

U.S. CUSTOMS AND BORDER PROTECTION

CBP DIRECTIVE NO. 5310-031B

DATE: March 26, 2009

ORIGINATING OFFICE: OF:FM:FP

SUPERSEDES: CBPD 5310-031A, 11/6/07

REVIEW DATE: March 2012

SUBJECT: AUTOMATED CLEARINGHOUSE (ACH) DEFAULTED PAYMENTS

1 **PURPOSE.** To prescribe U.S. Customs and Border Protection (CBP) policies and procedures for (1) handling debit vouchers resulting from defaulted ACH payments related to Automated Broker Interface (ABI) statement processing, and (2) administering the removal of an ACH payor that is responsible for defaulted ACH payments.

2 **BACKGROUND.** Beginning in January 1990, CBP implemented ACH as the preferred payment process for ABI filers/participants to further improve the efficiency of the statement collection process. ACH systems are similar to bank lockbox arrangements, except that in lieu of paying duty by check, firms may electronically provide CBP the authorization to notify a Treasury-designated financial institution (ACH processor) to charge the firm's bank account for a specific payment amount. The payment is then electronically transmitted by the ACH processor to the U.S. Treasury Department and credited to the CBP account. This process requires no collection input by a CBP cashier. The payment is applied to the entries as specified by the ABI payment authorization.

Recent experience has indicated an increase in the number of ACH payors that fail to have adequate funds in their bank account when the CBP ACH processor attempts to charge their bank account for a previously authorized statement payment. The payor's ACH processor issues a charge to CBP via a debit voucher in the amount of the uncollected funds. Accordingly, special action must be taken to account for and collect each debit voucher.

3 **POLICY.** ACH payors/participants must assure that funds are available in the bank account they are authorizing the payment to be drawn from. The ACH payor's failure to assure that adequate funds are available is unacceptable, and will be recognized as a dishonored payment and an exception to established procedures.

4 **AUTHORITIES.** 19 C.F.R. § 24.1(a)(8), 19 C.F.R. § 24.3a (B)(1)(4), and (C), 19 C.F.R. § 24.25, 19 C.F.R. § 143 (Ch. I, Subpart A - Automated Broker Interface).

5 **RESPONSIBILITIES.**

5.1 The Chief Financial Officer is responsible for policy oversight and the financial operations of this program.

5.2 The Director, Revenue Division is responsible for the implementation of this directive.

6 PROCEDURES.

6.1 Revenue Division (RD)

6.1.1 When the RD is notified by the ACH processor of the defaulted payment(s), the RD must establish accountability for each debit voucher received from the ACH processor and issued to CBP as the result of an ACH default.

6.1.2 When the ACH defaulted payment (debit voucher) is determined to be a bank error, resolution will generally require a replacement payment by certified check, cashiers check or money order to satisfy the outstanding debit voucher. This type of default will affect the standing of the ACH payor for purposes of determining their reliability to make proper payments and will result in the assessment of liquidated damages.

6.1.3 When the ACH defaulted payment (debit voucher) is determined to be the fault of the payor (e.g. insufficient funds, account closed, or stop payment) the RD will take appropriate collection action to resolve the debit voucher with the party legally responsible for the debt that the ACH default purported to pay. In the case of a broker or third party defaulting on an ACH payment, the importer of record will be notified of their continued liability for the debt that was purported to be paid. If the default payment was made against an entry and the debt is secured by a CBP bond, the importer of record will be assessed liquidated damages as the default is considered a breach of the conditions set forth in the importer's bond.

6.1.4 In addition, the RD will determine whether or not ACH disqualification is warranted based on a review of the incidence of returned checks and/or defaulted payments that were the fault of an ACH payor. More than one returned check and/or defaulted ACH payment, which is the fault of the same payor within the preceding 12-month period, is a sufficient basis to remove the ACH privilege. The payor will be offered the option of continuing electronic payments using ACH credit. The payor may also use guaranteed payment instruments, i.e., cashiers check, money order, etc, to remit future payments.

6.1.5 Based on notification that an ACH payor has made a defaulted payment that resulted in a debit voucher, no special action need be taken to change or update original collection information in ACS or on the actual collection document (i.e., formal or informal entry, collection receipt or bill, etc.). Action to collect the ACH debit voucher involved will be taken by the RD. ACS provides for identification of the original collection document related to each debit voucher (i.e., ABI Statement, Formal Entry, Collection Receipt/Informal Entry Number). The status of the debit voucher (paid or unpaid) can be determined by using function code CLVL.

6.1.6 Upon notification that an ACH payor has been disqualified under Paragraph 6.1.3 and 6.1.4 above, action should be taken to assure payment is accepted by ACH credit, certified check, money order or cash, as prescribed under 19 C.F.R. § 24.1(a)(3)(ii) on future ABI statements, in lieu of the ACH payment process.

6.1.7 A review of bond sufficiency may be warranted concerning the payor's inability to satisfy CBP payment requirements. Failure to pay properly may be an indication that accrued estimated duty liabilities and other penalty or liquidated damages liabilities require additional surety bond coverage.

6.2 Reinstatement Procedures

6.2.1 An ABI participant's application for reinstatement of the ACH payment privilege must specifically identify that it is an ACH Reinstatement request, and must include the current ABI participant name and payor unit number (19 C.F.R. § 143.6(c)).

6.2.2 The application should be submitted in writing to the Director, Revenue Division. Payors will not be allowed to apply for ACH reinstatement for a minimum of sixty days from removal and until the Director of the Revenue Division is confident that the payor is capable of making accurate ACH transactions and the requirements of 6.2.3 have been met.

6.2.3 Reinstatement of an ACH payor may be warranted if the payor can demonstrate that (1) the payment deficiencies that caused the original suspension have been resolved, (2) the requirements of 19 C.F.R. § 143 (Ch. I, Subpart A) are being met, (3) the payor has notified their financial institution of their intent to use the ACH payment process and (4) the account data provided by the payor will allow the institution to accurately process the resulting ACH deposit transactions.

/s/

Assistant Commissioner
Office of Finance