

payments by check through February 28, 2013;

(iii) Was born prior to May 1, 1921, and is receiving payment by check on March 1, 2013;

(iv) Receives a type of payment that is not eligible for deposit to a Direct Express® card account. In such cases, those payments are not required to be made by electronic funds transfer, unless and until such payments become eligible for deposit to a Direct Express® card account;

(v) Is ineligible for a Direct Express® card because of suspension or cancellation of the individual's card by the Financial Agent;

(vi) Has filed a waiver request with Treasury certifying that payment by electronic funds transfer would impose a hardship because of the individual's inability to manage an account at a financial institution or a Direct Express® card account due to a mental impairment, and Treasury has not rejected the request; or

(vii) Has filed a waiver request with Treasury certifying that payment by electronic funds transfer would impose a hardship because of the individual's inability to manage an account at a financial institution or a Direct Express® card account due to the individual living in a remote geographic location lacking the infrastructure to support electronic financial transactions, and Treasury has not rejected the request.

* * * * *

(6) Where the agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis and remittance data explaining the purpose of the payment is not readily available from the recipient's financial institution receiving the payment by electronic funds transfer; and

* * * * *

(b) An individual who requests a waiver under paragraphs (a)(1)(vi) and (vii) of this section shall provide, in writing, to Treasury a certification supporting that request, in such form that Treasury may prescribe. The individual shall attest to the certification before a notary public, or otherwise file the certification in such form that Treasury may prescribe.

■ 4. Revise § 208.6 to read as follows:

§ 208.6 Availability of the Direct Express® Card.

An individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open a Direct Express® card account. The offering of a Direct Express® card account shall constitute the provision of

EBT services within the meaning of Public Law 104–208.

■ 5. Revise § 208.7 to read as follows:

§ 208.7 Agency responsibilities.

An agency shall put into place procedures that allow recipients to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient's financial institution or a Direct Express® card account.

■ 6. Revise § 208.8 to read as follows:

§ 208.8 Recipient responsibilities.

Each recipient who is required to receive payment by electronic funds transfer shall provide the information necessary to effect payment by electronic funds transfer.

■ 7. Revise the third sentence in § 208.11 to read as follows:

§ 208.11 Accounts for disaster victims.

* * * Treasury may deliver payments to these accounts notwithstanding any other payment instructions from the recipient and without regard to the requirements of §§ 208.4 and 208.7 of this part and § 210.5 of this chapter.

* * *

■ 8. Remove Appendix A and Appendix B to Part 208.

Dated: December 16, 2010.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2010–32117 Filed 12–21–10; 8:45 am]

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AB24

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim final rule.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS) is amending its regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies to permit the delivery of Federal payments to prepaid debit cards that meet certain criteria. To be eligible to receive Federal payments, a card must provide the cardholder with pass-through deposit or share insurance and the card account must not have an attached line of credit or loan feature

that triggers automatic repayment from the card account. In addition, the issuer of the card account must provide the cardholder with all of the consumer protections that apply to a payroll card under the Federal Reserve Board's Regulation E.

DATES: This interim final rule is effective January 21, 2011. Comments must be received on or before February 22, 2011.

ADDRESSES: You can download this interim final rule at the following Web site: <http://www.fms.treas.gov/ach>. You may also inspect and copy this interim final rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

In accordance with the U.S. government's eRulemaking Initiative, FMS publishes rulemaking information on <http://www.regulations.gov>. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL–FMS–2010–0003, should only be submitted using the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments.

- *Mail:* Walt Henderson, Financial Management Service, 401 14th Street, SW., Room 337, Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to FMS have been decommissioned.

Instructions: All submissions received must include the agency name (“Financial Management Service”) and docket number FISCAL–FMS–2010–0003 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Director of the EFT Strategy Division, at (202) 874–6619 or walt.henderson@fms.treas.gov; or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or natalie.diana@fms.treas.gov.

SUPPLEMENTARY INFORMATION: On May 14, 2010, we published in the **Federal Register**, at 75 FR 27239, a Notice of Proposed Rulemaking (NPRM) requesting comment on a number of proposed amendments to 31 CFR part 210 (part 210). One of the proposed amendments was to allow Federal payments to be delivered to prepaid debit card or similar card accounts meeting certain consumer protection requirements. The NPRM also proposed to allow Federal payments to be delivered to certain kinds of accounts established by nursing facilities or religious orders. In addition, the NPRM addressed a number of other issues, including requirements adopted by NACHA—The Electronic Payments Association in 2009 to identify international payment transactions using a new Standard Entry Class and proposed changes to the process for reclaiming post-death benefit payments from financial institutions.

In this Interim Final Rule, we are finalizing the proposal in the NPRM to allow Federal payments to be delivered to prepaid card accounts meeting certain consumer protection requirements, with a number of changes reflecting the comments that we received. Although we previously requested and received comment on the prepaid card proposal, we are issuing this rule as an interim final rule in order to provide the public with an additional opportunity to comment. This interim final rule does not address any of the other proposed amendments to part 210 that were published in the NPRM. The final rule relating to those proposed amendments will be issued separately.

I. Background and Summary of Prepaid Card Proposal

Title 31 CFR 210.5(a) generally requires that a Federal direct deposit payment be delivered to a deposit account at a financial institution. For all payments other than vendor payments, the account at the financial institution must be in the name of the recipient, unless one of the exceptions listed in the regulation applies. As explained in the NPRM, our long-standing interpretation of the words “in the name of the recipient” has been that the payment recipient’s name must appear in the account title. *See, e.g.*, 64 FR 17480, referring to discussion at 63 FR 51490, 51499. The purpose of this requirement is to ensure that the payment reaches the intended recipient through delivery to a deposit account that the recipient owns and to which he or she has unfettered access, so that the payment is not diverted to a creditor or another third party before it reaches the

recipient and comes under the recipient’s control.

The “in the name of the recipient” requirement has the effect of prohibiting payments to pooled accounts in which the recipient’s ownership interest is reflected in subaccount records. Because prepaid card programs are generally set up using this kind of structure, the delivery of non-vendor Federal payments to these types of cards currently is prohibited. We indicated in the NPRM that we believed that the “in the name of the recipient” requirement may be impeding the use of prepaid card programs that may be beneficial to the unbanked and underbanked populations. We therefore requested comment on a proposal to create an exception to the “in the name of the recipient” requirement in order to allow the delivery of Federal payments to accounts accessed by prepaid and stored value cards, provided that the card bears the cardholder’s name and meets the following requirements:

- The account accessed by the card is held at an insured depository institution and meets the requirements for pass-through insurance under 12 CFR part 330 such that the cardholder’s balance is FDIC insured to the extent permitted by law; and

- The card account constitutes an “account” as defined in 12 CFR 205.2(b) such that the consumer protections of Regulation E (12 CFR part 205), the rule prescribed by the Board of Governors of the Federal Reserve System (Board) to implement the Electronic Fund Transfer Act, apply to the cardholder.

We requested comment on the implications of allowing delivery of Federal benefit and other non-vendor payments to accounts that meet the requirements listed above. We further noted that we are mindful of concerns that account arrangements may be structured to facilitate automatic third party debits to a direct deposit account (known in some States as payday lending) and similar arrangements that are inappropriate for Federal benefit recipients, and we particularly solicited comment on whether the consumer protections required in the proposed exception are adequate to prevent potential abuses.

II. Summary of Comments

We received 12 comments in response to the NPRM. The commenters represented a variety of perspectives. Comments were submitted by financial institutions, consumer advocacy groups, industry associations, the Senate Committee on Finance and the House Committee on Ways and Means. Most commenters commented on our

proposal to allow Federal payments to be deposited to prepaid card accounts.

Several commenters, including financial institutions and a nonprofit organization focusing on financial services for underserved consumers, supported the proposed prepaid card exception to the “in the name of the recipient” requirement. Those supporting the exception noted that prepaid products can benefit Federal payment recipients by expanding their options to receive Federal payments. They pointed out that underbanked Federal benefit recipients currently may use a variety of high cost financial service providers to cash their benefit checks and pay their bills. These commenters also noted that underbanked individuals may tend to hold significant amounts of cash, which may pose a security risk. According to these commenters, expanding Federal benefit recipients’ ability to use prepaid cards could alleviate many of these concerns.

Most commenters supported our proposed requirement that the prepaid cardholder’s balance be FDIC-insured via the FDIC’s requirements for pass-through insurance. Comments regarding the proposed requirement that card accounts constitute “accounts” subject to Regulation E were mixed. Several commenters urged us to clarify the proposed requirement that the consumer protections of Regulation E apply to the cardholder. Some commenters noted that currently the only type of prepaid cards to which Regulation E applies are payroll cards. Since Regulation E does not currently apply to general use prepaid cards, some commenters were uncertain as to whether only payroll cards would be eligible for the proposed exception. Therefore, commenters requested that the final rule clarify whether a prepaid card that would fit within the exception proposed by Treasury must: (a) Actually be subject to Regulation E (which, under current law, would eliminate many or all general use prepaid products from eligibility under the proposed exception); or (b) provide protections similar or identical to those contained in Regulation E.

Other commenters suggested that Regulation E should be extended to cover all prepaid cards. We note that FMS does not have the authority to amend Regulation E to cover prepaid cards. That authority is assigned to the Board.¹ One commenter, referring to

¹ See 15 U.S.C. 1693b(a). This authority will be transferred to the Bureau of Consumer Financial Protection (CFPB) pursuant to Public Law 111–203, § 1084.

Regulation E, recommended that “Treasury ensure that these protections are in place prior to allowing benefits to be deposited onto any cards.” It is unclear whether the commenter intended to suggest that we delay finalizing the prepaid card proposal until the Board amends Regulation E to address general use prepaid cards.

Some financial institutions commented that requiring issuers to voluntarily provide cardholders with the protections of Regulation E would increase costs to cardholders and adversely impact innovation in the prepaid card industry. Several financial institutions suggested that FMS should require compliance with only some of Regulation E’s protections, such as those providing protections for unauthorized transactions and those governing error resolution processes. These commenters recommended that certain Regulation E requirements, such as the periodic statement requirement, not be imposed.

In contrast, some other commenters expressed the view that FDIC insurance and Regulation E protections are not sufficient to adequately protect cardholders. These commenters expressed concern that Federal benefits might be deposited onto prepaid and stored value products that carry high fees or other features, such as lines of credit, that may affect the amount of the Federal benefit ultimately available to the Federal benefit recipient. One consumer advocacy organization requested that FMS impose a number of additional requirements on prepaid cards in order for them to be eligible for the exception to the “in the name of the recipient” rule. Additional requirements that commenters proposed include: Prohibiting the deposit of Federal benefits onto prepaid cards or stored value cards that contain credit features; regulating the fees associated with a prepaid card or stored value card; imposing fee disclosure requirements; requiring prepaid card providers to inform benefit recipients of the Direct Express® prepaid card² or of any other lower-cost options; and ensuring that card providers cannot collect fees or repayment of any advances by

exercising any right of set-off against Federal benefit payments.

On the other hand, another consumer advocacy organization supported the prepaid card proposal without any changes, except that they urged us to craft language that ensures that cardholders’ access to responsibly-designed credit is not restricted. This organization recognized the concern that the accounts may be structured to facilitate payday lending or other similar arrangements that can result in unaffordable debt levels for Federal beneficiaries. However, they expressed concern that a vaguely worded restriction on credit features associated with card accounts could prevent Federal benefit recipients from accessing forms of credit that are responsibly structured.

Finally, some commenters expressed concern that we have not pursued enforcement action against entities that may be currently violating the “in the name of the recipient” requirements by allowing payments onto prepaid cards or other accounts. One commenter urged that, in order to allow for enforcement, the rule expressly provide that no institution (bank or nonbank) may accept direct deposit of Federal payments to accounts that do not meet the rule’s requirements.

III. Interim Final Rule

We are revising the proposed prepaid card exception to address the comments we received. We are requiring that the funds accessible through the card be insured for the benefit of the cardholder in light of the fact that commenters uniformly supported such an insurance requirement, but we are broadening that provision to allow for eligibility of insurance by National Credit Union Share Insurance Fund (NCUSIF). We are aware that NCUSIF pass-through insurance is available to beneficial owners of share accounts in certain circumstances, and we request comment on whether credit unions have established, or might establish in the future, prepaid card accounts that provide pass-through insurance for members or non-members.

Because Regulation E currently does not cover any prepaid cards other than payroll cards, we are making the prepaid card exception available for prepaid cards if the issuer voluntarily provides all of the protections that apply to payroll cards under Regulation E, as may be amended from time to time. In addition, we are adding a requirement that the prepaid card not have an attached line of credit or loan feature that triggers automatic repayment from the card account. While

we are not determining a fee structure or a range of acceptable fees, it is our expectation that the fees for such cards be transparent to the recipient, adequately disclosed, and reasonable by industry standards. We note in this regard that Regulation E requires that fees be disclosed in a clear and readily understandable manner.

In developing the interim final rule, we have attempted to balance the need to maintain appropriate consumer protections—consistent with the general requirement of section 210.5(a)—with concerns expressed by different commenters. As originally proposed, the exception would not have allowed the delivery of Federal payments to any general use prepaid card accounts, because prepaid card accounts (other than payroll card accounts) are not subject to Regulation E. Moreover, several commenters indicated that the industry is unlikely to develop prepaid cards that provide cardholders with all of the protections applicable to bank deposit accounts. Finalizing the requirement that eligible cards be covered by all of the protections that apply to an account under Regulation E would therefore have rendered the exception pointless. Instead, we are requiring that the protections that apply to payroll card accounts under Regulation E be provided by the card issuer. For cards that do not constitute payroll cards as defined in Regulation E, this means that the issuer must voluntarily provide the protections that apply to payroll cards. This requirement ensures that cardholders will receive important consumer protections, while allowing prepaid card issuers to provide account history and balance information in lieu of sending periodic statements.

Several commenters pointed specifically to Regulation E’s statement requirements as a barrier to the provision of prepaid cards at a reasonable cost. Regulation E provides an alternative means of compliance for the statement requirements for payroll cards. Generally, statements need not be sent if the issuer makes the consumer’s account balance available by phone and also makes available an electronic history of the consumer’s account transaction activity covering 60 days, as well as a written transaction history covering 60 days upon the consumer’s request. See 12 CFR 205.18(b). Consequently, the unauthorized transaction and error resolution reporting deadlines for payroll cards are triggered by the earlier of the sending of a written history reflecting the transaction to the cardholder or the date the cardholder accesses the electronic

² The Direct Express® prepaid card is a card established pursuant to terms and conditions approved by FMS. Direct Express® is a registered service mark of the Financial Management Service, U.S. Department of the Treasury. The Direct Express® Debit MasterCard® card is issued by Comerica Bank, pursuant to a license by MasterCard International Incorporated. MasterCard® and the MasterCard® Brand Mark are registered trademarks of MasterCard International Incorporated. See, 75 FR 34394, 34397–34398 (Jun. 17, 2010) for a description of the Direct Express® card.

account history reflecting the transaction. See 12 CFR 205.18(c)(3), (4).

We considered developing a separate framework of requirements based on Regulation E to apply to prepaid cards to which Federal payments are directly deposited, but believe it would be detrimental to introduce a separate and unique framework of consumer protections for a relatively limited class of transactions involving prepaid cards. The payroll card requirements of Regulation E are well established and Treasury believes that, in general, the card industry already is familiar with appropriate measures necessary to meet those requirements. In this regard, Treasury believes that a number of prepaid cards already provide most, though not necessarily all, of the payroll card protections to cardholders. It is our expectation that some issuers of existing prepaid cards will choose to modify the terms and conditions of the card accounts to include all of the payroll card protections to cardholders, so that their cards will be eligible to receive Federal payments. We also anticipate that as new prepaid card programs are developed, issuers seeking to make the cards available to Federal payment recipients will structure their cards to incorporate Regulation E's payroll card protections. We request comment on the extent to which prepaid card issuers will choose to do so. We also request comment on the kinds of changes that card issuers will undertake to provide the consumer protection specified in this interim final rule and the costs associated with adopting these changes.

We have also attempted to balance the competing comments made by consumer organizations relating to credit features associated with prepaid cards. In order to prevent Federal payments from being delivered to prepaid cards that have payday lending or "account advance" features, we are prohibiting prepaid cards from having an attached line of credit if the credit agreement allows for automatic repayment of a loan from a card account triggered by the delivery of the Federal payment into the account. Our intention is that this restriction will prevent arrangements in which a bank or creditor "advances" funds to a cardholder's account, and then repays itself for the advance and any related fees by taking some or all of the cardholder's next deposit. Accounts covered by Regulation E, including payroll cards, are subject to restrictions on these types of arrangements through Regulation E's "compulsory use" provision, which provides: "No financial institution or other person may condition an extension of credit to a

consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or specified to maintain a specified minimum balance in the consumer's account." 12 CFR 205.10(e). Because prepaid cards other than payroll cards are not currently covered by this provision, we are restricting credit features associated with cards as a condition for the receipt of Federal payments onto a card.

This restriction does not, however, bar the provision of credit to consumers who receive Federal payments via an eligible prepaid card product. Nor does this restriction absolutely bar a recipient-cardholder from repaying a loan with an eligible prepaid card product to which Federal payments have been made. We request comment on whether we have struck the appropriate balance, and on whether the wording of the prohibition is sufficiently clear.

To address comments made concerning the need to enforce the "in the name of the recipient" requirement, we have added a provision to the exception to make it clear that no person or entity may issue a prepaid card that accepts Federal payments in violation of the rule's requirements, and that any financial institution that holds an account for or on behalf of a prepaid card issuer to which Federal payments are received is responsible for ensuring that the requirements of the exception are met. Treasury believes that, under this provision, a violation of a requirement of the exception currently would be enforceable by the appropriate Federal or State regulator (or both) to the extent that the regulator has jurisdiction over the person or entity, and in accordance with applicable law. If we become aware that Federal payments are being deposited to prepaid cards that do not meet these requirements, we will review the situation and take appropriate action. We may, for example, contact both the issuer and the financial institution holding the issuer's account, review the terms and conditions of the card account, and refer any violations of our requirements to the appropriate regulatory bodies, including the primary regulator of the financial institution maintaining the card account for an issuer. Treasury requests comment on whether the wording of this provision is sufficiently clear.

Treasury also seeks comment on whether the consumer protections provided by this interim final rule allow for more novel uses of these cards by consumers including, but not limited to,

those (1) who currently own bank accounts but prefer receiving payments by check due to privacy reasons; and (2) consumers who are unbanked or underbanked who receive Federal payments by check.

IV. Section-by-Section Analysis

Section 210.5(b)(5)(i) permits a Federal payment to be deposited to an account accessed by a prepaid card that does not meet the "in the name of the recipient" requirement if certain conditions are met. To be eligible to receive Federal payments, a prepaid card must meet four conditions. The first condition, at § 210.5(b)(5)(i)(A), is that the account be held at an insured financial institution. The second condition, at § 210.5(b)(5)(i)(B), requires that the account be set up to meet the requirements for pass through deposit or share insurance under 12 CFR part 330 or 12 CFR part 745 such that the funds accessible through the card are insured for the benefit of the Federal payment recipient. The third condition, at § 210.5(b)(5)(i)(C), is that the account is not attached to a line of credit or loan agreement under which repayment from the card account is triggered by delivery of the Federal payment. The fourth condition, at § 210.5(b)(5)(i)(D), requires the issuer of the card to comply with all of the requirements, and to provide the Federal payment recipient with the same consumer protections, that apply to a payroll card under regulations implementing the Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693a(1). The payroll card provisions of those regulations currently are located at 12 CFR 205.18 and are administered by the Board of Governors of the Federal Reserve System. This authority is scheduled to be transferred to the CFPB on the "designated transfer date," which is set as July 21, 2011.³

With respect to the fourth condition, § 210.5(b)(5)(i)(D) provides that the issuer must comply with the rules implementing the EFTA "as amended." Treasury notes that, as of the designated transfer date, the CFPB will be authorized to prescribe rules, as well as issue interpretations and guidance, implementing the provisions of the EFTA (other than section 920 of the EFTA).⁴ In addition, the requirements under the EFTA are enforceable by the Federal banking agencies, the Federal Trade Commission, and other Federal agencies, including the CFPB, subject to several provisions of the Consumer

³ 75 FR 57,252 (Sept. 20, 2010).

⁴ See Public Law 111-203, § 1075 (amending the EFTA to allow the Board to prescribe rules relating to interchange transaction fees for electronic debit transactions).

Financial Protection Act of 2010.⁵ Treasury expects that, as the requirements under the EFTA that apply to a payroll card account may be amended or interpreted from time to time, the CFPB and the agencies charged with enforcing the EFTA—not Treasury—also will be in the position to administer the requirements under this § 210.5(b)(5)(i)(D).

Section 210.5(b)(5)(ii) prohibits a person or entity from issuing a card that receives Federal payments in violation of these requirements. Moreover, any financial institution violates this regulation if the institution maintains an account for or on behalf of an issuer of a prepaid card that receives Federal payments if that issuer violates this subsection. As discussed above, we will refer violations of the regulation to the appropriate regulatory bodies.

Section 210.5(b)(5)(iii) provides that the term “payroll card account” has the same meaning as that term is defined for purposes of the rules implementing the EFTA. The term “prepaid card” means a card, code, or other means of access to funds of a recipient. The term “issuer” means a person or entity that issues a prepaid card.

V. Procedural Requirements

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the interim final rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Regulatory Planning and Review

The Office of Management and Budget (OMB)’s Office of Information and Regulatory Affairs (OIRA) designates the interim final rule as a “significant regulatory action” as defined in Executive Order 12866. While Treasury has not conducted a regulatory impact analysis that comports with the requirements of OMB Circular A–4, Treasury is providing some preliminary information about the current industry practices, and potential costs and benefits of this rule. Treasury believes that many issuers of the prepaid cards are already providing some consumer

protection. We seek comment on the degree to which consumer protection is already provided by prepaid debit card issuers; the changes the issuers would undertake to provide the level of consumer protection specified in this rulemaking; and the costs associated with providing these additional protections.

In addition, Treasury believes that once prepaid cards provide the specified consumer protections, these cards will be used in novel ways. An example of this is receiving tax refunds on these prepaid cards. Given that there were approximately 45 million tax refund checks issued in FY 2010, assuming \$1 per check processing fee on the part of the Federal government, and assuming that all Federal tax refunds are processed through prepaid cards, the reduction in costs to the Federal government for processing these checks could be approximately \$45 million. Therefore, Treasury seeks information from the public regarding other ways in which these prepaid cards will be used to receive Federal payments across different types of consumers.

Depending upon the comments received on the interim final rule, Treasury may produce a Regulatory Impact Analysis that comports with the requirements of Circular A–4 in its final rule.

Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Even if the RFA did apply, we have considered the potential impact of this rule on small entities and hereby certify that the interim final rule will not have a significant economic impact on a substantial number of small entities. We believe the rule will affect only a limited number of small entities and that any economic impact will be minimal. Currently, Federal non-vendor payments are not permitted to be delivered to general use prepaid cards. The interim final rule will allow prepaid card issuers to develop and offer to Federal benefit recipients prepaid cards that meet the rule’s requirements. Some prepaid card issuers, regardless of size, may choose to meet the rule’s requirements, in which case they may be able to expand their customer base to include Federal benefit recipients. Any economic impact for these issuers is not expected to be significant. Accordingly, a regulatory flexibility analysis under the RFA is not required. We invite comments regarding any less burdensome alternatives to this rule.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the interim final rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Authority To Issue Interim Final Rule

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires public notice before promulgation of regulations or a showing of good cause that prior notice and opportunity to comment are unnecessary, impracticable, or contrary to the public interest. *See* 5 U.S.C. 553(b). In accordance with section 553(b), FMS published a notice of proposed rulemaking requesting comment on the prepaid card exception on May 14, 2010 (75 FR 27239) and FMS has considered the comments received in developing this interim final rule. FMS is issuing this rule for effect, but also wishes to provide the public another opportunity to comment on it.

List of Subjects in 31 CFR Part 210

Automated clearing house, Electronic funds transfer, Financial institutions, Fraud.

■ For the reasons set forth in the preamble, 31 CFR part 210 is amended as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. In § 210.5, redesignate paragraph (b)(5) as (b)(6) and add a new paragraph (b)(5) to read as follows:

⁵ *See, e.g.*, Public Law 111–203, §§ 1025–1026 (governing the enforcement authorities of the CFPB and a prudential regulator with respect to a depository institution and, depending on the size of that institution, its affiliates).

§ 210.5 Account requirements for Federal payments.

* * * *

(b) * * *

(5)(i) Where a Federal payment is to be deposited to an account accessed by the recipient through a prepaid card that meets the following requirements:

(A) The account is held at an insured financial institution;

(B) The account is set up to meet the requirements for pass-through deposit or share insurance such that the funds accessible through the card are insured for the benefit of the recipient by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund in accordance with applicable law (12 CFR part 330 or 12 CFR part 745);

(C) The account is not attached to a line of credit or loan agreement under which repayment from the account is triggered upon delivery of the Federal payments; and

(D) The issuer of the card complies with all of the requirements, and provides the holder of the card with all of the consumer protections, that apply to a payroll card account under the rules implementing the Electronic Fund Transfer Act, as amended.

(ii) No person or entity may issue a prepaid card that receives Federal payments in violation of this subsection, and no financial institution may maintain an account for or on behalf of an issuer of a prepaid card that receives Federal payments if the issuer violates this paragraph.

(iii) For the purposes of this paragraph (b)(5), the term—

(A) “Payroll card account” shall have the same meaning as that term is defined in the rules implementing the Electronic Fund Transfer Act;

(B) “Prepaid card” means a card, code, or other means of access to funds of a recipient; and

(C) “Issuer” means a person or entity that issues a prepaid card.

* * * *

Dated: December 16, 2010.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2010-32114 Filed 12-21-10; 8:45 am]

BILLING CODE 4810-35-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R02-OAR-2010-0310, FRL-9214-4]

Approval and Promulgation of Implementation Plans; New Jersey; 8-Hour Ozone Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request by New Jersey to revise the State Implementation Plan (SIP) for ozone involving the control of volatile organic compounds (VOCs). The SIP revision consists of two new rules, Subchapter 26, “Prevention of Air Pollution From Adhesives, Sealants, Adhesive Primers and Sealant Primers,” and Subchapter 34, “TBAC Emissions Reporting,” (TBAC means tertiary butyl acetate or t-butyl acetate) and revisions to Subchapter 23, “Prevention of Air Pollution From Architectural Coatings,” Subchapter 24, “Prevention of Air Pollution From Consumer Products,” and Subchapter 25, “Control and Prohibition of Air Pollution by Vehicular Fuels,” of the New Jersey Administrative Code. The intended effect of this action is to approve control strategies that will result in VOC emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: *Effective Date:* This rule is effective on *January 21, 2011*.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2010-0310. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT: Paul Truchan, Air Programs Branch,

Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. What action is EPA taking?
- II. What comments did EPA receive in response to its proposal?
- III. What are EPA's conclusions?
- IV. Statutory and Executive Order Reviews

I. What action is EPA taking?

On April 9, 2009, New Jersey submitted a proposed revision to the State Implementation Plan (SIP) that includes amendments to New Jersey Administrative Code, Title 7: Chapter 27 (NJAC 7:27)

- Subchapter 24, “Prevention of Air Pollution From Consumer Products,”
- Subchapter 26, “Prevention of Air Pollution From Adhesives, Sealants, Adhesive Primers and Sealant Primers,”
- Subchapter 34, “TBAC Emissions Reporting,” and
- Amending the definition of volatile organic compound (VOC) throughout NJAC 7:27.

The revisions to Subchapter 24 expand the number of consumer product categories that are regulated, and revised and improved the portable fuel container requirements. Subchapter 26 is a new rule that regulates adhesives, sealants, adhesive primers and sealant primers that are sold in larger containers and used primarily in commercial/industrial applications, but includes residential applications of these products, such as carpet and flooring installations and roofing installations. Subchapter 34 is a new rule that establishes reporting requirements for tertiary butyl acetate or t-butyl acetate (TBAC) emissions. The definition of VOC was revised throughout the New Jersey rules to exclude TBAC from VOC emissions limitations or VOC content requirements, but requires that TBAC be considered a VOC for purposes of recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements. These rules complete the commitment New Jersey made as part of its RACT analysis and 1997 8-hour national ambient air quality standard (NAAQS) ozone attainment demonstration that EPA conditionally approved.

For additional information, see the proposed rulemaking published on July 22, 2010 (75 FR 42672) or the Technical Support Document which is available on line at <http://www.regulations.gov> and entering the docket number EPA-R02-OAR-2010-0310.