check will not result in the loss of Treasury's ability to determine whether the check contains a material defect or alteration.

(f) *Substitute check.* If the check is a substitute check, that the guarantors make the warranties set forth at 12 CFR 229.52(a)(1) and (2) and the indemnity set forth at 12 CFR 229.53.

§ 240.5 Limitations on payment; cancellation and distribution of proceeds of checks.

(a) *Limitations on payment.*

(1) Treasury shall not be required to pay any check that is not negotiated to a financial institution within 12 months after the date on which the check was issued.

(2) All checks shall bear a legend, stating "Void After One Year." The legend is notice to payees and indorsers of a general limitation on the payment of checks. The legend, or the inadvertent lack thereof, does not limit, or otherwise affect, the rights of Treasury under the law.

(b) *Cancellation and distribution of proceeds of checks.*

(1) Any check that has not been paid and remains outstanding for more than 12 months after the issue date will be canceled by Treasury.

(2) The proceeds from checks canceled pursuant to paragraph (b)(1) of this section will be returned to the payment certifying or authorizing agency for ultimate credit to the appropriation or fund account initially charged for the payment.

(3) On a monthly basis, Treasury will provide to each agency that authorizes

the issuance of checks a list of those checks issued for such agency which were canceled during the preceding month pursuant to paragraph (b)(1) of this section.

§ 240.6 Provisional credit; first examination; declination; final payment.

(a) Any credit issued by a Federal Reserve Bank to a financial institution shall be a provisional credit until Treasury completes first examination of the check, or as provided in paragraph (d) of this section.

(b) Treasury shall have the right as a drawee to complete first examination of checks presented for payment, to reconcile checks, and, when appropriate, to make a declination on any check.

(c) Treasury will decline payment on a check when first examination by Treasury establishes that:

(1) The check has a material defect or alteration;

(2) The check bears a forged or unauthorized drawer's signature;

(3) Treasury has already received presentment of, and made payment on, a substitute check, electronic check or original check relating to the check being presented, such that Treasury is being requested to make payment on a check it has already paid;

(4) In the case of an electronic check, Treasury cannot determine whether the check contains a material defect or alteration without examining the original check or a better quality image of the check and Treasury is on notice of a question of law or fact about whether the check is properly payable; or

(5) In the case of a substitute check, Treasury has a warranty or indemnity claim arising under 12 CFR 229.52 or 229.53.

(d) Treasury shall have a reasonable amount of time to complete first examination. However, except as provided in paragraph (e) of this section, if Treasury has not declined payment on a check within 60 days after the check is presented to a Federal Reserve Processing Center for payment, Treasury will be deemed to have made final payment on the check.

(e) Notwithstanding the provisions of paragraph (d) of this section, in accordance with 31 U.S.C. 3328(a)(2), if, upon presentment for payment, Treasury is on notice of a question of law or fact about whether a check is properly payable, Treasury may defer final payment until the question is settled.

(f) If a Federal Reserve Bank debits a financial institution's reserve account as a result of an erroneous declination,

Treasury will promptly refund the amount of the payment.

§ 240.7 Declination protest.

(a) *Who may protest.* Only a presenting bank may protest the declination of a check that it has presented to a Federal Reserve Bank for payment.

(b) *Basis for protest.* Where Treasury, in accordance with § 240.6, has made a declination of a check presented for payment and a Federal Reserve Bank has reversed its provisional credit to the presenting bank, the presenting bank may file a protest challenging the factual basis for such declination. Protests may be filed challenging the following determinations:

(1) *Counterfeit checks.* The presenting bank may offer evidence that the check is not a counterfeit.

(2) *Altered checks.* The presenting bank may offer evidence that the check is not altered.

(3) *Checks bearing forged or unauthorized drawer's signatures.* The presenting bank may offer evidence that the drawer's signature was authentic or was authorized.

(4) *Checks bearing a forged or unauthorized indorsement.* The presenting bank may offer evidence that an indorsement on the back of the check was not forged or was otherwise authorized in accordance with the requirements of §§ 240.13 through 240.17.

(5) *Prior presentment.* The presenting bank may offer evidence that the check or a paper or electronic representation thereof has not already been presented to, and paid by, Treasury.

(6) *Adequacy of substitute check or electronic check.* The presenting bank may offer an original check or a copy of the check that is sufficient to support a determination that the check does not contain a material defect or alteration.

(c) *Procedures for filing a protest.* A declination protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Branch Manager, Financial Processing Division, Check Reconciliation Branch, Room 700-A, 3700 East-West Highway, Hyattsville, MD 20782, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>. Treasury will not consider any protest unless it is received within 90 days from the declination date.

(d) *Review of a declination protest.* The Director, Financial Processing Division, or an authorized designee, will make every effort to decide any protest properly submitted under this section

within 60 days, and will notify the presenting bank of Treasury's decision. In those cases where it is not possible to render a decision within 60 days, the Director, Financial Processing Division, or an authorized designee, will notify the presenting bank of the delay. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the decision to deny payment of a check under § 240.6 of this part.

(1) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has met, by a preponderance of the evidence, the criteria in paragraph (b) of this section, Treasury will reverse its decision to decline payment on the check by directing a Federal Reserve Bank to provide credit in the amount of the check to the presenting bank.

(2) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has failed to meet, by a preponderance of the evidence, the criteria in paragraph (b) of this section, the declination will not be reversed.

§ 240.8 Reclamation of amounts of paid checks.

(a) If, after making final payment in accordance with § 240.6, Treasury determines that any guarantor has breached a presentment guarantee listed in § 240.4, the guarantor shall be liable to Treasury for the full amount of the check payment. Treasury may reclaim the amount of the check payment from any such guarantor prior to:

(1) The end of the 1-year period beginning on the date that a check is processed for payment by a Federal Reserve Processing Center; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (a)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the certifying agency.

(b) Treasury will not reclaim on a check that bears a forged or unauthorized drawer's signature unless it has evidence that the reclamation debtor had knowledge of the forged or unauthorized drawer's signature.

(c) Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic check and not a counterfeit check. Guidance on the key security features found on U.S. Treasury checks is available on the FMS website at: http://www.fms.treas.gov/checkclaims/check_security_new.pdf. Institutions

may contact the FMS Questioned Documents Branch at (202) 874-7640 for additional information about these security features or to request training.

(d) Reclamation debts are due to be paid upon receipt of the reclamation by the reclamation debtor. Interest, penalties, and administrative costs associated with unpaid balances will accrue as follows:

(1) *Interest.* Treasury will assess interest on the unpaid principal of the reclamation debt beginning on the 61st day following the reclamation date, and will calculate interest based on the rate published annually by Treasury in accordance with 31 U.S.C. 3717. Interest will continue to accrue until the full amount of the reclamation is paid or Treasury determines that payment is not required.

(2) *Penalties.* Treasury will assess a penalty beginning on the 91st day following the reclamation date. The penalty will be assessed in accordance with 31 U.S.C. 3717 on the unpaid principal of the reclamation debt, and will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(3) *Administrative costs.* Treasury will assess administrative costs associated with the unpaid reclamation debt beginning on the 61st day following the reclamation date. Administrative costs will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(e) If Treasury is unable to fully collect a reclamation debt from a reclamation debtor, after pursuing all appropriate means of collection (including, but not limited to, administrative offset in accordance with § 240.10 and Treasury Check Offset in accordance with § 240.11), Treasury will discharge the unpaid reclamation debt. See 31 CFR 903.5 (Discharge of indebtedness; reporting requirements). Treasury or the certifying agency will report the amount of the unpaid reclamation debt to the Internal Revenue Service in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1.

§ 240.9 Reclamation procedures; reclamation protests.

(a) *Reclamation procedures.* (1) Treasury will send a "REQUEST FOR REFUND (CHECK RECLAMATION)" to the reclamation debtor in accordance with § 240.8(a). This request will advise the reclamation debtor of the amount demanded and the reason for the demand. Treasury will make follow-up demands by sending at least three

monthly statements to the reclamation debtor. Monthly statements will identify any unpaid reclamation debts (as defined at § 240.2) and will contain or be accompanied by notice to the reclamation debtor that:

(i) If the reclamation debt is not paid within 120 days of the reclamation date, Treasury intends to collect the debt through administrative offset in accordance with § 240.10;

(ii) If the administrative offset is unsuccessful, Treasury intends to collect the debt through Treasury Check Offset in accordance with § 240.11;

(iii) The reclamation debtor has an opportunity to inspect and copy Treasury's records with respect to the reclamation debt;

(iv) The reclamation debtor may, by filing a protest in accordance with § 240.9(b), request Treasury to review its decision that the reclamation debtor is liable for the reclamation debt; and

(v) The reclamation debtor has an opportunity to enter into a written agreement with Treasury for the repayment of the reclamation debt. A request for a repayment agreement must be accompanied by documentary proof that satisfies Treasury that the reclamation debtor is unable to repay the entire amount owed when due.

(2) Requests by a reclamation debtor for an appointment to inspect and copy Treasury's records with respect to a reclamation debt and requests to enter into repayment agreements must be sent in writing to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>.

(3) If a reclamation debt remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the reclamation debt, the monthly statement will be annotated with a notice that the reclamation debtor has until the next billing date to make payment on the reclamation debt or Treasury will proceed to collect the reclamation debt through offset in accordance with § 240.10 and Treasury Check Offset in accordance with § 240.11.

(4) If Treasury determines that a reclamation has been made in error, Treasury will abandon the reclamation. If Treasury already has collected the amount of the reclamation from the reclamation debtor, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either

by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(b) *Reclamation protests.* (1) *Who may protest.* Only a reclamation debtor may protest a reclamation.

(2) *Basis for protest.* Where Treasury, in accordance with § 240.8 and paragraph (a) of this section, reclaims the amount of a check payment, the reclamation debtor may file a protest challenging such reclamation. Protests may be filed challenging the following determinations:

(i) *Counterfeit checks.* The reclamation debtor may offer evidence that it made all reasonable efforts to ensure that a check is authentic. The reclamation debtor must include evidence that the check was examined for a watermark as required under §§ 240.2(bb) and 240.4. Depending on the circumstances, FMS may require evidence that the reclamation debtor also examined the check for evidence of additional security features as described in guidance provided by Treasury or on Treasury's behalf.

(ii) *Altered checks.* The reclamation debtor may offer evidence that the check is not altered.

(iii) *Checks bearing forged or unauthorized drawer's signatures.* The reclamation debtor may offer evidence that the reclamation debtor did not have knowledge of the forged or unauthorized drawer's signature.

(iv) *Checks bearing a forged or unauthorized indorsement.* The reclamation debtor may offer evidence that the indorsement was not forged or was otherwise authorized in accordance with the requirements of §§ 240.13 through 240.17.

(v) *Prior presentment.* The presenting bank may offer evidence that the check or a paper or electronic representation thereof has not already been presented to, and paid by, Treasury.

(vi) *Adequacy of substitute check or electronic check.* The presenting bank may offer an original check or a copy of the check that is sufficient to support a determination that the check does not contain a material defect or alteration.

(3) *Procedures for filing a protest.* A reclamation protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, P.O. Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>.

(i) The reclamation protest must include supporting documentation (including, but not limited to, affidavits, account agreements, and signature cards) for the purpose of establishing that the reclamation debtor is not liable for the reclamation debt.

(ii) Treasury will not consider reclamation protests received more than 90 days after the reclamation date.

(iii) Treasury may, at its discretion, consider information received from a guarantor other than the reclamation debtor. However, in so doing, Treasury does not waive any of its rights under this part, nor does Treasury grant rights to any guarantor that are not otherwise provided in this part.

(4) *Review of a reclamation protest.* The Director, Financial Processing Division, or an authorized designee, will make every effort to decide any protest properly submitted under this section within 60 days, and will notify the reclamation debtor of Treasury's decision. In those cases where it is not possible to render a decision within 60 days, the Director, Financial Processing Division, or an authorized designee, will notify the reclamation debtor of the delay. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the process of making determinations under § 240.8(a) of this part or sending a "REQUEST FOR REFUND (CHECK RECLAMATION)" under § 240.9(a) of this part.

(i) Treasury will refrain from the collection activities identified in §§ 240.10 and 240.11 while a timely protest is being considered. However, interest, penalties, and administrative costs will continue to accrue and will be added to the reclamation debt until a final determination on the protest has been made.

(ii) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the reclamation debtor has met, by a preponderance of the evidence, the criteria in paragraph (b)(2) of this section, Treasury will notify the reclamation debtor, in writing, of his or her decision to terminate collection and will refund any amounts previously collected for the reclamation debt. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(iii) If the Director, Financial Processing Division, or an authorized designee, finds, by a preponderance of the evidence, that the reclamation

debtor is liable for the reclamation debt, Treasury will notify the reclamation debtor, in writing, of his or her decision. If the reclamation debtor has not paid the reclamation in full, the reclamation debtor must pay any outstanding amounts in full within 30 days from the date of Treasury's decision. If the reclamation debtor fails to pay the reclamation debt in full within that time frame, Treasury will proceed to collect the reclamation debt through offset in accordance with §§ 240.10 and 240.11.

(5) *Effect of protest decision.* The notice provided to the reclamation debtor under paragraph (b)(4)(iii) of this section 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 reclamation debtor has filed a protest under this section, and Treasury has provided notice of its final determination.

§ 240.10 Offset.

(a) If a reclamation debt remains unpaid for 120 days after the reclamation date, Treasury will refer the reclamation debt, if eligible, to Treasury's centralized offset program (see 31 CFR part 285) or another Federal agency for offset in accordance with 31 U.S.C. 3716. Prior to making a referral for offset, Treasury, in accordance with § 240.9(a)(3), will send at least one monthly statement to the reclamation debtor informing the reclamation debtor that Treasury intends to collect the reclamation debt by administrative offset and Treasury Check Offset.

(b) If a reclamation debtor wishes to make payment on a reclamation debt referred for offset, the reclamation debtor should contact Treasury at the address listed in § 240.9(b) to resolve the debt and avoid offset.

(c) If Treasury is unable to collect a reclamation debt by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the reclamation debtor as may be necessary to protect the interests of the United States, including, but not limited to, Treasury Check Offset in accordance with § 240.11, or referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the reclamation debtor already had paid the amount of the reclamation debt, or that a reclamation debtor which had timely filed a protest was not liable for the amount of the reclamation, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the

reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

§ 240.11 Treasury Check Offset.

(a) If Treasury is unable to effect collection pursuant to §§ 240.8, 240.9, or 240.10, of this part, Treasury will collect the amount of the reclamation debt through Treasury Check Offset. Treasury Check Offset occurs when, at the direction of the Treasury, a Federal Reserve Bank withholds, that is, offsets, credit from a presenting bank. The amount of credit offset is applied to the reclamation debt owed by the presenting bank. By presenting Treasury checks for payment, the presenting bank is deemed to authorize Treasury Check Offset.

(b) If Treasury effects offset under this section and it is later determined that the presenting bank paid the reclamation debt in full, or that a presenting bank was not liable for the amount of the reclamation debt, Treasury will promptly refund to the presenting bank the amount of its overpayment. Treasury may refund the amount either by applying the amount to another reclamation debt in accordance with this part or other applicable law, or by returning the amount to the presenting bank.

(c) Treasury Check Offset is used for the purpose of collecting debt owed by a presenting bank to the Federal Government. As a consequence, presenting banks shall not be able to use the fact that Treasury checks have not been paid as the basis for a claim against Treasury, a Federal Reserve Bank, or other persons or entities, including payees or other indorsers of checks, for the amount of the credit offset pursuant to 31 U.S.C. 3712(e) and this section.

(d) This section does not apply to a claim based upon a reclamation that has been outstanding for more than 10 years from the date of delinquency.

§ 240.12 Processing of checks.

(a) Federal Reserve Banks. (1) Federal Reserve Banks must cash checks for Government disbursing officials when such checks are drawn by the disbursing officials to their own order, except that payment of such checks must be refused if:

- (i) A check bears a material defect or alteration;
- (ii) A check was issued more than one year prior to the date of presentment; or
- (iii) The Federal Reserve Bank has been notified by Treasury, in accordance with § 240.15(c), that a check was issued to a deceased payee.

(2) Federal Reserve Banks are not required to cash checks presented directly to them by the general public.

(3) As a depository of public funds, each Federal Reserve Bank shall:

(i) Receive checks from its member banks, nonmember clearing banks, or other depositors, when indorsed by such banks or depositors who guarantee all prior indorsements thereon;

(ii) Give immediate provisional credit therefore in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the General Account of the United States Treasury, subject to first examination and payment by Treasury;

(iii) Forward payment records and requested checks to Treasury; and

(iv) Release the original checks and substitute checks to a designated Regional Records Services Facility upon notification from Treasury.

(4) If a check is to be declined under § 240.6, Treasury will provide the Federal Reserve Bank with notice of declination upon the completion of first examination. Federal Reserve Banks must give immediate credit therefor to Treasury's General Account, thereby reversing the previous charge to the General Account for such check.

(5) Treasury authorizes each Federal Reserve Bank to release a copy of the check to the presenting bank when payment is declined.

(b) *Treasury General Account (TGA) designated depositories outside the United States.* (1) Financial institutions outside the United States designated by Treasury as depositories of public money in accordance with 31 U.S.C. 3303 and permitted to charge checks to the General Account of the United States Treasury in accordance with Treasury implementing instructions shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and are, as presenting banks, subject to the provisions of §§ 240.4, 240.8, and 240.9.

(2) If a check is to be declined under § 240.6, Treasury will provide the presenting bank with notice of declination upon the completion of first examination and will provide the presenting bank with a copy or image of the check. Such presenting bank must give immediate credit therefore to the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check. Treasury authorizes the designated Federal Reserve Bank to return to such presenting bank the original check when payment is declined in accordance with § 240.5(a) or § 240.15(c).

(3) To ensure complete recovery of the amount due, reclamation refunds require payment in United States dollars with checks drawn on or payable through United States financial institutions located in the United States. Reclamation refunds initiated by financial institutions outside of the United States must be sent through their headquarters or U.S. correspondent financial institution only. The payments should be accompanied by documentation identifying the check that was the subject of the reclamation (such as a copy of the reclamation notice or the current monthly statement). Reclamation refunds shall not be deposited to Treasury's General Account.

(4) Additional information relating to designated depositories outside the United States may be found in Volume VI, Chapter 2000, of the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>.

Indorsement of Checks

§ 240.13 Indorsement by payees.

(a) *General requirements.* Checks shall be indorsed by the named payee or by another on behalf of such named payee as set forth in this part.

(b) *Acceptable indorsements.* (1) A check is properly indorsed when:

(i) The check is indorsed by the payee in a form recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(ii) The check is indorsed by another on behalf of the named payee, and sufficiently indicates that the indorser has indorsed the check on behalf of the payee pursuant to authority expressly conferred by or under law or other regulation. An example would be: "John Jones by Mary Jones." This example states the minimum indication acceptable. However, §§ 240.14, 240.15, and 240.17(f) specify the addition of an indication in specified situations of the actual capacity in which the person other than the named payee is indorsing.

(iii) Absent a signature, the check is indorsed "for collection" or "for deposit only to the credit of the within named payee or payees." The presenting bank shall be deemed to guarantee good title to checks without signatures to all subsequent indorsers and to Treasury.

(iv) The check is indorsed by a financial institution under the payee's authorization.

(2) *Indorsement of checks by a duly authorized fiduciary or representative.* The individual or institution accepting a check from a person other than the

named payee is responsible for determining whether such person is authorized and has the capacity to indorse and negotiate the check. Evidence of the basis for such a determination may be required by Treasury in the event of a dispute.

(3) *Indorsement of checks by a financial institution under the payee's authorization.* When a check is credited by a financial institution to the payee's account under the payee's authorization, the financial institution may use an indorsement substantially as follows: "Credit to the account of the within-named payee in accordance with the payee's instructions. XYZ [Name of financial institution]." A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is acting as an attorney-in-fact for the payee, under the payee's authorization, and that this authority is currently in force and has neither lapsed nor been revoked either in fact or by the death or incapacity of the payee.

(4) *Indorsement of checks drawn in favor of financial institutions.* All checks drawn in favor of a financial institution, for credit to the account of a person designating payment so to be made, must be indorsed in the name of the financial institution as payee in the usual manner. However, no check drawn in favor of a financial institution for credit to the account of a payee may be negotiated by the financial institution after the death of the payee.

(c) *Unacceptable indorsements.* (1) A check is not properly indorsed when the check is signed or otherwise is indorsed by a person without the payee's consent or authorization.

(2) Failure to include the signature of the person signing the check as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsement is a forgery and is unacceptable.

(3) Failure to include sufficient indication of the indorser's authority to act on behalf of the payee as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsing person is not authorized to indorse a check for the payee.

§ 240.14 Checks issued to incompetent payees.

(a) *Handling of checks when a guardian or other fiduciary has been appointed.* (1) A guardian appointed in accordance with applicable State law, or a fiduciary appointed in accordance with other applicable law, may indorse checks issued for the following classes of payments the right to which under

law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) A guardian or other fiduciary indorsing any such check on behalf of an incompetent payee, must include, as part of the indorsement, an indication of the capacity in which the guardian or fiduciary is indorsing. An example would be: "John Jones by Mary Jones, guardian of John Jones."

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without submission of documentary proof of the authority of the guardian or other fiduciary, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) A guardian or other fiduciary may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. When a check other than one specified in paragraph (a)(1) of this section is received by a guardian or other fiduciary, the check must be returned to the certifying agency with information as to the incompetence of the payee and documentary evidence showing the appointment of the guardian or other fiduciary in order that a replacement check, and future checks, may be drawn in favor of the guardian or other fiduciary.

(b) *Handling of checks when a guardian or other fiduciary has not been appointed.* If a guardian or other fiduciary has not been appointed, all checks issued to an incompetent payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of certain checks by an attorney-in-fact.* Notwithstanding paragraph (a)(2) of this section, if a check was issued for a class of payments the right to which under law terminates upon the death of the beneficiary, such as a recurring benefit payment or annuity, the check may be negotiated under a durable special power of attorney or springing durable special power of attorney subject to the restrictions enumerated in § 240.17. After the end of the six-month period provided in §§ 240.17(d) and (e), such checks must be handled in accordance with paragraph (a)(2) of this section.

§ 240.15 Checks issued to deceased payees.

(a) *Handling of checks when an executor or administrator has been appointed.*

(1) An executor or administrator of an estate that has been appointed in accordance with applicable State law may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) An executor or administrator indorsing any such check must include, as part of the indorsement, an indication of the capacity in which the executor or administrator is indorsing. An example would be: "John Jones by Mary Jones, executor of the estate of John Jones."

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without the submission of documentary proof of the authority of the executor or administrator, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) An executor or administrator of an estate may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. Other checks, such as recurring benefit payments and annuity payments, may not be negotiated after the death of the payee. Such checks must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(b) *Handling of checks when an executor or administrator has not been appointed.* If an executor or administrator has not been appointed, all checks issued to a deceased payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of checks when a certifying agency learns, after the issuance of a recurring benefit payment check, that the payee died prior to the date of issuance.* (1) A recurring benefit payment check, issued after a payee's death, is not payable. As a consequence, when a certifying agency learns that a payee has died, the certifying agency must give immediate notice to Treasury, as prescribed at Volume I, Part 4, Chapter 7000 of the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>. Upon receipt of such notice from a certifying agency,

Treasury will instruct the Federal Reserve Bank to refuse payment of the check upon presentment. Upon receipt of such instruction from Treasury, the Federal Reserve Bank will make every appropriate effort to intercept the check. If the check is successfully intercepted, the Federal Reserve Bank will refuse payment, and will return the check unpaid to the presenting bank with an annotation that the payee is deceased. If a financial institution learns that a date of death triggering action under this section is erroneous, the financial institution must advise the payee to contact the payment certifying agency.

(2) Nothing in this section shall limit the right of Treasury to institute reclamation proceedings under the provisions of §§ 240.8 and 240.9 with respect to a check issued to a deceased payee that has been negotiated and paid over a forged or unauthorized indorsement.

§ 240.16 Checks issued to minor payees.

(a) Checks in payment of principal and/or interest on U.S. securities that are issued to minors may be indorsed by:

(1) Either parent with whom the minor resides; or

(2) If the minor does not reside with either parent, by the person who furnishes the minor's chief support.

(b) The parent or other person indorsing on behalf of the minor must present with the check the indorser's signed statement giving the minor's age, and stating that the payee either resides with the parent or receives his or her chief support from the person indorsing on the minor's behalf and that the proceeds of the check will be used for the minor's benefit.

§ 240.17 Powers of attorney.

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed in accordance with applicable State or Federal law after the issuance of the check and describing the check in full (check serial and symbol numbers, date of issue, amount, and name of payee).

(b) *General powers of attorney.* Checks may be negotiated under a general power of attorney executed, in accordance with applicable State or Federal law, in favor of a person for the following classes of payments:

(1) Payments for the redemption of currencies or for principal and/or interest on U.S. securities;

(2) Payments for tax refunds, but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(c); and

(3) Payments for goods and services.

(c) *Special powers of attorney.* Checks issued for classes of payments other than those specified in paragraph (b) of this section, such as a recurring benefit payment, may be negotiated under a special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person.

(d) *Durable special powers of attorney.* A durable special power of attorney is a special power of attorney that continues despite the principal's later incompetency, and is created by the principal's use of words explicitly stating such intent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, durable special powers of attorney are effective only during the six-month period following a determination that the named payee is incompetent.

(e) *Springing durable special powers of attorney.* A springing durable special power of attorney is similar to a durable power of attorney except that its terms do not become effective until the principal's subsequent incompetence. As with a durable special power of attorney, a springing durable special power of attorney is created by the principal's use of language explicitly stating that its terms become effective at such time as the principal is determined to be incompetent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a springing durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the springing durable special power of attorney is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, springing durable special powers of attorney are

effective only during the six-month period following a determination that the named payee is incompetent.

(f) *Proof of authority.* Checks indorsed by an attorney-in-fact must include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: "John Jones by Paul Smith, attorney-in-fact for John Jones." Such checks when presented for payment by a financial institution, will be paid by Treasury without the submission of documentary proof of the claimed authority, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(g) *Revocation of powers of attorney.* Notwithstanding any other law, for purposes of negotiating Treasury checks, all powers of attorney are deemed revoked by the death of the principal and may also be deemed revoked by notice from the principal to the parties known, or reasonably expected, to be acting on the power of attorney.

(h) *Optional use forms.* Optional use power of attorney forms are listed in the appendix to this part. These forms are available on the FMS website at: <http://www.fms.treas.gov/checkclaims/regulations.html>.

§ 240.18 Lack of authority to shift liability.

(a) This part neither authorizes nor directs a financial institution to debit the account of any person or to deposit any funds from any account into a suspense account or escrow account or the equivalent. Nothing in this part shall be construed to affect a financial institution's contract with its depositor(s) under authority of state law.

(b) A financial institution's liability under this part is not affected by any action taken by it to recover from any person the amount of the financial institution's liability to the Treasury.

§ 240.19 Reservation of rights.

The Secretary of the Treasury reserves the right, in the Secretary's discretion, to waive any provision(s) of this regulation not otherwise required by law.

Appendix A to Part 240—Optional Forms for Powers of Attorney and Their Application

FMS Form 231—General Power of Attorney (Individual). This general power of attorney form may be executed by an individual, unincorporated partnership, or sole owner, for checks drawn on the United States Treasury, in payment: (1) For redemption of currencies or for principal or interest on U.S. securities; (2) for tax refunds; and (3) for goods and services.

FMS Form 232—Specific Power of Attorney (Individual). This specific power of attorney form may be executed by an individual, unincorporated partnership, or sole owner to authorize the indorsement of any class of check drawn on the United States Treasury. To be valid, the form must be executed after the issuance of the check and must describe the check in full, including the check serial and symbol numbers, date of issue, amount, and name of the payee.

FMS Form 233—Special Power of Attorney (Individual). This special power of attorney form may be executed by an individual, unincorporated partnership, or sole owner, to authorize the indorsement of payments other than those listed under FMS Form 231, such as recurring benefit payments. It may name any person (as the term person is defined in 31 CFR part 240) as attorney-in-fact, but must describe the purpose for which the checks are issued and recite that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. A special power of attorney is not effective for purposes of negotiating checks issued after the payee is determined to be incompetent, unless the payee has indicated that the special power of attorney is to: (1) Remain effective following a determination that the principal is incompetent (a durable special power of attorney); or (2) become effective following a determination that the principal is incompetent (a springing durable special

power of attorney). In no instance may a special power of attorney be used as the basis for negotiation of a check drawn on the United States Treasury more than six months after a determination that the principal is incompetent.

FMS Form 234—Specific Power of Attorney (Corporation). This general power of attorney form may be executed by a corporation to authorize the indorsement by an attorney-in-fact for the classes of payments listed under FMS Form 231. When authority is given to an officer of the corporation to execute a power of attorney authorizing a third person to indorse and collect checks drawn on the United States Treasury in the name of the corporation, the power of attorney on FMS Form 234 should be accompanied by FMS Form 235 (Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States), executed by the officer authorized herein to execute such a power.

FMS Form 236—Specific Power of Attorney (Corporation). This specific power of attorney form may be executed by a corporation to authorize the indorsement by an attorney-in-fact of any class of check drawn on the United States Treasury. To be valid, the form must be executed after the issuance of the check and must describe the check in full, including the check serial and symbol numbers, date of issue, amount, and name of the payee. When authority is given to an officer of the corporation to execute a power of attorney authorizing a third person to indorse and collect checks drawn on the United States Treasury in the name of the corporation, the power of attorney on FMS Form 236 should be accompanied by FMS Form 235 (Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States), executed by the officer authorized herein to execute such a power.

Dated: October 12, 2004.

Richard L. Gregg,
Commissioner.

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