

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315, 353, 357, and 370

Regulations Governing U.S. Savings Bonds, Series A, B, C, D, E, F, G, H, J, and K, and U.S. Savings Notes; Regulations Governing United States Savings Bonds, Series EE and HH; Regulations Governing Book-Entry Treasury Bonds, Notes and Bills; and Electronic Transactions and Funds Transfers Related to U.S. Securities

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: We're publishing a final rule on electronic transactions and funds transfers relating to United States securities. In particular, we've eliminated redundant provisions that address our use of Automated Clearing House entries.

DATES: Effective July 26, 1999.

ADDRESSES: You can download this final rule at the following World Wide Web address:

<<http://www.publicdebt.treas.gov>>. You may also inspect and copy this final rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave., NW, Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

FOR FURTHER INFORMATION CONTACT:

- Wallace L. Earnest, Director, Division of Staff Services, Savings Bond Operations Office, Bureau of the Public Debt, at (304) 480-6319 or <wearnest@bpd.treas.gov>
- Maureen Parker, Director, Division of Securities Systems, Office of Securities and Accounting Services, Bureau of the Public Debt, at (304) 480-7761 or <mparker@bpd.treas.gov>
- Susan J. Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480-3688 or <sklimas@bpd.treas.gov>
- Gregory J. Till, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (202) 219-3320 or <gtill@bpd.treas.gov>
- Edward C. Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, at (304)480-3688 or <egronset@bpd.treas.gov>

SUPPLEMENTARY INFORMATION:

I. Background

On November 20, 1998, we published a final rule in the **Federal Register** (63

FR 64543). The final rule amended the regulations at 31 CFR part 370 that governed the transfer of funds on account of United States securities. In particular, the final rule provided for the use of Automated Clearing House (ACH) debit entries for the sale of savings bonds. At the time, we made no attempt to consolidate these provisions with other debit entry provisions already in 31 CFR part 370.

This final rule consolidates the previously separate debit entry provisions in 31 CFR part 370. We've also eliminated redundant credit entry provisions that were found in 31 CFR parts 315, 353, and 357, in favor of unified provisions in part 370. We've also rewritten part 370 in plain language.

II. Summary of Amendments in 31 CFR Part 370

Subpart A—General Information

What Special Terms Do I Need To Know To Understand This Part? (§ 370.1)

We've made several changes to this section. We've amended the definition of "electronic signature" to be consistent with the definition given by Congress in the Government Paperwork Elimination Act, or title XVII of Public Law 105-277 (October 21, 1998). Congress passed this act to facilitate the use and acceptance of electronic signatures by executive agencies. Consistent with the Act, the final rule defines an electronic signature as a signature of an electronic message that:

- (1) identifies and authenticates a particular person as the source of the electronic message; and
- (2) indicates such person's approval of the information contained in the electronic message.

The definition of "investor account" mirrors that which we will use in an upcoming revision to the *TreasuryDirect* regulations in 31 CFR part 357. We've amended the definition of "payment" for greater accuracy. In addition, we've added definitions of "we" and "you." We've added these definitions, as well as slightly revised a handful of other definitions, to help us write this final rule in plain language.

Subpart B—Credit ACH Entries

How Can I Appoint a Financial Institution To Receive Payments on My Behalf? (§ 370.5)

This section has been amended to require that you name a financial institution and deposit account to receive payments through the ACH method, using an approved form. The former section (b) has been moved to

370.15, relating to limitations on liability.

What Requirements Apply to a Financial Institution That Handles a Credit Entry? (§ 370.6)

This section has been amended by eliminating unnecessary provisions, and by adding a provision that a financial institution, by accepting and handling a credit entry initiated by us, agrees to comply with the Operating Rules of the National Automated Clearing House Association (NACHA Rules), as modified by our regulations.

Are There Any Requirements Related to a Prenotification Entry? (§ 370.8)

This section is amended to provide that we may, in our discretion, send a prenotification message before we send a credit entry or whenever there is a change in the payment instructions. Paragraph (b) requires that the financial institution respond to prenotification messages within the time frame of the National Automated Clearing House Association (NACHA). If the financial institution does not respond to a prenotification message, we may interpret the nonresponsiveness as agreement to this subpart, and that the deposit account information contained in the prenotification message is accurate.

How Can My Payment Instructions Be Changed? (§ 370.9)

This section provides that payment instructions will continue until you or your financial institution asks us to change them.

What Can Cause My Payments To Be Suspended? (§ 370.10)

This section is amended to provide that payments will be suspended if we receive notice that your deposit account has been closed, that someone named on your account is dead or has been declared legally incompetent, that there is a change in the title of your deposit account which alters your interest, or if a corporation has been dissolved. In addition, we will suspend payments if there are changes in the status of the bond, security, or investor account. Payments will continue in suspension until we receive evidence satisfactory to us as to who is entitled to receive payments.

What Must My Financial Institution Do When It Receives a Payment? (§ 370.11)

This former § 370.10 is redesignated as § 370.11.

What Happens if an Error Is Made in a Credit Entry, or if a Duplicate Credit Entry Is Made? (§ 370.12)

This former § 370.11 is redesignated as § 370.12. The former § 370.12 has been deleted as an unnecessary provision.

What Limitations Exist on Liability? (§ 370.15)

This section is the former § 370.16, which has been redesignated as § 370.15. The former § 370.15 has been deleted as unnecessary. Paragraphs (a) and (b) are substantively unchanged. Section (c) has been moved from § 370.5 and is substantively unchanged.

Subpart C—Debit ACH Entries

What Requirements Apply if I Want To Authorize a Debit Entry to My Deposit Account? (§ 370.20)

This section sets out requirements on debit entry authorizations. The provisions of this section are somewhat complicated by the various ways that we use debit entries for the sale of securities, depending on the type of security involved.

We currently accept debit entry authorizations for sales of book-entry (electronic) Treasury securities held in our *TreasuryDirect* system. We also accept debit entry authorizations for sales of definitive (paper) savings bonds sold directly by us through the United States Savings Bond EasySaver PlanTM. (Savings bonds also are sold by savings bond issuing agents, but part 370 has no application to them). We also will accept debit authorizations for collection of fees.

Under this section, we require that if you purchase a book-entry security held in *TreasuryDirect*, you must be named on the investor account that holds the security. On the other hand, we do not impose a similar requirement for our sales of definitive savings bonds, because these are not held in investor accounts.

Also under this section, we limit you to authorizing only single-entry debits for purchases of book-entry securities held in *TreasuryDirect*. On the other hand, debit entries for purchases of definitive savings bonds must be recurring.

For purchases of book-entry Treasury securities, a debit entry authorization may be completed electronically. For instance, for purchases of securities held in *TreasuryDirect*, you must open an investor account; once there is an existing relationship, you may electronically authorize a debit entry to a designated deposit account for the purchase of a book-entry Treasury

security by providing some personal identification information. By contrast, the debit entry authorization for definitive savings bonds only may be completed if signed on paper. This difference between the securities is not explicit in the regulations. Rather, it simply reflects how we currently do business.

The section requires that all debit entry authorizations must be signed. We've defined the word "signature" as "any symbol or method executed or adopted by a person with present intention to be bound." This is a traditional legal definition of a signature.

Special consideration has been given to authorizations completed by electronic means. As noted above, a signature may be an electronic signature. However, as stated in section 370.35, not every electronically signed debit entry authorization automatically is acceptable to us. Instead, the electronic signature must be accomplished through a method that we've approved. For instance, we require you to enter your *TreasuryDirect* account number and taxpayer identification number to access our *TreasuryDirect* electronic services. We consider the entry of this information to be an electronic signature that expresses your intent to be bound by any debit entry authorization that you may submit while accessing our electronic services.

In determining what types of electronic signatures are acceptable to us, we will look to how electronic signatures are treated under other law and in the private sector. We also will be bound by whatever procedures may be imposed upon executive agencies governing the use of digital signatures.

Our approach on authorizations completed by electronic means diverges from the approach taken by the Board of Governors of the Federal Reserve ("the Board") and the National Automated Clearing House Association ("NACHA"). The Board is responsible for Regulation E (12 CFR part 205), which sets out consumer rights in electronic funds transfers such as debit entries. NACHA is responsible for the Operating Rules ("the NACHA Rules") that govern the handling of debit entries. These authorities state that a debit entry authorization must be in a "writing signed or similarly authenticated by the consumer." Under Regulation E, this requirement applies only to debit entry authorizations for recurring debits; under the NACHA Rules, this requirement applies to all debit entry authorizations.

Under Regulation E and the NACHA Rules, the meaning of "signed" appears

to be limited to a signature completed in longhand, and does not extend to an electronic signature. Neither Regulation E nor the NACHA Rules recognize the term "electronic signature." Instead, a debit ACH authorization that is completed electronically must be "similarly authenticated."

The Board and NACHA have interpreted "similarly authenticated" as allowing authentication by use of a PIN or digital signature. On the other hand, the use of an account number and taxpayer identification number may not be sufficient for the Board and NACHA. Thus, our current means of allowing the electronic submission of a debit entry authorization in *TreasuryDirect* may differ from that allowed by the Board and NACHA.

We have decided not to adopt the "similarly authenticated" language used by the Board and NACHA, for two reasons. First, in the Government Paperwork Elimination Act, Congress defined the term "electronic signature." Congress also stated its intent that executive agencies use and accept such signatures. Of course, we wish to be consistent with Congress. Second, by not adopting the "similarly authenticated" language, we reserve some right to determine what constitutes an acceptable means of electronically submitting a debit entry authorization. In deciding what qualifies as an approved "electronic signature," we will be influenced, but not bound, by the Board and NACHA's interpretation of "similarly authenticated."

We can differ from Regulation E on this point because Regulation E excludes from its coverage "[a]ny transfer of funds the primary purpose of which is the purchase or sale of a security * * * [h]eld in book-entry form by a Federal Reserve Bank or federal agency." Transactions involving book-entry securities held in *TreasuryDirect* fall within this exclusion. As noted above, it only is for these types of securities that the Bureau of the Public Debt allows debit entry authorizations to be completed electronically.

Even without this exclusion, we are consistent with Regulation E. The "signed or similarly authenticated" language in Regulation E applies only to authorizations for recurring debit entries. However, all electronically submitted debit authorizations in *TreasuryDirect* are for single-entry debits. Accordingly, to the extent that we allow debit entry authorizations to be electronically signed, the "signed or similarly authenticated" requirement of Regulation E is not triggered.

In the future, we may wish to accept electronically submitted debit entry authorizations for our sales of definitive savings bonds. As opposed to book-entry securities, Regulation E applies to debit entry transactions involving definitive securities. Thus, an authorization of recurring debit entries for the sale of definitive savings bonds may have to qualify as "signed or similarly authenticated" under Regulation E, though single-entry authorizations may not have to so qualify. If we decide to pursue sales of definitive savings bonds through electronic debit entry authorizations, we would consider making the "signed or similarly authenticated" requirement explicit in our regulations. However, no such electronic transactions are currently planned for definitive savings bonds.

We can differ from the NACHA Rules because the NACHA Rules are private law. More importantly, today's final rule is consistent with Regulation E, which has carved out an exclusion for transactions involving certain book-entry Treasury securities. Furthermore, although the "signed or similarly authenticated" language in the NACHA Rules applies to single-entry debit authorizations, we note that this application was inspired by NACHA's desire to protect consumers from aggressive telemarketers. This is an admirable purpose but one that has little meaning with regard to consumer dealings with Treasury. We believe we're justified in not following the NACHA Rules on this point.

No matter how an electronic signature of a debit entry authorization may be completed, we have at our disposal several measures to prevent fraud. For instance, for a book-entry security held in *TreasuryDirect*, we reserve the right to prevent the owner from disposing of the security for up to thirty days after purchase. If fraud is reported during this time, we can cancel the security, preventing the fraud from succeeding. Also, even after this thirty-day period, any attempt to transfer out or otherwise collect the value of a security requires the owner to provide identification, in person, to a bank or other institution. In other words, a person attempting a fraud cannot do it anonymously; instead, he must identify himself. Finally, to the extent that fraud may occur, the United States is better capable of prosecuting cases than may be a small, private entity.

In addition, the section states that credit and debit entries with respect to a security must be made to the same deposit account. This is another security feature. The provision helps ensure that

funds are placed back into the same deposit account from which the funds were drawn, rather than going to an improper account.

What Rights Do I Have To Terminate or Suspend Debit Entries? (§ 370.25)

This section is amended to state that if you submit a debit entry authorization in conjunction with a Treasury auction tender for the purchase of a book-entry security, you cannot terminate or suspend a debit entry after the auction closes. This is to prevent a person from unfairly withdrawing the remittance if the person receives an unfavorable yield at an auction.

What Limitations Exist on Liability? (§ 370.26)

This section is amended to state that our liability does not extend beyond the amount of the debit entry. Furthermore, if a financial institution causes us a loss because it fails to follow this part, the financial institution cannot be liable to us for more than the amount of the debit.

Can I Be Held Accountable if My Negligence Contributes to a Forged Signature? (§ 370.40)

This section is amended to state that it has no application in any dispute involving a debit authorization or credit card transaction. Instead, we will rely upon the error resolution procedures of the NACHA Rules, credit card association rules, and the Board's regulations.

What Is the Status of a Security if the Remittance Cannot Be Collected? (§ 370.45)

This new section states that if we cannot promptly collect all of the remittance for a security, we may in our discretion cancel the security unless it has been legally transferred for value to a third person who had no knowledge of the improper debit entry at the time of the transfer.

III. Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action," as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility

Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects

31 CFR part 315

Government Securities, Federal Reserve System, Banks and Banking.

31 CFR part 353

Bonds, Electronic Funds Transfers, Government Securities.

31 CFR part 357

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Securities.

31 CFR part 370

Bonds, Electronic Funds Transfers, Government Securities, Securities.

For the reasons set forth in the preamble, 31 CFR parts 315, 353, 357, and 370 are amended as follows:

PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES

1. The authority citation for part 315 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. Amend § 315.31 as follows:

a. Remove the last two sentences of paragraph (b);

b. Remove the last sentence of paragraph (c);

c. Revise paragraph (h)(1) to read as set forth below.

d. Remove paragraph (h)(2);

e. Redesignate paragraphs (h)(3), (h)(4), (h)(5), and (h)(6) as (h)(2), (3), (4), and (5);

f. Revise redesignated paragraph (h)(5) to read as set forth below.

g. Remove paragraph (h)(7);

h. Redesignate paragraph (h)(8) as (h)(6) and revise redesignated paragraph (h)(6) to read as set forth below.

i. Redesignate paragraph (i) as (h)(7) and revise redesignated paragraph (h)(7) to read as set forth below.

§ 315.31 Series H bonds.

* * * * *

(h) * * *

(1) *Payments on same account.*

Payments on all Series H bonds assigned to the same account maintained by the Bureau will be made to the same deposit account at a financial institution.

* * * * *

(5) *Cancellation of ACH arrangement.* An ACH arrangement shall remain in effect until it is terminated by a request from the owner or coowner submitted to the Bureau of the Public Debt, Parkersburg, WV 26102-1328.

(6) *Rules.* Series H interest payments made by the ACH method are governed by the regulations at 31 CFR part 370.

(7) *Nonreceipt or loss of interest payment.* The Bureau of the Public Debt, Parkersburg, WV 26102 should be notified if:

(i) An interest check is not received or is lost after receipt or

(ii) An ACH payment is not credited to the designated account and the financial institution has no record of receiving it. The notice should include the owner or coowner's name and taxpayer identifying number and the interest payment date.

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

1. The authority citation for part 353 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. Amend § 353.31 as follows:

a. Remove the third sentence of paragraph (b);

b. Revise the last sentence of paragraph (b) to read as set forth below.

c. Redesignate paragraph (c)(1) as paragraph (c) and remove the last sentence from the redesignated paragraph (c);

d. Remove paragraphs (c)(2), (d), and (e);

e. Redesignate paragraphs (f) and (g) as paragraphs (d) and (e), respectively;

f. Redesignate paragraph (h) as (f);

g. Revise redesignated paragraph (f)(1) to read as set forth below.

h. Remove redesignated paragraph (f)(2);

i. Redesignated paragraphs (f)(3), (f)(4), (f)(5) and (f)(6) are further redesignated as (f)(2), (f)(3), (f)(4), and (f)(5), respectively.

j. Revise redesignated (f)(5)(ii) to read as set forth below.

k. Remove redesignated paragraph (f)(7).

l. In redesignated paragraph (f), further redesignate paragraph (f)(8) as (f)(6) and revise to read as set forth below.

m. Redesignate paragraph (i) as (f)(7) and revise to read as set forth below.

§ 353.31 Series HH bonds.

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(b) * * * Series H interest payments made by the ACH method are governed by the regulations at 31 CFR part 370.

* * * * *

(f) * * *

(1) *Submission of deposit account information.* Payments on all Series HH bonds assigned to the same account maintained by the Bureau must be made to the same deposit account at a financial institution.

* * * * *

(5) * * *

(ii) Bonds issued prior to October 1, 1989. An ACH arrangement established for Series HH bonds issued prior to October 1, 1989, shall remain in effect until it is terminated by a request from the owner or coowner submitted to the Bureau of the Public Debt, Parkersburg, WV 26102-1328

(6) *Rules.* Series HH interest payments made by the ACH method are governed by the regulations at 31 CFR part 370.

(7) *Nonreceipt or loss of interest payment.* The Bureau of the Public Debt, Parkersburg, WV 26102 should be notified if:

(i) An interest check is not received or is lost after receipt or

(ii) An ACH payment is not credited to the designated account and the financial institution has no record of receiving it. The notice should include the owner or coowner's name and taxpayer identifying number and the interest payment date.

PART 357—GENERAL REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS.

1. The authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. 31, 5 U.S.C. 301 and 12 U.S.C. 391.

2. Amend § 357.26 as follows:

a. Revise the section heading as set forth below.

b. Revise paragraph (a) to read as set forth below.

c. Revise the heading for paragraph (b) to read as set forth below.

d. Remove paragraphs (b)(1)(i), (b)(1)(iv), (b)(2), (b)(3), (c) and (d);

e. Redesignate paragraph (b)(1)(ii) as paragraph (b);

f. Redesignate paragraph (b)(1)(iii) as paragraph (c) and add a heading to read as set forth below.

g. Redesignate paragraph (b)(1)(v) as paragraph (d) and add a heading to read as set forth below.

h. Redesignate paragraph (b)(1)(vi) as paragraph (e) and add a heading to read as set forth below.

§ 357.26. Direct Deposit.

(a) *General.* A payment by the Department with respect to a security shall be by direct deposit unless it is deemed necessary by the Department to make payment by another means. Direct Deposit payments are governed by the regulations at 31 CFR part 370.

(b) *Names on account.* * * *

(c) *Inquiry to financial institution.*

* * *

(d) *Payments to master account.*

* * *

(e) *Deposit account.* * * *

3. Revise § 357.30 to read as follows.

§ 357.30 Cases of delay or suspension of payment.

If evidence required by the Department in support of a transaction request is not received by the Department at least ten (10) business days before the maturity date of the security, or if payment at maturity has been suspended pursuant to 31 CFR 370.10, in cases of reinvestment, the Department will redeem the security and hold the redemption proceeds in the same form of registration as the security redeemed, pending further disposition. No other interest shall accrue or be paid on such proceeds after the security is redeemed.

1. Revise part 370 to read as follows:

PART 370—ELECTRONIC TRANSACTIONS AND FUNDS TRANSFERS RELATING TO UNITED STATES SECURITIES

Subpart A—General Information

Sec.

370.0 What does this part cover?

370.1 What special terms do I need to know to understand this part?

Subpart B—Credit ACH Entries

370.5 How can I appoint a financial institution to receive payments on my behalf?

370.6 What requirements apply to a financial institution that handles a credit entry?

370.7 How can my financial institution change my designated deposit account?

370.8 Are there any requirements related to a prenotification entry?

370.9 How can my payment instructions be changed?

370.10 What can cause my payments to be suspended?

370.11 What must my financial institution do when it receives a payment?

370.12 What happens if an error is made in a credit entry, or if a duplicate credit entry is made?

370.13 Can time limits for taking an action on a credit entry be extended?

370.14 Can substitute payment procedures be used?

370.15 What limitations exist on liability?

Subpart C—Debit Entries

- 370.20 What requirements apply if I want to authorize a debit entry to my deposit account?
- 370.21 Are there any requirements related to a prenotification entry?
- 370.22 What requirements apply to a financial institution that debits a deposit account?
- 370.23 What other requirements apply to a financial institution?
- 370.24 What right does the Bureau of the Public Debt have to terminate or suspend debit entries?
- 370.25 What rights do I have to terminate or suspend debit entries?
- 370.26 What limitations exist on liability?

Subpart D—Electronic Submission of Transaction Requests Through the Bureau of the Public Debt

- 370.35 Does the Bureau of the Public Debt accept all electronically signed transaction requests?
- 370.36 When does a transaction request become effective?
- 370.37 Where is the point of transaction for an electronically submitted transaction request?
- 370.38 What is the legal effect of an electronic signature?
- 370.39 To what extent is a digital signature admissible in any civil litigation or dispute?
- 370.40 Can I be held accountable if my negligence contributes to a forged signature?
- 370.41 What limitations exist on liability?

Subpart E—Additional Provisions

- 370.45 What is the status of a security if the remittance cannot be collected?
- 370.46 Are there any situations in which the Bureau of the Public Debt may waive these regulations?
- 370.47 To what extent may the Bureau of the Public Debt change these regulations?

Authority: 12 U.S.C. 391; 31 U.S.C. chapter 31.

Subpart A—General Information**§ 370.0 What does this part cover?**

(a) *Scope.* This part applies to the transfer of funds by the Automated Clearing House method as used by us in connection with United States securities. This part also provides regulations for the electronic submission of transaction requests through us, except as varied by agreement or as otherwise provided. This part does not apply to transactions for the sale of United States Savings Bonds accomplished through savings bond issuing agents generally, except and to the extent we direct otherwise.

(b) *Operating Rules of the National Automated Clearing House Association and Regulations of the Financial Management Service.* The Operating Rules of the National Automated Clearing House Association generally

apply to these transactions. However, the Operating Rules do not apply to the extent that the Operating Rules are preempted entirely and excluded specifically by application of Financial Management Service regulations in part 210 of this chapter. In the event of any inconsistencies between this part 370 and either the Operating Rules or part 210, this part 370 applies.

(c) *Regulations of the Board of Governors of the Federal Reserve.* To the extent that Regulation E (12 CFR part 205) and Regulation Z (12 CFR part 226) of the Board of Governors of the Federal Reserve System apply to transactions authorized by this part, those Federal laws are unaffected by this part 370.

(d) *Variance by agreement.* The terms of this part may be varied by agreement.

§ 370.1 What special terms do I need to know to understand this part?

Automated Clearing House (ACH) entry means a transaction in accordance with the Operating Rules of the National Automated Clearing House Association, as modified by these regulations and other law. The regulations in this part control in the event of any inconsistencies with the applicable Operating Rules.

Credit entry means an ACH entry for the payment of money to a deposit account.

Debit entry means an ACH entry for the collection of money from a deposit account.

Deposit account means a demand deposit (checking), savings, or asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution.

Digital signature means a type of electronic signature. A signer creates a digital signature by using public-key encryption to transform a message digest of an electronic message. If a recipient of the digital signature has an electronic message, message digest function, and the signer's public key, the recipient can verify:

- (1) whether the transformation was accomplished with the private key that corresponds to the signer's public key; and
- (2) Whether the electronic message has been altered since the transformation was made.

Electronic message means information that is stored in an electronic medium and is retrievable in perceivable form.

Electronic signature means a signature of an electronic message that:

- (1) identifies and authenticates a particular person as the source of the electronic message; and

(2) indicates such person's approval of the information contained in the electronic message.

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 that 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 that 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 that 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 that is eligible to make application to become an insured credit union pursuant to 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) that is an insured depository institution as defined in that act or is eligible to apply to become an insured depository institution under that act; and

(6) any Federal branch or agency of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

Investor account is our record of your *TreasuryDirect* holdings, including a list of your total security holdings, the exact form of registration of your account, your mailing address, your *TreasuryDirect* account number, your social security account number or employer identification number, and your deposit account instructions.

Message digest function means an algorithm that transforms an electronic message into a seemingly unintelligible, generally smaller, result called the message digest. A message digest function has these qualities:

(1) the same electronic message yields the same message digest every time the algorithm is executed;

(2) it is computationally infeasible that an electronic message can be derived from the message digest result produced by the algorithm; and

(3) it is computationally infeasible that two electronic messages can be

found that produce the same message digest using the algorithm.

Payment means, for the purpose of this part, funds paid by us to you.

Person means any natural person or organization.

Public-key encryption means a cryptographic process which generates and employs a key pair, consisting of a public key and a different but mathematically related private key. One use of the public key is to verify a digital signature created by the private key.

Security means an obligation offered by the Secretary of the Treasury.

Settlement date means the date an exchange of funds with respect to an ACH entry is reflected on the books of the Federal Reserve Bank(s).

Signature means any symbol or method executed or adopted by a person with present intention to be bound.

We (or "us") refers to the Secretary of the Treasury and the Secretary's delegates at the Treasury Department and Bureau of the Public Debt. The term also extends to any fiscal or financial agent acting on behalf of the United States when designated to act by the Secretary or the Secretary's delegates. The term does not extend to United States Savings Bond issuing and paying agents.

You means a deposit account owner, in subparts B and C, unless stated otherwise. The word "you" means a person who electronically submits transaction requests through us, in subpart D.

Subpart B—Credit ACH Entries

§ 370.5 How can I appoint a financial institution to receive payments on my behalf?

You must name a financial institution to receive payments through credit entries using the ACH method. You also must identify the deposit account to which payments are to be made. To do this, you must use a form approved by us.

§ 370.6 What requirements apply to a financial institution that handles a credit entry?

A financial institution that accepts and handles a credit entry initiated by us agrees to the provisions of this subpart, and warrants that it will comply with all requirements imposed upon Receiving Depository Financial Institutions under the Operating Rules of the National Automated Clearing House Association, as modified by these regulations and other law.

§ 370.7 How can my financial institution change my designated deposit account?

If your financial institution requests us to make a change in your deposit account number or type of your account, we will change the information without requiring any confirmation from you.

The request from the financial institution must be made following the Operating Rules of the National Automated Clearing House Association. The financial institution's request will be deemed an agreement by the institution to indemnify us and you for any loss resulting from the requested change.

§ 370.8 Are there any requirements related to a prenotification entry?

(a) *Use of prenotification in our discretion.* In our discretion, we may initiate a prenotification entry to a financial institution before we send a credit entry. We may also send a prenotification message whenever there is a change in the payment instructions. If we send a prenotification message, we will follow the time frames as established by the Operating Rules of the National Automated Clearing House Association. A prenotification is a zero-dollar ACH entry that can help us determine whether there might be problems with sending a subsequent credit entry.

(b) *Requirements placed upon financial institution that receives a prenotification.* A financial institution must respond to a prenotification within the time frame for such responses as established by the Operating Rules of the National Automated Clearing House Association. If the receiving financial institution does not respond to the prenotification message within the specified time period, we may interpret the nonresponsiveness as the financial institution's agreement to this subpart. Furthermore, a financial institution warrants by its nonresponsiveness that the deposit account number and the type of account contained in the prenotification entry message was accurate as of the moment the financial institution received it.

§ 370.9 How can my payment instructions be changed?

Your payment instructions will continue to apply until either you or your financial institution requests us to make a change.

§ 370.10 What can cause my payments to be suspended?

(a) *Change in deposit account.* We will suspend payments if we receive notice that your deposit account has been closed, that someone named on your deposit account is dead or has

been declared legally incompetent, that there is a change in the title of your deposit account that alters your interests; or, if a corporation is the owner, that it has been dissolved.

(b) *Change in status of owner.* We will suspend payments when we receive notice that an owner of a bond, security, or investor account is dead or has been declared legally incompetent, or in any case where we receive notice of a change in the name or status of an organization or representative named on a bond, security, or investor account.

(c) *Continuation of Suspension.* Payments will continue to be suspended until we receive satisfactory evidence as to who is authorized or entitled to receive payments.

§ 370.11 What must my financial institution do when it receives a payment?

An institution which receives a payment on behalf of its customer must:

(a) Upon receipt, make the payment available to you on the payment date. If a scheduled payment date is not a business day for the Federal Reserve Bank of the district in which the institution is located, payment will be made on the next-succeeding business day. If the institution is unable to make a credit entry to the designated account, it must return the payment in accordance with the Operating Rules of the National Automated Clearing House Association.

(b) Promptly notify us when your account has been closed, or when it is on notice of the death or legal incapacity of you or any other individual named on your account, or when it is on notice of the dissolution of a corporation in whose name the deposit account is held. The institution must return all payments received along with an explanation for the return.

§ 370.12 What happens if an error is made in a credit entry, or if a duplicate credit entry is made?

If we make an erroneous credit entry under this part, we will make a corrected credit entry to your account. We will then take action to recover the erroneous credit entry, or any duplicate credit entry, as follows:

(a) *Return of amount of erroneous or duplicate credit entry by financial institution.* We will send a notice to the financial institution to which the erroneous or duplicate credit entry was sent. When it receives this notice, the financial institution must immediately return to the appropriate Federal Reserve Bank an amount equal to the credit entry. If the institution is unable to do this, the institution must immediately notify us, and provide any

information that it has about the matter. We reserve the right to request the return of a partial amount of an erroneous or duplicate credit entry.

(b) *Collection of amount of unreturned erroneous or duplicate credit entry.* Where the erroneous or duplicate credit entry has not been returned, we will undertake any other actions that are appropriate. To the extent permitted by law, the collection action may include deducting the amount owed from future credit entries made to the deposit account to which the erroneous or duplicate credit entry was made.

(c) *Authorization of Debit to collect unreturned duplicate or erroneous credit entry.* If a financial institution has not responded within 60 calendar days of the notice, its acceptance of the credit entry will be considered an authorization for a debit in the amount of the entry. The debit will be made from the account maintained or utilized by the financial institution at the Federal Reserve Bank to which the entry was made. An institution designated by a financial institution to receive payment on its behalf, in permitting the usage, is deemed to have authorized a debit. The debit will be made from its account maintained at the Federal Reserve Bank to which the entry was made. The institution to which the credit entry has been directed is deemed to have agreed to provide information and assistance to recover any erroneous or duplicate entry. You are also deemed to have agreed to provide information and assistance, and to take any action provided by law to recover an erroneous or duplicate credit entry.

§ 370.13 Can time limits for taking an action on a credit entry be extended?

If we or your financial institution are delayed beyond applicable time limits in taking any action with respect to a credit entry because of circumstances beyond our control, then the time for taking that action will be extended as necessary until the cause of the delay ends.

§ 370.14 Can substitute payment procedures be used?

We may use substitute payment procedures, instead of ACH, if we consider it to be necessary. Any such action is final.

§ 370.15 What limitations exist on liability?

(a) We may rely on the information provided by you or anyone else authorized to provide information concerning your financial institution or deposit account to which payments are to be made. We do not need to verify

this information. We are not liable for any action we may take in reliance on the information furnished.

(b) Our liability does not extend beyond the amount of the payment due.

(c) When you name a financial institution to receive payments on your behalf, you are appointing that institution as your agent for the receipt of payments. When a credit entry is made to your financial institution for deposit to your account following your instructions, we no longer have any further responsibility for that payment. Where your financial institution has arranged with the Federal Reserve Bank to have payments made through another financial institution, the crediting of your payment to that institution relieves us of any further responsibility for that payment.

Subpart C—Debit Entries

§ 370.20 What requirements apply if I want to authorize a debit entry to my deposit account?

(a) *General.* You may pay for a security and related fees by authorizing us to initiate one or more debit entries to your deposit account. For a purchase of a book-entry security to be held in an investor account maintained by us, you must be named on the investor account. The authorization must be accomplished only through forms or means approved by us.

(b) *Single-entry and recurring debit entries.* You only may authorize single-entry debits for purchases of book-entry securities held in *TreasuryDirect*. You only may authorize recurring debit entries for purchases of definitive savings bonds.

(c) *Credit entries to be made to same deposit account.* To the extent that payments by us with respect to a security are to be made through credit entries, you must receive debit and credit entries in the same deposit account.

(d) *Signature.* The authorization must have your signature and that of any other person whose signature is required to withdraw funds from the deposit account. We need not verify your identity or the authenticity of your signature.

§ 370.21 Are there any requirements related to a prenotification entry?

(a) *Use of prenotification in our discretion.* In our discretion, we may initiate a prenotification entry to a financial institution prior to sending a debit entry. A prenotification is a zero-dollar ACH entry that can help us determine whether there might be problems with sending a subsequent debit entry.

(b) *Requirements placed upon financial institution that receives a prenotification.* If sent, a financial institution must respond to a prenotification within the time frame for such responses as established by the National Automated Clearing House Association. If the receiving financial institution does not respond to the prenotification message within the specified time period, we may interpret the nonresponsiveness as the financial institution's agreement to this subpart. Furthermore, a financial institution warrants by its nonresponsiveness that the deposit account number and the type of account contained in the prenotification entry message was accurate as of the moment the financial institution received it.

§ 370.22 What requirements apply to a financial institution that debits a deposit account?

A financial institution that debits a deposit account upon receiving a debit initiated by us agrees to the provisions of this subpart. A financial institution that does so also warrants that it has the authority to receive debit entries.

§ 370.23 What other requirements apply to a financial institution?

The financial institution warrants that it will comply with all requirements imposed upon Receiving Depository Financial Institutions under the Operating Rules of the National Automated Clearing House Association, as modified by these regulations and other law.

§ 370.24 What right does the Bureau of the Public Debt have to terminate or suspend debit entries?

We may terminate or suspend the availability of one or more debit entries in any case or class of cases, and may do so without notice at any time. A decision to terminate or suspend the availability of debit entries is in our sole discretion and is final.

§ 370.25 What rights do I have to terminate or suspend debit entries?

(a) *General.* If you are an investor account owner or deposit account owner, you generally may terminate or suspend one or more debit entries by notifying us orally or in writing at least three business days before the scheduled date of a transfer. In response to an oral notice, we may require you to give written notice, to be received by us within fourteen days of an oral notice. An oral notice ceases to be binding after fourteen days if you fail to provide the required written confirmation. A suspension will remain in effect for the duration you specify, but for no more

than six months. The termination and suspension methods need not be recited in the authorization. These termination or suspension rights are in addition to those that you may have through your financial institution under Regulation E of the Board of Governors of the Federal Reserve System (12 CFR part 205).

(b) *Exception.* If you submit a debit entry authorization in conjunction with a Treasury auction tender for the purchase of a book-entry security, you cannot terminate or suspend a debit entry after the auction closes.

§ 370.26 What limitations exist on liability?

If we sustain a loss because a financial institution fails to handle an entry in accordance with this part, the financial institution is liable to us for the loss, but not beyond the amount of the debit entry. In no instance does our liability extend beyond the amount of the debit entry.

Subpart D—Electronic Submission of Transaction Requests Through the Bureau of the Public Debt

§ 370.35 Does the Bureau of the Public Debt accept all electronically signed transaction requests?

An electronic signature will not be accepted if it has not been accomplished through a method that has been approved for specific purposes by us.

§ 370.36 When does a transaction request become effective?

Except for auction bids of U.S. securities or unless otherwise agreed, a transaction request becomes effective at the moment we send a confirmation message. In no instance does a transaction request become effective before we actually receive the request.

§ 370.37 Where is the point of transaction for an electronically submitted transaction request?

For jurisdiction and venue purposes, the point of transaction for a transaction request handled pursuant to this subpart is Parkersburg, West Virginia, regardless of from where the transaction request is transmitted or where the transaction request is actually processed.

§ 370.38 What is the legal effect of an electronic signature?

An electronic signature and any electronic message to which it is affixed or attached may not be denied legal effect, including legal effect as a signature, a writing, or an original, solely because the signature or record is in electronic form.

§ 370.39 To what extent is a digital signature admissible in any civil litigation or dispute?

In asserting a digital signature against you in any civil litigation or dispute, extrinsic evidence of authenticity as a condition precedent of admissibility (such as testimony about the scientific validity of digital signatures) is not necessary to establish:

(a) That a digital signature corresponds to a specific public key pair, and;

(b) That an electronic message to which the digital signature is affixed has not been altered from its original form.

§ 370.40 Can I be held accountable if my negligence contributes to a forged signature?

(a) *General.* If your failure to exercise ordinary care substantially contributes to the submission of a forged signature, then you cannot claim that the signature is a forgery. However, we cannot invoke this section against you if we cannot first establish that we were reasonable in relying upon the signature. If we can do so, you bear the burden of production and the burden of

persuasion in establishing your exercise of ordinary care. If you cannot do so, then you cannot claim that the signature is a forgery.

(b) *Exception.* This section has no application in any dispute involving a debit authorization or credit card transaction.

§ 370.41 What limitations exist on liability?

In no instance does our liability extend beyond the amount of the transaction.

Subpart E—Additional Provisions

§ 370.45 What is the status of a security if the remittance cannot be collected?

If we cannot promptly collect all of the remittance for a security, we may in our discretion cancel the security unless it has been legally transferred for value to a third person who had no knowledge of the improper debit entry at the time of the transfer.

§ 370.46 Are there any situations in which the Bureau of the Public Debt may waive these regulations?

We reserve the right, in our discretion, to waive any provision of these regulations in any case or class of cases. We may do so if such action is not inconsistent with law and will not subject the United States to substantial expense or liability.

§ 370.47 To what extent may the Bureau of the Public Debt change these regulations?

Any aspect of this part may be changed at any time and without notice. You assume the risk that a change may terminate a provision that was to your advantage. Nothing in this part creates vested rights in your favor.

Dated: June 28, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

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