rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish controlled airspace at Port Clarence, Alaska, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Port Clarence, AK [New]

Port Clarence CGS Airport, AK
(Lat. 65°15′13″ N., long. 166°51′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Port Clarence CGS Airport, AK, and within 1.5 miles either side of the 180° bearing from the Port Clarence CGS Airport, extending from the 6.4-mile radius to 13.2 miles south of the Port Clarence CGS Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Port Clarence CGS Airport, AK, excluding that portion extending outside the Anchorage Arctic CTA/FIR (PAZA) boundary.

Issued in Anchorage, AK, on May 28, 2010.

Michael A. Tarr,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–14693 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

RIN 1510–AB26

Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: Federal law requires that, unless waived by the Secretary of the Treasury (Secretary), all Federal payments, other than payments made under the Internal Revenue Code of 1986, must be made electronically, that is, by electronic funds transfer (EFT). Direct deposit is the primary method that the Federal Government uses to make EFT payments. The Department of the Treasury (Treasury), Financial Management Service (FMS), is proposing to amend its regulation that describes the responsibilities of Federal agencies and recipients with respect to the electronic delivery of Federal payments and establishes the circumstances under which waivers from the EFT requirement are available.

The proposed rule would generally require individuals to receive Federal nontax payments by EFT, effective March 1, 2011, except that there would be a delayed effective date to March 1, 2013, for two categories of individuals, namely: Individuals receiving Federal payments by check on March 1, 2011, and individuals whose claims for Federal benefits are filed before March 1, 2011, and who request check payments when they file.

For Federal benefit recipients, this means that individuals whose claims for Federal benefits are filed on or after March 1, 2011, would receive their benefit payments by direct deposit. Individuals receiving their payments by direct deposit prior to March 1, 2011, would continue to do so. Individuals who do not choose direct deposit of their payments to an account at a financial institution would be enrolled in the Direct Express® Debit MasterCard® card program, a prepaid card program established pursuant to terms and conditions approved by FMS. Beginning on March 1, 2013, all recipients of Federal benefit and other non-tax payments would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

DATES: Comments on the proposed rule must be received by August 16, 2010.

ADDRESSES: You can download this proposed rule at the following Web site: *http://www.fms.treas.gov/eft.* You may also inspect and copy this proposed rule at: Treasury Department Library, 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 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–2009–0003, should only be submitted using the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions on the Web site for submitting comments. FMS recommends using this method to submit comments since mail can be subject to delays caused by security screening.
- *Mail:* Walt Henderson, Director, EFT Strategy Division, Financial Management Service, 401 14th Street, SW., Room 303, Washington, DC 20227. Please note that mail may be delayed due to security screening.

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

Instructions: All submissions received must include the agency name

("Financial Management Service") and docket number FISCAL–FMS–2009–0003 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, EFT Strategy Division; Natalie H. Diana, Senior Counsel; or Ronda Kent, Senior Counsel, at *eft.comments@fms.treas.gov* or (202) 874–6619.

SUPPLEMENTARY INFORMATION:

I. Background

Statutory Authority and Existing Regulation

Section 3332, title 31 United States Code, as amended by subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (Section 3332), generally requires that all nontax Federal payments be made by electronic funds transfer (EFT), unless waived by the Secretary. The Secretary must ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution "at a reasonable cost" and with "the same consumer protections with respect to the account as other account holders at the same financial institution." *See* 31 U.S.C. 3332(f), (i)(2).

Part 208 of title 31, Code of Federal Regulations (Part 208), implements the requirements of 31 U.S.C. 3332. Part 208 currently sets forth requirements for accounts to which Federal payments may be sent by EFT. "Federal payment" means any payment made by an agency, including, but not limited to, Federal wage, salary, and retirement payments; vendor and expense reimbursement payments; benefit payments; and miscellaneous payments. *See* 31 CFR 208.2(g). Federal payments include payments made to representative payees and other authorized payment agents. *See* 31 CFR 210.5(b)(1). For Part 208 purposes, "agency" means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. *See* 31 CFR 208.2(a).

Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account (ETA) at a financial institution that offers such accounts, and establishes the responsibilities of Federal agencies and recipients under the regulation. Part 208 also sets forth a number of waivers to the general requirement that Federal payments be delivered by EFT. *See* 31 CFR 208.4. Among the waivers included in the existing regulation are waivers for situations in which an individual determines that payment by EFT would impose a hardship due to a physical or mental disability or a geographic, language or literacy barrier, or would impose a financial hardship. *See* 31 CFR 208.4(a). Treasury proposes to eliminate the waivers contained in section 208.4(a) because of the availability of the Direct Express® [1] card and for other reasons described below. Treasury seeks comments about examples of exceptional circumstances where specific types of individual EFT waivers could be needed, even with the availability of the Direct Express® card for Federal benefit recipients.

The Secretary's waiver authority would remain unchanged, and Federal agencies would continue to have the flexibility to waive payment by direct deposit or other EFT method in the circumstances described in paragraphs (b) through (g) of § 208.4, namely, for certain payments to payees in a foreign country where the infrastructure does not support EFT, for certain disaster or military situations, for situations in which there may be a security threat or for valid law enforcement reasons, for non-recurring payments, and for unusual situations that require urgent payment and the Government would be seriously injured unless payment is made by a method other than EFT.

Treasury Efforts To Increase Direct Deposit

Direct deposit is the primary method that the Federal Government uses to make EFT payments. In fiscal year 2009, Treasury disbursed more than 80% of its payments electronically. The remaining payments were made by paper check, costing taxpayers millions of dollars more than if those payments had been made electronically and causing avoidable payment-related problems for many check recipients. Because the majority of the Government's check payments are delivered to Federal benefit recipients, primarily Social Security beneficiaries, and in light of the many benefits of direct deposit for recipients of recurring payments, Treasury has focused particular attention on encouraging current Federal benefit check recipients to switch to direct deposit. Treasury's Go Direct® campaign, sponsored with the Federal Reserve Banks, highlights the advantages to a Federal benefit recipient who opens an account at a financial institution and elects to receive his or her benefits via direct deposit to the account. As part of the campaign, Treasury established a Go Direct® campaign toll-free call center and Web site to facilitate enrollments via telephone at (800) 333–1795 (English) or (800) 333–1792 (Spanish), online at *www.GoDirect.gov,* or through an individual's financial institution. The Go Direct® campaign collaborates with more than 1,800 community-based organizations and financial institutions around the country that assist in delivering messages about the benefits of direct deposit, especially to those with bank or credit union accounts. Treasury estimates that more than 4.3 million direct deposit enrollments have been achieved since 2005 as a result of the campaign's activities. However, even though Treasury is successfully converting millions of check recipients to direct deposit as a result of the Go Direct® campaign, more than 11 million Federal benefit recipients still receive checks each month.

According to Treasury research conducted in 2007 (SSA & SSI Check Recipient Survey, OMB Control No. 1510–0074), 28% of Social Security check recipients and 59% of Supplemental Security Income (SSI) check recipients did not have bank accounts. Based on November 2007 Treasury check payment data, this indicated there were approximately 2.1 million Social Security recipients and 1.8 million SSI recipients who did not have bank accounts at that time. Treasury recognized that one of the barriers to increased use of direct deposit was that the estimated 4 million Social Security and SSI benefit recipients lacked an account at a bank or credit union, despite the greater availability of low-cost and no-cost accounts for individuals who receive direct deposit payments. Therefore, in 2008, Treasury implemented a program in which Social Security and SSI benefit recipients can elect to receive their payments to a Direct Express® Debit MasterCard® card account. The Direct Express® card is a prepaid MasterCard®

[1] Direct Express® is a registered service mark of the Financial Management Service, U.S. Department of the Treasury. As explained below, 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.

debit card issued by Comerica Bank, which Treasury designated as its financial agent for this purpose.

Treasury also recognized that another barrier to the use of direct deposit was the concern that direct deposit may expose the recipient to the risk that his or her benefit payments might be improperly garnished for debts owed to creditors. As a result, Treasury designed the Direct Express® card program to ensure that individuals who receive their benefit payments via the card are not at risk for improper garnishment of the benefits.

In addition, Treasury has collaborated with the Federal benefit agencies to propose new regulations (75 FR 20299, Apr. 19, 2010) to address the improper garnishment of Federal benefit payments when they are directly deposited to an account. Treasury expects the garnishment regulations to be finalized prior to the implementation dates in this proposed rule. Moreover, Treasury is committed to the continued protection from garnishment of exempt benefits as offered by the Direct Express® card program, and will continue to take steps necessary to ensure that benefit recipients are afforded the protections required by law.

For non-benefit payments, Treasury continues to expand the use of electronic payments and direct deposit by developing processes and programs designed to facilitate electronic disbursements and receipts of all payment types. For example, Treasury's International Treasury Services program (ITS.gov) provides international payment services to Federal agencies in nearly 200 countries, and the Automated Standard Application for Payments (ASAP.gov) allows grantee organizations receiving Federal funds to directly deposit pre-authorized funds to their accounts.

II. Proposed Change to Regulation

Summary of Proposal

For the reasons discussed below, we are seeking to increase the use of direct deposit by individuals receiving Federal benefit and other payments. The proposed rule would generally require [2] individuals to receive Federal nontax payments by EFT, effective March 1, 2011.

Individuals receiving Federal payments by check on March 1, 2011, however, could continue to do so through February 28, 2013. In addition, individuals who file claims for Federal benefits before March 1, 2011, and who request check payments when they file, would be permitted to receive payments by check through February 28, 2013. Individuals who file claims for benefits on or after March 1, 2011, would receive their payments by direct deposit. Individuals receiving their payments by direct deposit prior to March 1, 2011, would continue to do so.

Individuals may choose to receive their payments by direct deposit to their account at a financial institution and provide their bank account information for this purpose. Individuals who do not choose direct deposit of their payments to an account at a financial institution would be enrolled in the Direct Express® card program, a prepaid debit card program established pursuant to terms and conditions approved by FMS. The Direct Express® card would be made available to any recipient of Federal benefit payments, including individuals who have an account at a financial institution but prefer to receive their payments via the Direct Express® card. Beginning on March 1, 2013, all recipients of Federal benefit and other payments, including those then receiving their payments by check, would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

Accordingly, Federal nontax payment recipients would not be able to receive payments by check as of the dates listed above. We are proposing these changes primarily for three reasons: (1) For payment recipients, electronic payments are safer, easier and more convenient than paper checks; (2) the increased availability of electronic banking products, such as prepaid debit cards, including the Direct Express® card issued by Treasury's financial agent under terms and conditions approved by Treasury, makes it possible for Federal benefit recipients to receive and access their payments electronically at no or little cost and with the same or better consumer protections than those available with more traditional banking products; and (3) the Government's cost of delivering payments by check is substantially higher than delivering payments by direct deposit, and check delivery costs will continue to grow as the nation's baby boomers retire over the next two decades. Treasury seeks comments on all aspects of the proposed rule, including examples of exceptional circumstances where specific types of individual EFT waivers could be needed, the costs to recipients for using their benefit payments received by paper check as compared to those received by EFT, and alternative phase-in approaches.

Advantages of Direct Deposit for Individuals

The predominant method for delivering Federal payments by EFT is direct deposit through the Automated Clearing House (ACH) network to an account at a financial institution designated by the recipient. The ACH network is a nationwide EFT system through which financial institutions exchange and settle electronic debit and credit transactions. The Federal government is the largest single user of the ACH system, originating tens of millions of direct deposit transactions each month.

Electronic payments provide individuals with several advantages as compared to receiving payments by check. Direct deposit and other electronic payments are credited to recipients' accounts on the day payment is due, so the funds generally are available sooner than with check payments. Individuals receiving Federal payments electronically rarely have any delays or problems with their payments. In contrast, based on payment claims filed with Treasury, nine out of ten problems with Treasury-disbursed payments are related to paper checks even though checks constitute only 19 percent of all Treasury-disbursed payments made by the Government.

Consumers recognize the benefits of direct deposit. In response to a 2009 survey sponsored by Treasury and the Federal Reserve Banks (Baby Boomer Survey, OMB Control No. 1510–0074), 96 percent of those who use direct deposit reported positive experiences, with 86 percent reporting "very positive" experiences. As more people have become accustomed to electronic banking, and as the industry has continued to improve and expand its electronic services to the customer, more people now report positive experiences with direct deposit. Almost 90 percent of those surveyed in 2009 agreed that direct deposit is the safest way to receive payments, and 93 percent recognized the convenience of direct deposit (Baby Boomer Survey, OMB Control No. 1510–0074). Although the survey population was not limited to Federal check recipients, the study nevertheless illustrates how positively the direct deposit experience is viewed. Treasury expects Federal check recipients to similarly view the direct deposit experience as a positive one.

In contrast to the direct deposit experience, each year approximately half a million individuals call Treasury to request claims packages related to

[2] Agencies would continue to be permitted to waive payment by EFT in certain circumstances as authorized by the Secretary in § 208.4(b)–(g) of this part.

problems with check payments. For example, in fiscal year 2009, more than 670,000 Social Security and SSI checks were reported lost or stolen. Each year, Treasury investigates more than 70,000 cases of altered or fraudulently endorsed checks, totaling $64 million in estimated value. When checks are misrouted, lost in the mail, stolen, or fraudulently signed, Treasury must send replacement checks to the recipient. This can result in a delay in payment of weeks or months if fraud or counterfeiting is involved, thereby creating a hardship for benefit recipients who rely on these payments for basic necessities such as food, rent, or medication. Individuals who move or travel for extended periods of time may also experience delays in receiving their checks if they do not provide timely forwarding address information.

Receiving payments by check rather than direct deposit also can increase the risk of identity theft. Although Treasury checks contain minimal information about a recipient, people intent on committing fraud nevertheless can use a stolen Treasury check, along with other stolen or fake identification documents, to open an account in the recipient's name or otherwise impersonate a check payee. A Treasury check that has been endorsed, but not cashed, offers further opportunities for identity theft.

The benefits of direct deposit and, in contrast, the everyday problems associated with check payments are particularly apparent in disaster and emergency situations. As Hurricanes Katrina and Rita dramatically illustrated in 2005, in the extraordinary circumstances of a disaster or emergency, the delivery of checks may be delayed or disrupted at the very time when people urgently need funds in order to pay for food, clothing and shelter. Moreover, even where Treasury checks can be delivered without undue delay to disaster victims, individuals who have been displaced from their homes may be unable to establish their identities due to lost or inaccessible documentation. As a result, financial institutions may be unwilling to cash Treasury checks for these individuals, because they cannot determine the identity of the individual or whether a Treasury check that an individual is seeking to cash has been stolen and fraudulently endorsed. Finally, check payments may raise security concerns in disaster situations, since individuals who cash checks may be carrying significant amounts of cash in order to make purchases.

Additional potential benefits associated with the proposed rulemaking are described in the Regulatory Impact Assessment, below.

Evolution of Banking Products and Services

Since the adoption of Part 208 in 1998, banking services have dramatically expanded and evolved. There are more low-cost and no-cost accounts for benefit recipients offered by financial institutions and other financial service providers than were available during the 1990s when Part 208 was promulgated. Reloadable prepaid debit cards, which were a small specialty product in the 1990s, are now widely available and can be used at a vast number of merchant locations across the country, not only to purchase goods and services but also to obtain cash through cashback transactions at point-of-sale (POS) locations.

A growing number of State agencies have moved aggressively away from check payments or paper-based vouchers to branded prepaid cards as an electronic payment option. For example, since 2004, all States have been delivering Supplemental Nutrition Assistance Program (SNAP) benefits, formerly known as food stamps, using an electronic benefits transfer system similar to a prepaid card system. More than 40 States are now using prepaid card programs (or planning to use them) to deliver various types of payments to the public, including State assistance payments, child support payments to custodial parents, workers compensation and unemployment insurance benefits. While some States are allowing individuals to choose between cards and checks, some States have made the cards mandatory.

Globally, electronic payments and the use of prepaid cards continue to expand. The volume of prepaid debit card and mobile phone transactions has been growing worldwide. Central banks and other governments are seeking ways to increase electronic payments and reduce paper-based financial transactions. One dramatic example is the proposal by the United Kingdom Payments Council to eliminate all check transactions throughout the United Kingdom by October 31, 2018.

The Direct Express® Card

In June 2008, Treasury introduced the Direct Express® Debit MasterCard® card, a low cost debit card developed exclusively for Federal benefit recipients (initially, for Social Security and SSI payment recipients). As of April 4, 2010, more than one million of the more than 10 million eligible Social Security and SSI check recipients had signed up for the voluntary card program.

There are no monthly fees and most services are free, so it is possible for an individual to use the Direct Express® card for free. There are no fees for cardholders to sign up for or activate the card; receive deposits; make purchases at retail locations, online or by telephone; get cash at retail locations and financial institutions; or check the card's balance at an ATM, by telephone or online. Transaction history and other account information are available at no cost online or by telephone, but if desired, a cardholder may receive a monthly paper statement for a minimal fee. There are no fees for declined transactions and, in rare instances when overdrafts occur, there are no overdraft fees.

Cardholders can choose to receive free automated text, email or telephone "low balance" alerts or "deposit notifications" when money is deposited to their card account. Cardholders may close their Direct Express® card account at any time without a fee. There are no inactivity fees and there is no charge for bank teller cash withdrawals at MasterCard® member banks. The free services and minimal fees are fully disclosed on the Direct Express® Web site (*http://www.USDirectExpress.com*), in materials available to interested applicants, and in materials that are sent to new cardholders along with the card. Fee and features information are also available by calling the Direct Express® toll-free call center.

Cardholders may make purchases anywhere Debit MasterCard® is accepted, including millions of retail locations worldwide, online, or by telephone. Similarly, cardholders may make cash withdrawals and check their account balances at ATMs. A cardholder is allowed one free ATM cash withdrawal for every Federal payment the cardholder receives, valid until the end of the month following the month of receipt. For subsequent ATM cash withdrawals, a cardholder pays a fee to the card issuer of $.90 per ATM withdrawal in the United States. ATM owners often charge ATM users additional fees, known as "surcharge fees;" however, a Direct Express® cardholder may make cash withdrawals at more than 53,000 Direct Express® card surcharge-free network ATMs without paying any surcharge fees. Treasury seeks comments from the public about whether there are sufficient numbers of ATMs in remote and rural areas, and whether the ability to get cash back at POS and make cash withdrawals at MasterCard® member banks reduces the need for ATM access.

Direct Express® cardholders are protected by Regulation E (12 CFR part 205), which generally provides certain protections to a cardholder whose card is lost or stolen, subject to reporting requirements. In fact, Direct Express® cardholders have 90 days to report unauthorized transactions rather than the typical 60 days offered by most financial institutions. Card balances are covered by deposit insurance by the Federal Deposit Insurance Corporation (FDIC) to the extent allowed by law and, as discussed above, Direct Express® cardholders are not at risk for an improper garnishment or the related freezing of funds on the card. More information about the Direct Express® card, including a list of all fees and the terms and conditions of card use, can be found at *http://www.USDirectExpress.com.*

Currently, benefit recipients may sign up for the Direct Express® card in a variety of ways. They may call the Direct Express® toll-free call center or visit the Direct Express® Web site. In addition, a Social Security or SSI recipient may sign up for the card at the recipient's local Social Security Administration office or by calling the Social Security Administration's toll-free national 800 number services. In May 2010, Treasury's Go Direct® call center began accepting calls from Veterans who receive compensation and pension benefit payments and wish to sign up for the Direct Express® card. Treasury is exploring additional cost-effective, secure, and easy ways to enroll beneficiaries in the Direct Express® card program, and will work with Federal agencies to minimize any administrative burden to them as additional benefit payments are accepted into the program.

To date, the Direct Express® card has been made available only to recipients of Social Security and SSI payments. In May 2010, Treasury began offering the Direct Express® card to Veterans compensation and pension check recipients as part of Treasury's plans to expand the program to accommodate other benefit recipients. Under the proposed rule, any benefit recipient would be eligible to receive a Direct Express® card.

Statutory Requirement for Account Access

Section 3332(f) requires all Federal nontax payments to be made by EFT, except as waived by the Secretary for certain limited circumstances. *See* 31 U.S.C. 3332(f) and (j)(3). In fulfilling this statutory mandate, the Secretary must ensure that recipients of Federal payments required to be made by EFT have access to an account at a financial institution at a reasonable cost, and that recipients be given the same consumer protections with respect to the account as other account holders at the same financial institution. *See* 31 U.S.C. 3332(i)(2).

When Treasury originally published a final rule in 1998 implementing Section 3332, Treasury simultaneously developed the Electronic Transfer Account (ETA) account, which was designed to meet these requirements. Although the ETA continues to meet the needs of some benefit recipients, it is not available on a nationwide basis and does not include some of the more useful features that have become available with prepaid debit cards in recent years. By offering the Direct Express® card, Treasury meets the requirements of Section 3332(i) to ensure that payment recipients have access to an account at a reasonable cost and with the same consumer protections as other account holders at the financial institution that issues the card.

According to research conducted in March 2009 (Direct Express—Cardholder Satisfaction and Usage Survey, OMB Control No. 1510–0074), 95 percent of Direct Express® cardholders are satisfied with the card. Eight in ten satisfied cardholders cite convenience, safety or immediate access to money as reasons for their satisfaction. Eighty-six percent of those surveyed said they would recommend the card to a friend or family member who receives Federal benefits.

The Direct Express® card not only meets the statutory "reasonable cost" and "same consumer protection" requirements of Section 3332, it exceeds those requirements. As discussed above, the Direct Express® card carries no monthly fee and can be used at no cost in many cases. In the above-referenced survey of Direct Express® cardholders, three out of four of the cardholders indicated that fees associated with the card are equal to or less than what they paid before. The Direct Express® card offers more extensive consumer protections than those generally afforded to account holders at financial institutions, including other account holders at Comerica Bank, which issues the card. Direct Express® cards are covered by FDIC insurance and the Federal Reserve's Regulation E (12 CFR part 205), as well as MasterCard's "zero liability" policy. In addition, cardholders are not at risk for overdraft fees or improper garnishments or the related freezing of funds. Finally, cardholders have 90 days to report unauthorized transactions, which exceeds the 60 days required under Federal law and provided as the accepted industry standard by most financial institutions.

Cost Savings of Direct Deposit

Despite the general requirement that Federal payments be made electronically, Treasury continues to print and mail many millions of checks each year, at a substantially higher cost to the Government than if those payments were delivered by EFT. The potential cost savings as a result of the proposed rulemaking to the Government and taxpayers are significant, and are described in detail in the Regulatory Impact Assessment, below.

Technical Revision

We are proposing to remove the current § 208.6, which describes deposit account requirements for Federal payment recipients. These provisions are contained in 31 CFR 210.5, and do not need to be duplicated in this part 208. Section 208.6 will be replaced with a new section 208.6 making the Direct Express® card available to Federal payment recipients.

III. Section-by-Section Analysis

Proposed new § 208.2(c) would add a definition of the "Direct Express® card" as meaning the debit prepaid card issued to recipients of Federal benefits by Treasury's financial agent pursuant to requirements established by Treasury. The Direct Express® card features are explained above and on the Direct Express® card Web site at *http://www.USDirectExpress.com.*

Proposed redesignated § 208.2(e), formerly § 208.2(d), would clarify that the definition of "electronic benefits transfer" includes disbursement through a Direct Express® card account. As has been the case, "electronic benefits transfer" (EBT) continues to include, but is not limited to, disbursement through an ETAsm and a Federal/State EBT program.

Proposed § 208.4 is revised to eliminate the ability of an individual to claim a waiver from receiving payments electronically based on the individual's determination, in his or her sole discretion, that payment by direct deposit would impose a hardship or because the individual does not have an account with a financial institution. Benefit recipients who are receiving their payments from an agency by check before March 1, 2011, would be allowed to continue to receive those payments from that agency by check through February 28, 2013. In addition, individuals who have filed claims for Federal benefits before March 1, 2011, and who requested check payments when they filed, would be permitted to receive payments by check through February 28, 2013. Individuals who file claims for Federal benefit payments on or after March 1, 2011, would receive their payments by direct deposit. Individuals receiving their benefit payments by direct deposit on or before March 1, 2011, would continue to do so. Beginning on March 1, 2013, all benefit recipients would receive their payments by direct deposit—either to an account at a financial institution or to a Direct Express® card account.

The Secretary's waiver authority would remain unchanged, and Federal agencies would continue to have the flexibility to waive payment by direct deposit or other EFT method in the circumstances described in paragraphs (b) through (g) of § 208.4, namely, for certain payments to payees in a foreign country where the infrastructure does not support EFT, for certain disaster or military situations, for situations in which there may be a security threat or for valid law enforcement reasons, for non-recurring payments, and for unusual situations that require urgent payment and the Government would be seriously injured unless payment is made by a method other than EFT.

Proposed § 208.6 is revised to remove the general account requirements for Federal payments made electronically to an account at a financial institutions. These requirements are contained in 31 CFR 210.5 and do not need to be duplicated in Part 208. Proposed § 208.6 states that any individual who receives a Federal benefit, wage, salary, or retirement payment will be eligible for a Direct Express® card account.

Proposed § 208.7 is revised to state that agencies shall put into place procedures that allow recipients to provide the information necessary: (i) For the delivery of their payments by EFT to an account at a financial institution, or (ii) to enroll for a Direct Express® card account. Agencies would no longer need to notify individuals about their right to invoke a hardship waiver. FMS will work with agencies to ensure that they have the information they need to effectively explain the features and fees of the Direct Express® card to prospective cardholders.

Proposed § 208.8 is revised to state that payment recipients are required to provide a Federal agency with sufficient information to receive payments electronically. To receive a payment by direct deposit to an account at a financial institution, the recipient would need to provide his or her account information. To enroll for a Direct Express® card account, recipients would need to provide sufficient demographic information to allow for an account to be established, including information needed for identity verification purposes.

Proposed § 208.11 is revised to conform to the technical revision and delete the reference to § 208.6.

Appendices A and B containing Model ETA℠ Disclosure Notices are removed because they would no longer apply. ETA℠ accounts remain available from financial institutions that continue to offer them. For more information about ETA℠ accounts, visit *www.eta-find.gov.*

IV. Procedural Analysis

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 proposed 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

It has been determined that this regulation is a significant regulatory action as defined in Executive Order 12866 in that this rule would have an annual effect on the economy of $100 million or more, and this rule raises novel policy issues arising out of the legal mandate in 31 U.S.C. 3332. Accordingly, this proposed regulation has been reviewed by the Office of Management and Budget. The Regulatory Impact Assessment prepared by Treasury for this regulation is provided below.

SUMMARY OF ESTIMATED BENEFITS AND COSTS

Benefit	$125 million.
Cost	Not estimated.
Net Benefits	Not estimated.

The analysis used nominal dollars in 2009.

1. Description of Need for the Regulatory Action

a. Statutory and Regulatory History

This rulemaking is necessary to expand compliance with the electronic funds transfer (EFT) provisions of section 3332, title 31 United States Code (Section 3332). In 1996, Congress enacted subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (DCIA), which amended Section 3332 to generally require that all nontax Federal payments be made by EFT, unless waived by the Secretary of the Treasury (Secretary). The Secretary must ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution "at a reasonable cost" and with "the same consumer protections with respect to the account as other account holders at the same financial institution." *See* 31 U.S.C. 3332(f), (i)(2).

To implement Section 3332 as Congress intended, Treasury promulgated Part 208 of title 31, Code of Federal Regulations (Part 208). Part 208 currently sets forth requirements for accounts to which Federal payments may be sent by EFT; provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account (ETA) at a financial institution that offers such accounts; and establishes the responsibilities of Federal agencies and recipients under the regulation. Part 208 also sets forth a number of waivers to the general requirement that Federal payments be delivered by EFT. *See* 31 CFR 208.4.

In conjunction with the publication of Part 208, Treasury developed the ETA, a low-cost account offered by participating financial institutions for those individuals who wish to receive their Federal payments by direct deposit. The ETA was established with the intention that it would eventually become available nationwide, and thereby comply with the statutory mandate that any person required to receive payment by EFT have access to an account at a financial institution at a reasonable cost and with standard consumer protections. However, the ETA is not available nationwide, and, as a result, does not meet the statutory requirement related to account access.

Any financial institution that wishes to offer the ETA may do so by entering into a financial agency agreement agreeing to offer the ETA in accordance with the terms and conditions established by Treasury. *See* Notice of Electronic Transfer Account Features, 64 FR 38510 (July 16, 1999). A participating financial institution must open an ETA for any individual who requests one, with some limited exceptions, provided that the individual authorizes the direct deposit of his or her Federal benefit, wage, salary or retirement payments. A financial institution may charge an account fee of up to $3.00 per month, and may charge other account-related fees as usually and customarily charged to other retail customers. ETA cardholders must be allowed to withdraw funds at least four times per month without incurring fees. Checks are not offered with ETAs. Account holders access their funds through online debit at ATM, commonly referred to as "PIN debit," and point-of-sale (POS) networks. Offline (signature) debit is not permitted. Treasury pays a participating financial institution a fee of $12.60 for each ETA account established.

The hardship waivers in Part 208 were necessary because the ETA was not (and is not) available to all benefit recipients across the country. In addition, because the ETA does not permit signature debit and does not include bill payment capability as a required feature, the ETA cardholders have limited options in paying for goods and services with an ETA. They cannot use the ETA, for example, to make online and telephone purchases. The limited payment capability of the ETA resulted in a need for hardship exceptions for geographic, financial, and physical disability reasons, since individuals might not have convenient or feasible access to physical POS or ATM locations. Moreover, the ETA allows monthly and other fees which, although limited, could still pose a financial hardship for some benefit recipients. This meant that a waiver for financial hardship was also necessary.

Since its inception in 1999 through March 2010, fewer than 245,000 ETA accounts have been opened, and as of March 2010, there are fewer than 118,000 active ETA accounts. Anecdotal evidence suggests that, with some exceptions, the ETA is not a cost-effective product for financial institutions. According to a 2002 report by the Government Accountability Office (GAO), although many financial institutions believed that the ETA was a good product for the target market, the financial institutions were reluctant to offer the account because they did not see the product as profitable. *See,* "Electronic Transfers: Use by Federal Payment Recipients Has Increased but Obstacles to Greater Participation Remain," GAO–02–913, page 31 (Sept. 12, 2002) (*www.gao.gov/new.items/d02913.pdf*). From the consumer perspective, reasons for lack of interest include the inability to write checks, limited availability of ETAs, lack of awareness of ETAs, a difficult enrollment process, and a personal preference for doing business without a bank account. *Id.,* at 35–36.

GAO has issued at least two reports on the Federal Government's efforts to increase the use of electronic payments rather than checks. *See,* for example, 2002 GAO report cited above, and "Electronic Payments: Many Programs Electronically Disburse Federal Benefits, and More Outreach Could Increase Use," GAO–08–645 (June 23, 2008) (*www.gao.gov/new.items/d08645.pdf*). In these referenced reports, GAO recognizes the advantages of electronic payments, but also recognizes the two major historical obstacles to removing the Part 208 individual waivers. First, there are a high number of check recipients who do not have a bank account or who lack convenient access to an account at a reasonable cost with appropriate consumer protections. GAO–02–913, pages 16–24 (Sept. 12, 2002); GAO–08–645, pages 19–20, 33 (June 23, 2008). Second, consumer concerns about the improper freezing and seizure of Federal benefit funds typically exempt from garnishment has led to resistance to Treasury's efforts to remove the Part 208 individual waivers to EFT requirements. GAO–08–645, pages 20–22.

b. Technology Changes in the Banking Industry

The technological developments and widespread acceptance of debit and prepaid card products during the last decade make it feasible and advantageous for Treasury to revise its existing implementing regulation to expand the scope of individuals subject to the EFT requirements. Specifically, the development and implementation of the Direct Express® card, a MasterCard® prepaid debit card developed by Treasury exclusively for Federal benefit recipients, means that Treasury can now comply with the requirement of Section 3332 to ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution that is reasonably priced and subject to standard consumer protections.

Reloadable prepaid debit cards, which were a small specialty product in the 1990s, are now widely available and can be used at a vast number of merchant locations across the country, not only to purchase goods and services, but also to obtain cash through cashback transactions at POS locations. With the expansion of the Internet and other technological advances, consumers have the ability to make online purchases with a debit card, as well as the ability to pay for goods and services over the telephone, resulting in the mitigation of some past obstacles to electronic payment acceptance. Even for those without access to the Internet, or who buy goods and use services from vendors who do not accept debit card payments, debit cards can be used to purchase money orders, thereby eliminating the step of having to cash a check or carry large amounts of cash to complete necessary financial transactions.

The "2007 Federal Reserve Payments Study, Noncash Payment Trends in the United States: 2003–2006," sponsored by the Federal Reserve System (released December 10, 2007) (*http://www.frbservices.org/files/communications/pdf/research/2007_payments_study.pdf*) highlights the growing acceptance of debit cards in the United States. According to the study, debit cards now surpass credit cards as the most frequently used payment type. The Federal Reserve noted that the highest rate of growth was in automated clearing house (ACH) payments, which grew about 19 percent per year, followed closely by debit card payments. The annual use of debit cards increased by about 10 billion payments over the survey period to 25.3 billion payments in 2006, an annual growth rate of transactions of 17.5% from 2003 to 2006. Many financial service providers offer general prepaid branded reloadable cards intended for recipients of wages, incentive or bonus payments, State benefits and child support payments, and other types of high volume or regularly recurring payments. Many States offer or require the use of electronic payment cards for those who receive State benefits, such as temporary assistance to needy families.

Treasury's experience with offering electronic payment card products dates back to 1989, and illustrates how Treasury's products have evolved and how acceptance of these products has grown. In 1989, Treasury offered a debit card product, known as the SecureCard, on a pilot basis in Baltimore, Maryland, at no cost to SSI recipients. The undeveloped nature of the POS system at that time presented the primary challenge in that pilot. To make the card useful, Treasury installed POS equipment at various local merchants, at a substantial cost to the Government. In 1992, Treasury initiated the Direct Payment Card pilot for Social Security and SSI recipients in Texas, which had a better developed POS infrastructure, and subsequently extended the pilot to Social Security recipients in Argentina. From 1992 through 1997, approximately 46,000 recipients enrolled, and the program was well-received by recipients. Building on the success of the Direct Payment Card pilot, in 1996, Treasury joined a Federal-State electronic benefits transfer (EBT) program known as the Benefit Security Card program. The Benefit Security Card was offered to Federal and/or State benefit recipients in eight southeastern States, known as the Southern Alliance of States, which included Alabama, Arkansas, Florida, Georgia, Kentucky, Missouri, North Carolina, and Tennessee. Treasury's Benefit Security Card program allowed benefit recipients to access their Federal and/or State benefits via a single debit card. When Treasury terminated the card program in January 2003, approximately 51,000 Federal benefit recipients were enrolled in the program. Although customers were pleased with the product, Treasury and most States were concerned about cardholder costs, which were scheduled to increase at the time Treasury terminated the program. At the end of 2006, Treasury initiated a small Direct Express® card program to gauge the market for a branded debit card, reloadable only with Federal benefit payments. As part of the pilot, Treasury sent letters to 35,000 Social Security and SSI check recipients in Chicago and southern Illinois, offering them the opportunity to sign up for a Direct Express® card to receive their Federal benefit payments electronically. In addition, Treasury included information about the program in check envelopes mailed to all Illinois Social Security and SSI check recipients. The card features offered for the pilot program were similar to the current Direct Express® card product, although the fees were slightly higher.

2. Provision

Treasury proposes a two-phased approach for implementation of its proposed rule. The first phase would require all new benefit recipients to sign up for direct deposit to a bank account of the recipients' choice or to a Direct Express® card account, beginning March 1, 2011. The second phase would begin on March 1, 2013, at which time all recipients of Federal benefit and other nontax payments would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

Those receiving their benefit payments by check before March 2011, could continue to do so through February 28, 2013, after which those recipients would convert to direct deposit. For Federal benefit recipients, this means that individuals who file claims for Federal benefits before March 1, 2011, and who request check payments when they file, would be permitted to receive payments by check through February 28, 2013. Individuals who file claims for benefits on or after March 1, 2011, would receive their payments by direct deposit. Individuals receiving their payments by direct deposit prior to March 1, 2011, would continue to do so.

3. Baseline

a. Amount of Federal Disbursement

In fiscal year 2009, Treasury disbursed more than 80% of its nontax payments electronically, or more than 750 million payments. Despite the general requirement that Federal payments be made electronically, and Treasury's efforts to persuade check recipients to convert to direct deposit, Treasury nevertheless continues to print and mail many millions of checks each year, at a substantially higher cost to the Government than if those payments were delivered by EFT. For example, of the 146 million checks disbursed for nontax payments, in fiscal year 2009, more than 136 million of them were Federal benefit checks mailed to 11 million benefit recipients, causing avoidable payment-related problems for many check recipients, and resulting in extra costs to taxpayers of more than $125 million that would not have been incurred had those payments been made by EFT. Social Security (retirement, disability, and survivors benefits) and SSI payments represent more than 92 percent, or more than 125 million, of those benefit check payments. The remaining 11 million benefit check payments are made to recipients of civil service retirement, railroad retirement, Black Lung, and Veterans benefits. Although the direct deposit payments rate has increased since 1996, when it was 58%, the rate has climbed only slowly since fiscal year 2005 when it first reached 80%.

b. Affected Population

As noted above, in fiscal year 2009, Treasury disbursed 136 million checks to 11 million benefit recipients. Treasury estimates that approximately 4 million of those recipients do not have bank accounts.

Treasury recognizes the demographic differences between payment recipients who are more willing to accept direct deposit and those who are not. Treasury also recognizes that there are a variety of reasons why check recipients do not switch to direct deposit. Because the majority of its check payments are made to Social Security and SSI recipients, Treasury's research focuses on this population. During implementation of its proposed rule, Treasury will continue its research efforts to ensure that the needs of all check recipients are adequately addressed and take appropriate action.

According to Treasury research conducted in 2004 ("Understanding the Dependence on Paper Checks—A Study of Federal Benefit Check Recipients and the Barriers to Boosting Direct Deposit," OMB Control No. 1510–0074), the average age of a Social Security check recipient was 66 years old. Sixty-one percent of the Social Security check recipients were female; 39% were male. Thirty-five percent of the Social Security check recipients had not completed high school, while 26% had some college education or beyond. Sixty percent of Social Security recipients were retired; 27% did not have bank accounts; 12% received some other form of government assistance; 27% had a disability.

Comparatively, the average age of a SSI check recipient was 50. Seventy percent of the SSI check recipients were female; 30% were male. Fifty-one percent of the SSI recipients had not completed high school, while 15% had some college education or beyond. Only 21% of SSI recipients were retired; 68% did not have a bank account; 42% received some other form of government assistance, and 42% had a disability.

According to Treasury research in 2007 (SSA & SSI Check Recipient Survey, OMB Control No. 1510–0074), the check recipient population demographics had not changed significantly. The 2007 survey found that 28% of Social Security check recipients did not have a bank account, but that 9% more SSI recipients had bank accounts than in 2004 (in 2007, 59% of SSI recipients did not have a bank account).

The above-referenced Treasury research shows that younger benefit recipients convert to direct deposit at a faster rate than older benefit recipients. Younger benefit recipients who have had their payments for less than a year are signing up for direct deposit at rates that far exceed their proportions in the population. Close to 50% of those Social Security and SSI check recipients who converted to direct deposit had been receiving their benefits for less than one year. Conversely, only 16% of Social Security check recipients and 15% of SSI recipients who had been receiving their payments nine (9) years or longer signed up for direct deposit.

Treasury and the Social Security Administration found that, in fiscal year 2009, almost 80% of new enrollees signed up for direct deposit either to an existing bank account or to a Direct Express® card account. Since September 2008, the Social Security Administration has been offering new Social Security and SSI recipients the option of signing up for a Direct Express® card, in addition to direct deposit at a financial institution, at the time they enroll for benefits. Social Security is also allowing individuals to sign up at local offices and by telephone. The Direct Express® card has been a major contributor in the decline of Social Security and SSI check payments over the last two years, but has had an especially significant impact on the SSI check payment volume. The average monthly payment amount for an SSI check recipient is $496, whereas the average monthly payment amount for a Social Security check recipient is $838. There has been a year-over-year decrease in SSI checks of 6.91% in March 2010, compared to March 2009, which is significantly greater than the 3.81% decline in March 2009, compared to March 2008.

Treasury seeks comments for Treasury's consideration about examples of exceptional circumstances where specific types of individual EFT waivers could be needed, even with the availability of the Direct Express® card for Federal benefit recipients.

4. Assessment of Potential Costs and Benefits

a. Potential Costs

There are potential short-term costs associated with the proposed rulemaking. First, there are intangible emotional costs for individuals who are fearful or resistant to direct deposit. In its 2004 research, Treasury learned that there are some key differences among Social Security check recipients, SSI check recipients, and those that receive their benefit payments by direct deposit. Although these differences do not necessarily explain why certain individuals are more resistant than others to receiving payments by direct deposit, the data helps Treasury properly target its public education campaign. For example, because the data described below shows that Social Security check recipients are more likely than SSI check recipients to have a bank account, Treasury can direct its resources to informing Social Security check recipients about the benefits of directly depositing payments to an existing bank account. For SSI recipients who are less likely to have a bank account, Treasury can focus its Direct Express® card information to that population.

Compared to SSI check recipients, Social Security check recipients are older (average age 66), more likely to have a bank account, more likely to be male and retired, less likely to have a disability, less likely to receive some other form of government assistance, less likely to depend on their benefit as their sole source of income, and more likely to be Caucasian. SSI recipients are likely to be younger (average age 50), less likely to have a bank account, more likely to have a representative payee acting on their behalf, more likely to be African-American, more likely to be female, more likely to live in a city, more likely to receive some other form of benefit payment, and more likely to depend on others for assistance with daily chores and errands. Direct deposit recipients are more technologically savvy than either Social Security or SSI check recipients. They are more likely to own a cell phone or to use a personal computer and the Internet. Compared with check recipients, direct deposit beneficiaries responding to the survey were more likely to have confidence in banks, to believe that computers are secure, and to feel that ATMs are safe.

Despite these demographic differences, Treasury has found that the reasons for resistance to direct deposit among check recipients have remained fairly constant over the years. Many people express a desire to see the physical payment in check form. Others feel a greater sense of control when handling checks, and many, especially those receiving SSI, believe that receiving checks helps them to better manage their money and maintain their standard of living. Barriers that need to be overcome can be grouped into four general categories: informational (those who do not understand how direct deposit works); emotional (those who just prefer to receive checks); inertia (those who are receptive to electronic payments, but need to be motivated to sign up); and mechanical (those who do not have bank accounts, and in some cases, do not want bank accounts).

Treasury expects most recipients to pay less for EFT payments than for check payments. While some individuals may be able to cash government checks at no cost, there are often fees of up to $20 or more for cashing a check. The Direct Express® card program is structured so that there are several ways for cardholders to access their funds and use their card without paying any fees. The Direct Express® card account fees compare favorably to those charged by financial service providers offering general purpose reloadable cards, which often charge fees for sign-up, monthly maintenance, ATM withdrawals, balance inquiries, and customer service calls. Cardholders may use their card to make purchases and get cash back at a POS location without paying a fee; obtain cash from any MasterCard® member bank teller window without paying a fee; and make one free ATM cash withdrawal for each benefit payment deposited to the card account (the free ATM cash withdrawal is available until the end of the month following the month of deposit). If the cardholder makes a withdrawal using an ATM within the Direct Express® surcharge-free ATM network, the cardholder will not pay a surcharge fee to an ATM owner. In addition, there are many other features that cardholders can access without paying a fee, including unlimited customer service calls (with or without live operators); optional automated low balance alerts or deposit notifications; and online or telephone transaction history and other account information. There is no fee to sign up for the card, close the account, or to obtain one replacement card per year. Importantly, there are no overdrafts, minimum balance requirements, or credit requirements to sign up for the card. The few fees that are charged for the card include $.90 for ATM transactions after free ATM transactions are used, $.75 per month for optional paper statements, fees for using the card outside the United States, and replacement cards beyond the free replacement card. Treasury seeks comments on the costs to recipients for using their benefit payments received by paper check as compared to those received by EFT.

Treasury expects to continue to incur expenditures for the public education related to the implementation of any new rules and to temporarily expand its telephone and online direct deposit enrollment center to accommodate those converting from check payments to direct deposit to comply with the new rules, whether the conversion is to an account at a financial institution or to a Direct Express® card account. However, such expenditures will taper off after the new rules are fully implemented, since direct deposit enrollment in the future will occur at the time of benefit enrollment. Federal benefit agencies may incur costs to temporarily expand customer service centers to accommodate recipients' questions and enrollments until the new rules are fully implemented.

Treasury expects increased costs for its call center and Web site used to enroll check recipients into direct deposit, although these costs are expected to drop off after 2013, when the proposed rule would be fully implemented. The education costs, expected to range from $3 million to $4.5 million per year, through 2013, are costs that Treasury would have incurred even without the proposed rulemaking, and for potentially longer than the next 3–5 years. Similarly, Treasury expects benefit paying agencies to incur some initial costs for customer service training for customer service representatives responsible for educating new enrollees and current check recipients about the new rules, but these costs are expected to be more than offset by the cost savings expected once customer service centers no longer have to respond to individual inquiries related to check problems. The one-time costs to increase customer service capacity at the Treasury enrollment center (both telephone and online) could total as high as $20 million from the effective date of the final rule through 2013. After 2013, Treasury expects these costs to drop off significantly.

The Go Direct® campaign, sponsored by Treasury and the Federal Reserve Banks, highlights the need for this educational program. Despite the success of the campaign with more than 4.3 million direct deposit enrollments achieved since 2005 as a result of the campaign's activities, more than 11 million Federal benefit recipients still receive checks each month. Treasury research shows that the likelihood of current check recipients switching to direct deposit remained generally unchanged from 2004 to 2007, with 55% of banked Social Security check recipients surveyed in 2007 being very unlikely to change to direct deposit, down from 59% in 2004. The percentage of banked Social Security check recipients likely to switch to direct deposit went from 27% in 2004 to 28% in 2007. Comparatively, 40% of banked Supplemental Security Income (SSI) check recipients were likely to switch to direct deposit in 2007, up only one percentage point since 2004. While Treasury research shows that direct deposit education has a positive impact on the likelihood of a check recipient to switch to direct deposit, the effort is time consuming, administratively burdensome, costly, and resource-intensive. During the period July 2009 through June 2010, Treasury spent $4.5 million on its Go Direct® campaign, and expects to spend another $4 million during the period July 2010 through June 2011. Prior years' costs have ranged from $5 million to $10 million for Treasury to establish and sustain its presence in target markets to promote and encourage check recipients to convert to direct deposit.

Finally, and less directly, financial institutions may experience some costs associated with converting their check recipient customers to direct deposit, but Treasury does not expect this to be a significant burden since financial institutions already enroll a significant number of direct deposit recipients through Treasury's Go Direct® campaign.

b. Potential Benefits

The potential benefits of the proposed rulemaking to the Government and taxpayers are significant. As noted above, in fiscal year 2009, Treasury mailed more than 136 million Federal benefit checks to approximately 11 million benefit recipients, resulting in extra costs to taxpayers of more than $125 million that would not have been incurred had those payments been made by EFT. Without the proposed rule change and given the current trends, the number of checks that Treasury prints and mails each year is expected to increase significantly over the coming years, primarily as a result of the aging of the baby boomer generation. Beginning in 2008, the first wave of 78 million baby boomers became eligible for Social Security benefits. Even as the more technologically-savvy baby boomers enter the rolls, the direct deposit rate for fiscal year 2010 through April remained at about 80% for new Social Security enrollees, relatively unchanged from fiscal year 2009, and only slightly higher than fiscal year 2008. With the increase in retiring baby boomers, Treasury expects to issue approximately 60 million new payments each year to approximately 5 million newly enrolled recipients (based on Social Security Administration actuarial data). Of those 60 million payments, an estimated 9 million would be made by check based on the current overall direct deposit/check ratio (85 percent/15 percent) for Social Security payments. By 2020, the Social Security Administration projects there will be 18.6 million more Social Security beneficiaries than in fiscal year 2009, which would result in more than 223 million additional payments each year. At the current direct deposit/check ratio, this would mean 33.5 million additional checks each year beginning in 2020, at a cost of $31 million each year, leading to a total annual cost of more than $156 million more than if those payments were made by direct deposit.

These projected cost savings do not take into account future increased costs in postage, paper, and salaries; the cost of issuing benefit checks other than Social Security and SSI; or the costs agencies incur in handling inquiries and authorizing replacement checks. For example, the Social Security Administration expects administrative savings resulting from a drop in non-receipt and lost check actions. The Social Security Administration also expects to save money by eliminating the "Payment Delivery Alert System," which is a joint effort among the Social Security Administration, Treasury, and the U.S. Postal Service to locate and deliver delayed Social Security and SSI checks.

Those who receive their payments by direct deposit do not have to worry about a lost or stolen check, or carrying around large amounts of cash that can be easily lost or stolen. Each year, approximately half a million individuals call Treasury to request claims packages related to problems with check payments. For example, in fiscal year 2009, more than 670,000 Social Security and SSI checks were reported lost or stolen. Each year, Treasury investigates more than 70,000 cases of altered or fraudulently endorsed checks, totaling $64 million. When checks are misrouted, lost in the mail, stolen, or fraudulently signed, Treasury must send replacement checks to the recipient. This can result in a delay in payment, especially if fraud or counterfeiting is involved, thereby creating a hardship for benefit recipients who rely on these payments for basic necessities such as food, rent, or medication. In contrast, individuals receiving Federal payments electronically rarely have any delays or problems with their payments. Nine out of ten problems with Treasury-disbursed payments are related to paper checks even though checks constitute only 19 percent of all Treasury-disbursed payments made by the Government.

These projected savings also do not account for the costs that would no longer be incurred by banks and credit unions for cashing checks and reimbursing the Government when there are alterations, forgeries, or unauthorized indorsements of Federal benefit checks. In fiscal year 2009, it cost the banking industry $69.3 million to reimburse the Treasury for checks that had been fraudulently altered or counterfeited, or contained a forged or unauthorized indorsement.

5. Alternative Approaches Considered

Treasury considered three alternative approaches to achieving the benefits of direct deposit other than the approach proposed in this rulemaking notice.

First, Treasury could have proposed to eliminate the individual EFT waivers sooner for everyone, i.e., eliminate the waivers for all benefit recipients on the same effective date, but Treasury was concerned about the impact of such a rule on payment recipients if it had an inadequate amount of time to educate the public about the rule's requirements and benefits. It is important for Treasury and benefit agencies to be prepared to respond to recipients' inquiries about the new rules, which requires sufficient time to train agency customer service representatives, educate those affected by the new rules, and to implement any process changes that may be required. Treasury will work closely with the agencies to ensure that implementation requirements are understood and can be addressed in the time frame proposed.

Second, Treasury also considered phasing in the elimination of the individual EFT waivers over a longer period of time. Treasury is concerned that such a delay results in additional costs to individuals who will be delayed in realizing the benefits of direct deposit. Treasury intends to begin its public education campaign immediately upon the promulgation of a final rule. Treasury will monitor the progress of its campaign, and adjust the campaign as necessary to ensure maximum effectiveness. In addition, a delayed implementation results in additional costs to the Government and taxpayers. For every year that Treasury delays full implementation of the EFT rule, the government spends at least $125 million more for check payments than it would otherwise spend if recipients were receiving EFT payments. Treasury seeks comments on alternative phase-in approaches based on research evidence and increased effectiveness.

Finally, Treasury considered whether to institute a formal application process for individuals seeking to invoke a waiver to the EFT requirement. Treasury is concerned that such an approach would require the unnecessary development of a new bureaucratic infrastructure to process the applications, and would impose administrative burdens on both Government agencies and benefit recipients. The availability of the Direct Express® card negates the need for the existing waivers. Agencies retain the ability to waive EFT requirements for classes of payments for various reasons. Finally, in an unusual or exceptional circumstance, the Secretary has the authority to waive the EFT requirement, but Treasury does not anticipate invoking this authority except in rare situations.

6. Other Issues

a. Financial Agent

Building on the "lessons learned" in previous programs and the Direct Express® card program pilot, Treasury issued an announcement in 2007 seeking a financial institution qualified to act as a Treasury-designated financial agent to provide debit card services for Federal benefit recipients nationwide, through the Direct Express® card program. Treasury has unique legal authority to designate a financial institution as its financial agent to disburse Federal benefit payments electronically, which includes the establishment of an account meeting certain requirements, maintenance of an account, the receipt of Federal payments electronically, and the provision of access to funds in the account on the terms specified by Treasury. *See* 12 U.S.C. 90; 31 CFR 208.2. Fifteen financial institutions responded, and after careful review of the applications, Treasury selected Comerica Bank as its agent based on various criteria, including the proposed cardholder fees. Treasury considered, but rejected, selecting multiple financial agents (although it has the option to do so in the future) primarily to ensure that the selected financial agent would be able to maintain a sufficient volume of active accounts in order to cost-effectively sustain a program with the lowest possible cardholder fees. The financial agent selection process used by Treasury enabled Treasury to obtain debit card services with the most value for benefit recipients, including, among other things, better consumer protections than those offered by most prepaid card products, a surcharge-free ATM network of more than 53,000 surcharge-free ATMs, free low balance alerts and deposit notification, unlimited free customer service calls, and the ability to use the debit card product to access Federal benefit payments without incurring a fee. Treasury provides oversight to confirm that its financial agent operates the Direct Express® card program to provide maximum value at a reasonable cost to cardholders. Treasury has begun offering paper check recipients of Veterans compensation and pension benefits the option of using the Direct Express® card, and plans to expand the card program to other types of Federal payments, including civil service retirement, railroad retirement, and more. This would allow Federal payment recipients to receive multiple types of Federal payments to a single Direct Express® card account.

b. Garnishment

Treasury has also addressed the garnishment issue, that is, the concerns about the improper freezing and seizure of benefit funds exempt from garnishment. On April 19, 2010, Treasury and the four major benefit paying agencies—Office of Personnel Management, Railroad Retirement Board, Social Security Administration, and Department of Veterans Affairs—published a joint notice of proposed rulemaking to address concerns associated with the garnishment of exempt Federal benefit payments. 75 FR 20299 (Apr. 19, 2010). The rule, as proposed, would establish straightforward, uniform procedures for financial institutions to follow in order to minimize the hardships encountered by Federal benefit payment recipients whose accounts are frozen pursuant to a garnishment order. The rule would require financial institutions to exempt from freezing or seizure an amount equivalent to benefit payments deposited to an account within the 60 days prior to a financial institution's receipt of a garnishment order. The rule will protect benefit recipients with regular, recurring benefit payments that are directly deposited to an account at a financial institution.

Until the garnishment rule is finalized, the Direct Express® card offers another solution to address concerns about improper garnishment. Currently, the Direct Express® card accepts only exempt benefits, thus making it easier for the Direct Express® card issuer to identify all of the funds in an individual's account as consisting of exempt funds and then react accordingly to garnishment orders. Treasury will not allow a Direct Express® card account to commingle non-exempt and exempt funds until a final garnishment rule is promulgated or, alternatively, the card issuer offers protections similar to those proposed by Treasury and the other benefit agencies.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule applies to individuals who receive Federal payments, and does not directly impact small entities. Accordingly, an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) is not required.

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 proposed 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.

List of Subjects in 31 CFR Part 208

Accounting, Automated Clearing House, Banks, Banking, Electronic funds transfer, Financial institutions, Government payments.

For the reasons set out in the preamble, we propose to amend 31 CFR part 208 as follows:

PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

1. The authority citation for part 208 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503; Pub. L. 104–208, 110 Stat. 3009.

2. In § 208.2, redesignate paragraphs (c) through (o) as paragraphs (d) through (p), respectively, add new paragraph (c), and revise redesignated paragraph (e) to read as follows:

§ 208.2 Definitions.

* * * * *

(c) *Direct Express® card* means the prepaid debit card issued to recipients of Federal benefits by a Financial Agent pursuant to requirements established by Treasury.

* * * * *

(e) *Electronic benefits transfer (EBT)* means the provision of Federal benefit, wage, salary, and retirement payments electronically, through disbursement by a financial institution acting as a Financial Agent. For purposes of this part, EBT includes, but is not limited to, disbursement through an ETAsm, a Federal/State EBT program, or a Direct Express® card account.

* * * * *

3. Revise § 208.4(a) to read as follows:

§ 208.4 Waivers.

* * * * *

(a) Where an individual is receiving Federal payments from an agency by check prior to March 1, 2011, the individual may continue to receive those payments by check through February 28, 2013. In addition, an individual who files a claim for Federal benefit payments prior to March 1, 2011, and who requests payment of those benefits by check at the time he or she files the claims, may receive those payments by check through February 28, 2013.

* * * * *

4. Revise § 208.6 to read as follows:

§ 208.6 Availability of the Direct Express® Card.

Any 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.

Each agency shall put in place procedures that allow each recipient 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 to sign up for a Direct Express® card account to be held by the recipient.

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 to an agency the information requested by the agency in order 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. * * *

Appendixes A and B to Part 208 [Removed]

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

Dated: June 10, 2010.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2010–14614 Filed 6–16–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–9163–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Rocky Mountain Arsenal Federal Facility

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete portions of the On-Post Operable Unit (OU3), specifically the Central and Eastern Surface Areas including surface media and structures (CES), and the surface media of the entire Off-Post Operable Unit (OU4) (OPS) of the Rocky Mountain Arsenal Federal Facility (RMA) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that all appropriate response actions at these identified parcels under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However this deletion does not preclude future actions under Superfund.

This partial deletion pertains to the surface media (soil, surface water, sediment) and structures (both former structures that have been demolished and structures retained for future use) within the CES and the surface media of the entire OPS. The rest of the On-Post OU (Figure 1), including groundwater below RMA that is west of E Street, and the groundwater that comprises the Off-Post OU (*see* Section IV and Figure 1) will remain on the NPL and response activities will continue at those OUs. The groundwater media east of E Street (with the exception of a small area below the northwest corner of Section 6) was previously deleted from the NPL as part of the Internal Parcel Partial Deletion in 2006 (71 FR 43071).

DATES: Comments must be received by July 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–