

Dated: September 6, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 240

RIN 1510-AA45

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This rule revises 31 CFR Part 240, which governs the indorsement and payment of checks drawn on the United States Treasury. The changes are intended both to fix the time by which Treasury can decline payment on Treasury checks and to provide financial institutions with a date certain for final payment. These rules also provide greater clarity by defining previously undefined terms and by ensuring symmetry with current Treasury regulations governing Federal payments utilizing the automated clearing house method. This rule also provides that Treasury may instruct Federal Reserve Banks to intercept and return, unpaid, benefit payment checks issued to deceased payees. These proposed revisions are issued in response to concerns raised by financial institutions, Federal agencies, and other affected parties.

DATES: Comments must be submitted on or before November 6, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ronald Brooks, Senior Program Analyst, Financial Processing Division, Financial Management Service, Prince Georges Center II Building, 3700 East-West Highway, Room 725-D, Hyattsville, Maryland 20782. Comments may be faxed to (202) 874-7534.

FOR FURTHER INFORMATION CONTACT: Ronald Brooks, (202) 874-7620 (Senior Program Analyst, Financial Processing Division); Paul M. Curran, (202) 874-6680 (Principal Attorney).

SUPPLEMENTARY INFORMATION:

Limitations on Payment

The current regulation provides that Treasury shall have the right to conduct first examination of Treasury checks

presented for payment, and to refuse payment of any checks within a reasonable time. The current regulation also provides that such checks shall be deemed paid only upon Treasury's completion of first examination. The proposed rule clarifies this in two ways.

First, it defines first examination, and defines material defects or alterations as including counterfeit checks. These definitions are consistent with Treasury's longstanding interpretation of these terms.

Second, it fixes the time by which Treasury must complete first examination, and provides that if Treasury fails to do so within 150 days, the check will be deemed paid. This change narrows the time by which Treasury must complete first examination since Treasury interprets the current regulation as affording up to one year for first examination. This proposed change is intended to accommodate financial institutions which seek not only a more compressed time frame for first examination but also a date certain for final payment of Treasury checks.

While Treasury will, in most cases, complete first examination within 30 days of presentment of a Treasury check to a Federal Reserve Bank, the 150 day maximum period affords Treasury sufficient time to complete first examination in certain problem cases. For example, up to 150 days may be required in instances where there are delays in Treasury's obtaining from check certifying or authorizing agencies the payment issue tapes necessary to complete first examination.

Recovery by Bank From Depositors

The proposed rule clarifies that the regulations contained in this part neither authorize nor direct any financial institution to debit the account of any depositor. It further clarifies that any financial institution's right of recovery against depositors is derived from both the depository contracts with its customers and any self-help remedies authorized by State law governing the relationship between financial institutions and their customers. This provision mirrors the regulations codified in 31 CFR Part 210, which pertains to "Federal Payments Through Financial Institutions By the Automated Clearing House Method."

Deceased Payee Check Intercepts

Currently, where a benefit payment check has been issued and negotiated after a payee's death, Treasury generally recovers the funds from financial institutions through the reclamation process. Financial institutions have

expressed dissatisfaction with these procedures because Treasury reclamation actions only occur after final payment and because in many instances the depositors have closed their accounts or withdrawn most or all of the funds. These financial institutions seek a process by which Treasury can intercept such checks upon presentment and return such checks unpaid before the financial institutions are required under Federal Reserve Regulation CC (12 C.F.R. Part 229) to make funds permanently available to their depositors. This proposed rule responds to those concerns, and should result in a lower volume of payments to nonentitled payees.

Specifically, it clarifies that benefit payment checks issued after a payee's death are not payable. It also sets forth procedures by which Treasury will instruct the Federal Reserve to intercept such checks upon presentment and return unpaid those checks which are successfully intercepted to the depository banks.

Rulemaking Analysis

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small business entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

These regulations impose time frames within which final payment of Treasury checks must be accomplished, and establish consequences for the failure of Treasury to honor those time frames. Consequently, these regulations provide financial institutions with greater certainty regarding the entire payment process, and place higher standards of performance on Treasury in its processing of checks.

The other principal provision of these regulations will reduce the likelihood that final payment on Treasury checks will be made to nonentitled persons. Treasury's efficiency and its ability to serve the needs of legitimate payees of benefit programs will thereby be enhanced.

Notice and Comment

Public Comment is solicited on all aspects of this proposed regulation. Treasury will consider all comments made on the substance of this proposed regulation, but does not intend to hold hearings.

List of Subjects in 31 CFR Part 240

Checks, Counterfeit Checks, Forgery, Banks, Banking, Guarantees, Federal Reserve System.

For the reasons set out in the preamble, 31 CFR Part 240 is proposed to be amended as follows.

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

1. The authority citation for part 240 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321; 31 U.S.C. 3328; 31 U.S.C. 3331; 31 U.S.C. 3334; 31 U.S.C. 3343; 31 U.S.C. 3711; 31 U.S.C. 3712; 31 U.S.C. 3716; 31 U.S.C. 3717.

2. Section 240.2 is revised to read as follows:

§ 240.2 Definitions.

(a) *Agency* means any 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 Treasury of the United States are issued.

(b) *Bank* means any financial institution, including but not limited to, any savings bank, national bank, trust company, state bank, and credit union created under Federal or state law.

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

(d) *Certifying agency* means an agency authorizing the issuance of a Treasury payment by a Treasury disbursing officer or a non-Treasury disbursing officer in accordance with 31 U.S.C. 3325.

(e) *Check* means a draft or an order to pay drawn on the United States Treasury.

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

(g) *Commissioner* means the Commissioner of the Financial Management Service, Department of the Treasury.

(h) *Days* means calendar days.

(i) *Decline payment* means the process whereby Treasury refuses to make final payment on a check by instructing the Federal Reserve Bank to reverse its provisional credit to a presenting bank.

(j) *Federal Reserve Bank* means a Federal Reserve Bank and its branches.

(k) *Financial institution* means any bank, including but not limited to, any savings bank, national bank, trust company, state bank and credit union created under Federal or state law.

(l) *First examination* means Treasury's process of check reconciliation which involves comparing disbursing officer issue information on checks with Federal Reserve Bank payment information. Where the issue information is at odds with the payment information, first examination will include retrieval and inspection of the check, or the best available image thereof.

(m) *Material defect or alteration* means

(1) The counterfeiting of a check; or
(2) Any physical change on a check, including, but not limited to, the amount, date, payee name, or other identifying information printed on either the front or the back of the check; or

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

(n) *Person or persons* means an individual or individuals, or an institution or institutions, including all forms of financial institutions.

(o) *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, designated by statute, which is authorized to charge checks directly to the Treasury General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

(p) *Protest* means a bank's written statement and any supporting documentation tendered for the purpose of establishing that the bank is not liable for refund of the reclamation balance.

(q) *Reclamation* means a demand by Treasury to a bank for refund of the amount of a check payment.

(r) *Reclamation date* means the date on which Treasury prepares a demand for refund. Normally, demands are sent to banks within 2 working days of the reclamation date.

(s) *Treasury* means the United States Department of the Treasury.

(t) *U.S. securities* means securities of the United States and securities of Federal agencies and wholly or partially Government-owned corporations for which Treasury acts as the transfer agent.

(u) *Unauthorized indorsement* means:

(1) An indorsement made by a person other than the payee, except as authorized by and in accordance with § 240.5 and §§ 240.11 through 240.15;

(2) An indorsement by a bank under circumstances in which the bank breaches the guaranty of indorsement required of it by 31 CFR 209.9(a);

(3) A missing indorsement where the depository bank had no authority to supply the indorsement.

3. Section 240.3 is amended by revising paragraphs (c), (d) and (e) to read as follows:

§ 240.3 Limitations on payment.

* * * * *

(c)(1) Treasury shall have the right as drawee to examine checks presented for payment and reconcile or direct the Federal Reserve Bank to refuse payment of any checks.

(2) Receipt of credit by a bank from a Federal Reserve Bank shall be provisional until Treasury completes first examination of the check.

(3) When first examination by Treasury establishes that a check has a material defect or alteration, Treasury will decline payment on the check.

(d) Notwithstanding the provisions of paragraph (c) of this section, when issue information is not available within 150 days after the check is presented to the Federal Reserve Bank for payment, or when first examination is otherwise not completed within such time frame, Treasury will be deemed to have made final payment on the check.

(e) Notwithstanding the provisions of paragraph (d) of this section, if Treasury is on notice of a question of law or fact about whether a check is properly payable upon presentation for payment, and Treasury refers such question to the Comptroller General under 31 U.S.C. 3328(a)(2), the Commissioner may defer final payment on the check until the Comptroller General settles the question.

4. Section 240.4 is amended by redesignating paragraph (a)(3) as paragraph (c) and revising it to read as set forth below; removing paragraph (b) and redesignating paragraph (a)(2) as (b); and by redesignating paragraph (a)(1) as (a) and revising it to read as follows:

§ 240.4 Cancellation and distribution of proceeds of checks.

(a) Any check issued on or after October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner.

(b) * * *

(c) On a monthly basis, the Commissioner shall provide to each agency that authorizes the issuance of Treasury checks a list of those checks issued for such agency which were cancelled during the preceding month pursuant to paragraph (a) of this section.

5. Section 240.6 is amended by revising paragraph (a) to read as follows:

§ 240.6 Reclamation of amounts of paid checks.

(a) If Treasury determines that a check has been paid over a forged or unauthorized indorsement, or that a check containing a material defect or alteration is deemed paid under § 240.3, the presenting bank or any other indorser shall be liable to the Treasury for the full amount of the check payment. The Commissioner may reclaim the amount of the check payment from the presenting bank, or from any other indorser that breached its guaranty of indorsement prior to:

(1) The end of the 1-year period beginning on the date of provisional payment; 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.

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6. Section 240.9 is amended by revising paragraphs (a)(1) and (a)(3) (ii) and (iv) to read as follows:

§ 240.9 Processing of checks.

(a) *Federal Reserve Banks.* (1) Federal Reserve Banks shall cash checks for Government disbursing officers when such checks are drawn by the disbursing officers to their own order. Payment of such checks shall not be refused except for material defect or alteration of the check.

(2) * * *

(3) * * *

(ii) Give immediate provisional credit therefor in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the account of the Treasury, subject to first examination and payment by Treasury.

(iii) * * *

(iv) Release the original checks to a designated Federal Records Center upon notification from Treasury. Treasury shall return to the forwarding Federal Reserve Bank a copy of any check the payment of which is declined upon the completion of first examination, together with notice of the declination. Federal Reserve Banks shall give immediate credit therefor in Treasury's account, thereby reversing the previous charge to the account for such check. Treasury authorizes each Federal Reserve Bank to release a copy of the check to the indorser when payment is declined.

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7. Section 240.13 is amended by adding paragraph (c) to read as follows:

§ 240.13 Checks issued to deceased payees.

* * * * *

(c) *Deceased payee check intercepts.*

(1) A benefit payment check, issued after a payee's death, is not payable. When a certifying agency learns that a payee has died, the certifying agency shall give immediate notice to Treasury. Upon receipt of such notice, Treasury will instruct the Federal Reserve Bank to refuse payment on the check upon presentment. The Federal Reserve Bank will make every appropriate effort to intercept the check. Where a check is successfully intercepted, the Federal Reserve bank will refuse payment, and return the check unpaid to the bank with an annotation that the payee is deceased. Where a financial institution learns that a date of death triggering action under this section is erroneous, the appropriate certifying agency which authorized the issuance of the check should be contacted.

(2) Nothing in this section shall limit the right of Treasury to institute reclamation proceedings under the provisions of § 240.6 with respect to a deceased payee check paid over a forged or unauthorized indorsement.

8. Section 240.16 is added to read as follows:

§ 240.16 Lack of authority to shift liability.

(a) This part neither authorizes nor directs a bank to debit the account of any party or to deposit any funds from any account in a suspense account or escrow account or the equivalent. However, nothing in this part shall be construed to affect a bank's contract with its depositor(s) under authority of State law.

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

9. Section 240.17 is added to read as follows:

§ 240.17 Implementing instructions.

Procedural instructions implementing the regulations in this part will be issued by the Commissioner of the Financial Management Service in volume I, part 4 and volume II, part 4 of the Treasury Financial Manual.

Dated: July 14, 1995.

Russell D. Morris,

Commissioner.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[SD-001; FRL-5300-8]

Clean Air Act Proposed Full Approval of Operating Permits Program; State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes to change the existing interim approval of the Operating Permits Program submitted by the State of South Dakota to a full approval for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 23, 1995.

ADDRESSES: Comments should be addressed to the contact indicated below. Copies of the State's submittal and other supporting information used in developing this proposed approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294-7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to