

SIGIS: Special Interest Group for IAS Standards™

90% Rule Frequently Asked Questions Revised August 2009

General Questions

Q: Can you tell me, what is the IRS 90% Rule and how does it relate to IAS requirements?

A: In IRS Notice 2007-02 and the subsequent Notice 2008-104, the IRS provides that drug stores/pharmacies (MCC's 5912 and 5122), which have 90% or more of gross sales that are prescriptions/Rx or over-the-counter Eligible Healthcare Products, can be viewed as "healthcare merchants" by plan administrators in the debit card programs. As of July 1, 2009, plan administrators may elect to continue to approve FSA/HRA card transactions at a drug store/pharmacy that meets the 90% Rule, if the drug store/pharmacy doesn't support an IAS. The text of the IRS rulings are shown below:

IRS Notice 2007-2:

Accordingly, after December 31, 2008, health FSA and HRA debit cards may not be used at stores with the Drug Stores and Pharmacies merchant category code unless (1) the store participates in the inventory information approval system as described in Notice 2006-69, or (2) on a store location by store location basis, 90 percent of the store's gross receipts during the prior taxable year consisted of items which qualify as expenses for medical care under § 213(d) (including nonprescription medications as described in Rev. Rul. 2003-102, 2003-2 C.B. 559).

IRS Notice 2008-14- Transition Relief:

The deadline in Notice 2007-2 is extended by six months so that, after June 30, 2009, health FSA and HRA debit cards may not be used at stores with the Drug Stores and Pharmacies merchant category code unless the requirements of (1) or (2) above are satisfied.

Q: What types of drug stores/pharmacies are likely to meet the 90% Rule requirement?

A: As a general answer, it is felt that pharmacies operating in hospitals or medical buildings which mostly fill prescriptions and have a very limited availability of other merchandise would be able to qualify as 90% Rule stores. Additionally, there are specialty pharmacies, such as compounding pharmacies, which primarily sell prescriptions/Rx and may qualify. But in all cases, the drug store or pharmacy must be able to attest that 90% of the previous year's gross sales of the store are from prescriptions/Rx and Eligible Healthcare Products.

Q: What is SIGIS planning to do to support the 90% Rule?

A: SIGIS has implemented a program for SIGIS member drug stores/pharmacies that qualify under the 90% Rule to be registered. Go to the SIGIS home page at www.sigis.com for more information.

Q: What does SIGIS do to verify that 90% or more of the gross sales of a registered store are from prescriptions/Rx or qualified over the counter (OTC) healthcare products?

A: The SIGIS 90% Rule Merchant Program is a registration, not certification, program. SIGIS does not investigate or audit the financials of registered 90% Rule stores to qualify stores for registration.

Merchant/Acquirer/Processor Questions

Q: What if some of my stores will meet the 90% Rule, but others will not. What do I do?

A: The IRS is clear that only stores whose gross sales are at least 90% from prescriptions/Rx and over-the-counter Eligible Healthcare Products can be registered as qualifying for the 90% Rule. If a merchant has other stores that do not meet the 90% Rule, the merchant will need to implement IIAS capabilities in order for FSA/HRA card transactions to be approved after June 30, 2009. Alternatively, it is possible that an assessment of the costs and benefits may suggest that the merchant would just continue to accept payment cards as they do today without an IIAS. If so, it is likely that FSA/HRA card authorizations would not be approved.

Q: Since the pharmacy window in my stores would qualify under the 90% Rule, can I register the cash register/POS terminal of the pharmacy area?

A: No, that will not be permitted. The IRS requirement is that the gross sales of **each store** must be qualified as having gross sales that are at least 90% from prescriptions/Rx and over-the-counter Eligible Healthcare.

Q: I have heard that if a merchant can qualify its stores under the 90% Rule that FSA/HRA cardholders will not need to submit sales receipts to their plan administrator. Is that correct?

A: Generally, no. Unlike an IIAS where the merchant substantiates the items being purchased at the point of sale, the 90% Rule indicates that stores that qualify as 90% locations can be viewed as "healthcare merchants." This means that plan administrators will apply their standard substantiation processes to transactions at these locations – and the customer may be asked to submit a sales receipt to document that the items being purchased were prescriptions/Rx or Eligible Healthcare Products. It is possible that in some cases the card issuer processor will be able to match a transaction amount with Pharmacy Benefit Management (PBM) system information, and can determine that the card transaction amount matches the plan's co-pay on prescriptions, for example. In this case, the customer may not be asked to submit a sales receipt. But in the absence of an automated matching program like this, it is likely that customers using a FSA/HRA card will be asked by their plan administrator to submit a sales receipt.

Q: My stores probably meet the 90% Rule, but I'm thinking of supporting an IIAS. Is that OK?

A: Yes. Many drug stores/pharmacies already support IIAS capabilities. If merchants support an IIAS, they don't have to worry about annually qualifying the gross sales of each store for the 90% Rule.

Q: What are the 90% Rule program requirements?

A: The goal is that SIGIS member store locations that are registered under the 90% Rule will not need to undertake any technical work to meet the June 30, 2009 deadline. Issuer processors will use the Store ID/Card Acceptor ID field in authorization requests to approve FSA/HRA card transactions at registered stores. Over the longer-term, there may be additional technical requirements that will be published with lead-time for implementation support. Current SIGIS requirements for drug stores and pharmacies who wish to register under the 90% program are:

- Must become a member of SIGIS by completing the online membership application and paying the appropriate membership fee.
- Completes the SIGIS, online 90% Rule Merchant Registration. During online registration, merchants will be asked to attest that each store registered meets the IRS requirements for the

90% Rule. The following information will also be needed from your Acquirer in order to successfully complete the form:

- The Acquirer’s MasterCard ICA number
- The Acquirer’s VISA BIN number
- The drug store/pharmacy’s Card Acceptor ID (each store has a different Card Acceptor ID) submitted in authorization requests. The Card Acceptor ID is sometimes referred to as the store’s “merchant number” or “store location id”.
- The MCC code for your store locations. (Note only locations under 5912 and 5122 are eligible).

Once the application is submitted, SIGIS will either approve it or request additional information. In either case, SIGIS will communicate with you and your acquirer via email. It is extremely important that you double check the information sent in the email. Any errors may result in transaction declines.

Q: What is an Acquirer’s MasterCard ICA number?

A: It is a 6 digit number assigned by MasterCard to each Acquirer. If you have different Acquirers for Authorization vs Settlement you will have a separate ICA for each one. SIGIS is only collecting the Authorization Acquirers ICA at this time.

Q: What is an Acquirer’s Visa BIN number?

A: It is a 6 digit number assigned by Visa to each Acquirer. If you have different Acquirers for Authorization vs Settlement you will have a separate BIN for each one. SIGIS is only collecting the Authorization Acquirers ICA at this time.

Q: Could my Acquirer’s Visa BIN number and my Acquirer’s MasterCard ICA be the same number?

A: While it is possible that they could be the same number, it is highly unlikely.

Q: What is the Card Acceptor ID and what is the length?

A: The Card Acceptor ID is typically assigned for each store location and is a number between 1 and 15 digits long identifying your store location. In some cases the number may contain a dash, “-“.If you need assistance determining this number, your acquirer or service provider can assist you.

Q: Could my Authorization Card Acceptor ID and my Settlement Card Acceptor ID be the same number?

A: Yes, it is highly possible that they could be the same number. An exception to this would be if you were to use multiple Acquirers.

Q: My CAID is different for each terminal in my store, what do I do?

A: Some merchants have a unique CAID for each terminal in the store, ie. ICAID 999999001 for the front of the store and 999999002 for the back of the store that results in more than one CAID value being used in a single 90% location. Because CAID is used in the authorization approval process for 90% merchants, it is important for you to make sure all CAID’s from qualifying stores are registered.

If your acquirer / acquirer processor is not able to support a single CAID for all terminals within the same store, you may register each terminal in the 90% registration process. To do so, create a separate store location for each terminal. Except for the Location Name and CAID, all of the other information should be the same for both "locations". Here is an example of what the location Name and CAID fields would look like

Location 1 Name CAID
Joe's Pharmacy (Term#1) 999999001

Location 2 Name CAID
Joe's Pharmacy (Term#2) 999999002

**Please note that you still must comply with the IRS regulation that the determination of eligible product % is at the total store level. If the total store qualifies, you may register all terminals. If the total store does not qualify, you are not allowed to register any terminal for that store. When inputting the % of gross sales, use the same value for all terminals in that store location.

Q: What if I don't know who my "Acquirer" is?

A: Your Acquirer is the company that actually processes your bankcard transactions. We realize that many merchants have relationships with Independent Sales Organizations or Banks but the actual processing is done by another company. If you don't have a direct relationship with an Acquirer, the company with whom you do have a relationship can help you identify your Acquirer and should facilitate the gathering of the information needed to complete your registration.

Q: What happens if I change Acquirers?

A: If you should change Acquirers after registering online with SIGIS, you will need to update your registration with the new information. It is important to note that you will need to update all of the information or risk transaction declines. Be sure that you update your registration with all new information, i.e., the Acquirer's MasterCard ICA, Visa BIN and your Card Acceptor ID. Ensure that you time the update of the 90% registration with the timing of your actual conversion. Doing too early or too late can lead to card declines.

Q: My store primarily sells medical and healthcare items, but is not a drug store. Is 90% Rule Merchant registration limited to drug stores and pharmacies?

A: Yes. The IRS is clear that 90% Rule registration is only permitted to drug stores and pharmacies. Merchants that sell medical/healthcare items or provide medical/healthcare services use a merchant category code (5912 and 5122) that identifies them as a healthcare merchant. Of course, merchants with a non-healthcare merchant category that sell prescriptions/Rx and/or qualified healthcare products may implement support for an IIAS.

Q: Is it expected that once a store is registered, that is all that needs to be done?

A: No. Based on the IRS requirements, the merchant will have to re-register each year that the gross sales of a store meet the 90% Rule so there will be an annual registration requirement to meet IRS rules.

Q: Will merchants that want to register stores for the SIGIS 90% Rule List need to be a SIGIS member?

A: Yes, if they want to register with SIGIS. SIGIS provides a low cost membership option. The membership includes access to a detailed Eligible Product List that may be used for 90% qualification determination. It is noted that there may be other merchant associations/organizations that also provide a 90% Rule program. SIGIS has no information about how these programs will work.

Q: Will merchants that register as SIGIS 90% Rule merchants need to flag their inventory using the SIGIS Eligible Product List?

A: No. Merchants that register for the 90% Rule are not required to flag their inventory. Merchants will find the SIGIS Eligible Product List helpful in determining if 90% or more of gross sales are from Prescriptions/Rx and Eligible Healthcare Products.

Q: Will all FSA/HRA plan administrators permit their clients to use FSA/HRA cards at 90% Rule merchants?

A: While most plan administrators are expected to permit FSA/HRA cards to be used at 90% Rule merchants, there may be some that do not or whose employer clients do not permit it. This could mean that plan administrators in a merchant's market area may have elected not to authorize FSA/HRA card transactions at 90% Rule merchants.

Q: Will my store name be listed on the SIGIS Merchant List?

A: SIGIS has two merchant lists: first, the SIGIS IIAS Merchant List for merchants that are SIGIS-certified to process IIAS transactions, and second, the SIGIS 90% Rule Merchant List for merchants that have registered with SIGIS as meeting the IRS requirement as a store with 90% or more of gross sales from prescription/Rx and qualified medical products.

Plan Administrator/Issuer Questions

Q: How do FSA/HRA card issuers know which merchants have registered with SIGIS?

A: SIGIS will publish a list of SIGIS members that have registered as 90% Rule merchants. Additionally, SIGIS will publish the acquirer ICA/BIN and Card Acceptor IDs of these merchants each week. Issuers and issuer processors that elect to participate in the 90% Rule should use the 90% SFTP Report. The Issuer Processor should use the ICA, BIN, CAID and MCC code in the authorization process to determine if it is a 90% merchant. Other fields should not be used. The public 90% report should be used as an informational guide when working with merchants.. Issuer and issuer processors must be a SIGIS member to download the list.

Q: How often is SIGIS 90% Rule merchant information updated?

A: SIGIS will post an updated SIGIS member merchant file weekly on Mondays by 8am ET with changes (adds, deletes, modifications) so that issuers/issuer processors may access the updated information. In addition, SIGIS will post a full replacement file each week. Issuers/issuer processors must update and post updated 90% Rule merchant information no less than once a month. It is highly recommend that the file be picked up and applied each week.

Q: Where can cardholders and plan administrators obtain a list of the 90% Rule registered merchants?

A: There is a link to the 90% Rule Merchant List on the SIGIS home page at www.sigis.com. The SIGIS 90% Rule Merchant List contains the name and address of each store that eligible SIGIS member merchants have registered. This is for informational and should not be used for the actual authorization process. Issuer Processors should rely solely on the 90% SFTP report for authorization as it contains the MCC, BIN, ICA and CAID codes to uniquely identify merchant store locations during the authorization process.

Q: Who will have access to this information when a consumer has an inquiry?

A: The SIGIS 90% Rule Merchant List is available to the general public via www.sigis.com. Specific questions about card declines and plan rules should be directed to the plan administrators phone number on the back of the card.

Q: What if plan administrator and/or consumers have questions or inquiries about a possible error with the SIGIS 90% Rule merchant information, who will address the questions?

A: Consumers contact their plan administrator to ask questions about merchants at which their FSA/HRA card will work. Only plan administrators can answer these questions. Plan administrators should research cardholder questions via their transaction processing systems to determine what may have caused a cardholder's problem. If the plan administrator believes that SIGIS 90% Rule merchant information may not be accurate, they should contact their card issuer processor for assistance.

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