

FDA found in the shell egg refrigeration and labeling final rule that preemption is needed because State and local laws that are less stringent than the Federal requirements will significantly interfere with the important public health goals of this regulation (65 FR 76092 at 76109–76110). This final rule amends the shell egg refrigeration and labeling final rule to permit the egg industry to place the safe handling statement for shell eggs on the inside lid of egg cartons if the statement “Keep Refrigerated” appears on the PDP or information panel. FDA believes that preemption of State and local labeling requirements that are the same as or more stringent than the requirements of this regulation would not be necessary, as enforcement of such State and local requirements would not interfere with the food safety goals of this regulation. Further, it is likely that any states that enacted similar labeling requirements to those in this final rule would change those requirements to be consistent with any changes made by FDA as a result of this rulemaking. Accordingly, the preemptive effect of this rule would be limited to State or local requirements that are not as stringent as the requirements of this regulation. Requirements that are the same as or more stringent than FDA’s requirement would remain in effect.

Further, section 4(e) of the Executive Order provides that “when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.” FDA provided the States with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders through publication of the 2005 proposed rule. FDA received two comments from a State Department of Agriculture, which agreed with the proposal.

In addition, on March 12, 2007, FDA’s Division of Federal and State Relations provided notice by fax and e-mail transmission to State health commissioners, State agriculture commissioners, and food program directors of FDA’s intended amendment to its food labeling regulations to permit the egg industry to place the safe handling statement for shell eggs on the inside lid of egg cartons if the statement “Keep Refrigerated” appears on the PDP or information panel (§ 101.17(h)). The notice provided the States with further opportunity for input on this rulemaking. It advised the States of the intended publication of the final rule and encouraged State and local

governments to review the notice and to provide any comments to the docket (Docket Number 2004N–0382), opened May 5, 2005, when the 2005 proposed rule was published in the **Federal Register**, by a date 30 days from the date of the notice (i.e., by April 11, 2007). FDA received no comments in response to this notice. The notice has been filed in the previously referenced docket.

For the reasons set forth previously in this document, the agency believes that it has complied with all of the applicable requirements under the Executive order. In conclusion, FDA has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

## VII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Tuominen, R., “Why Do Some Yellow Page Advertisements Capture Attention Better Than Others?,” *Acta Odontologica Scandinavica*, 59: 79–82, 2001.

2. Dietrich, D.A., “Enhancing Label Readability for Over-the-Counter Pharmaceuticals by Elderly Consumers,” *Journal of Safety Research*, 27: 132, 1996.

3. RTI International, “FDA Labeling Cost Model, Final Report,” prepared by Mary Muth, Erica Gledhill, and Shawn Karns, RTI, prepared for Amber Jessup, FDA, Center for Food Safety and Applied Nutrition, April 2002.

## List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

## PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. Section 101.17 is amended by revising paragraph (h)(2) to read as follows:

### § 101.17 Food labeling warning, notice, and safe handling statements.

\* \* \* \* \*

(h) \* \* \*

(2) The label statement required by paragraph (h)(1) of this section shall appear prominently and conspicuously, with the words “SAFE HANDLING INSTRUCTIONS” in bold type, on the

principal display panel, the information panel, or on the inside of the lid of egg cartons. If this statement appears on the inside of the lid, the words “Keep Refrigerated” must appear on the principal display panel or information panel.

\* \* \* \* \*

Dated: May 25, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7–16272 Filed 8–17–07; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Part 208

**RIN 1510–AB07**

### Management of Federal Agency Disbursements

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** On August 7, 2006, the Financial Management Service (FMS) published an interim final rule amending 31 CFR Part 208 (Part 208) to facilitate the delivery of Federal payments to victims of disasters and emergencies. See 71 FR 44584. The interim final rule was published without prior notice and comment and took effect immediately upon publication due to the need to be prepared to deliver Federal assistance and benefit payments during the 2006 hurricane season. However, we invited comments on the interim rule and indicated that we would consider all comments received. We have reviewed and considered the comments received on the interim rule and are adopting that rule as final without change.

**DATES:** Effective August 20, 2007, the interim rule published on August 7, 2006 (71 FR 44584) is confirmed as final.

**ADDRESSES:** You can download this rule at the following Web site: <http://www.fms.treas.gov/ach>. You may also inspect and copy this 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.

**FOR FURTHER INFORMATION CONTACT:** Sally Phillips, Director, EFT Strategy Division, at (202) 874–7106 or

sally.phillips@fms.treas.gov; or Natalie H. Diana, Senior Counsel, at (202) 874-6680 or natalie.diana@fms.treas.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

Part 208 implements the provisions of 31 U.S.C. 3332, which generally requires that Federal payments be made by electronic funds transfer (EFT). Under 31 U.S.C. 3332, the Secretary of the Treasury (Secretary) must ensure that any individual required to receive a Federal payment by EFT have access to an account at a financial institution at a reasonable cost and with certain consumer protections. On August 7, 2006, Treasury issued an interim final rule amending Part 208 in order to facilitate the delivery of Federal benefit and assistance payments to victims of emergencies and disasters. The purpose of the interim rule was to provide regulatory authority for Treasury, in the event of a disaster or emergency, to establish accounts at a financial institution for affected individuals in order to allow for the delivery by EFT of Federal payments.

The possibility that a future emergency or disaster could disrupt the delivery of Federal payments through conventional methods such as direct deposit and check was made apparent by Hurricane Katrina in 2005. During the aftermath of Hurricane Katrina, many individuals who had been displaced from their homes were in immediate need of financial assistance. As Hurricane Katrina illustrated, in the extraordinary circumstance of a disaster, many individuals may not have access to their bank accounts and may not be able to readily establish new bank accounts. Such individuals would have no way to receive an electronic Federal assistance or benefit payment. Moreover, the postal delivery of checks may be delayed or disrupted in a disaster situation, at the very time when the expeditious delivery of Federal assistance and benefit payments is critical in assisting people in disaster situations who urgently need funds in order to pay for food, clothing and shelter. Even where Treasury checks can be expeditiously delivered 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 will typically be carrying significant amounts of cash in order to make purchases.

In light of these concerns, we published an interim final rule to provide regulatory authority for Treasury to establish accounts at financial institutions for victims of a disaster or emergency in order to allow for the electronic delivery of Federal payments.

##### Summary and Response to Comments

We received three comment letters on the interim final rule. One comment letter, from a national payments association, expressed support for the rule and noted that the rule appears to provide the flexibility that would be critical in the event of a future disaster or emergency that disrupts the delivery of payments. The letter also urged Treasury give advance consideration to issues such as how long accounts would remain open, where people would go to open accounts and how ACH files would be transferred if there were no electricity and/or telecommunications capacity. Another comment letter, from a trade association, agreed with the need for flexibility in disaster situations but urged Treasury to provide disaster victims with the opportunity to receive Federal payments through the financial institution of their choosing whenever possible. The letter also urged Treasury to use all available communications media to apprise disaster victims, the financial services sector and emergency assistance organizations of the plan to deliver Federal payments in the aftermath of a disaster.

The third comment letter was from a Federal agency. The agency questioned how Treasury could deliver payments electronically in the event that the infrastructure supporting direct deposit were disrupted. The agency also raised other questions, such as how financial institutions would provide account access to disaster victims who do not have documentary evidence of their identities. Finally, the agency argued that agency relief personnel and individual victims are in the best position to decide how disaster relief payments should be delivered, and that individuals should not be required to receive payments electronically through accounts established for them by Treasury.

We are aware that, depending on the nature of an emergency, the delivery of payments by direct deposit could be disrupted by damage to the payment system infrastructure. The purpose of

the amendment to Part 208 was to provide Treasury with maximum flexibility for developing payment solutions even in the event of disruptions to payment networks, electricity and/or telecommunications. For example, in the event that the direct deposit network were not operational, it might be possible to deliver payments via other established electronic payment networks, such as ATM networks and credit/debit card networks, or through other means that might be developed depending upon the contingencies of a particular situation. In the event that individuals could not provide the standard identity documents that financial institutions typically require, Treasury would work with benefit and relief agencies and financial institutions to issue passwords that disaster victims could use to access payments following the agencies' confirmation of victims' identities on the basis of verifiable information held by the agency.

It is important to note that the interim final rule permits, but does not require, Treasury to establish accounts for disaster victims. Treasury intends to work closely with benefit and relief agencies to determine how best to deliver funds in the event of an emergency. Because it is impossible to know in advance precisely the circumstances that a future disaster or emergency could present, the rule allows the terms and conditions of such accounts to be established on the basis of whatever is appropriate in a given situation. Thus, for example, Treasury might consider establishing accounts for disaster victims through which relief and assistance funds could be accessed at ATMs and/or point-of-sale locations. Alternatively, in more exigent circumstances, Treasury might work with one or more financial institutions to provide electronic funds access through proprietary arrangements with retailers, charitable organizations or other unconventional means of access. The interim final rule gives Treasury the authority to quickly establish accounts for disaster and emergency victims, as well as the flexibility to determine what features such accounts should have in order to meet the needs of agencies and payment recipients.

##### Amendment of Part 208

The interim rule amended 31 CFR Part 208 by adding a new § 208.11 that provides that Treasury may establish accounts at financial institutions for victims of a disaster or emergency in order to allow for the electronic delivery of Federal payments. New § 208.11 gives the Secretary flexibility to determine what features such accounts should

have in light of the particular nature of the disaster or emergency. Sections 208.4, 208.6, 208.7 and 210.5 of title 31 CFR do not apply to the establishment of accounts or issuance of payments pursuant to this section. For example, the waivers set forth in § 208.4 are not applicable in situations where Treasury is establishing accounts for the express purpose of allowing for the delivery by EFT of Federal payments to disaster victims. The requirement in §§ 208.6 and 210.5 that a Federal non-vendor electronic payment be deposited to a deposit account in the name of the recipient does not apply to accounts established pursuant to § 208.11, nor are agencies required to notify check recipients and newly-eligible payment recipients of options available to them, as is normally required under § 208.7. Further, Treasury will be able to deliver payments to accounts established pursuant to § 208.11, notwithstanding any other instructions from the payment recipient.

#### Regulatory Analyses

##### *Request for Comment on Plain Language*

On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive is effective for all new proposed and final rulemaking documents issued on or after January 1, 1999. We invite comment on how to make this 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 this final 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 final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

##### *Regulatory Flexibility Act Analysis*

Because no notice of proposed rulemaking was required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) do not apply.

#### List of Subjects in 31 CFR Part 208

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

#### Adoption of the Amendment

■ For the reasons set out in the preamble, under the authority of 5

U.S.C. 301 the interim rule amending 31 CFR Part 208 published at 71 FR 44584 is adopted as a final rule without change.

Dated: August 14, 2007.

**Kenneth R. Papaj,**  
Commissioner.

[FR Doc. 07-4053 Filed 8-17-07; 8:45 am]

BILLING CODE 4810-35-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DOD-2006-HA-0207]

RIN 0720-AB15

#### **Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Reserve Select for Members of the Selected Reserve**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This interim final rule revises requirements and procedures for TRICARE Reserve Select and restructures eligibility to include all Selected Reservists, except for those individuals either enrolled or eligible to enroll in a health benefit plan under Chapter 89 of Title 5, United States Code. The rule is being published as an interim final rule with comment period in order to comply with statutory effective dates.

**DATES:** *Effective Date:* This rule is effective October 1, 2007. Submit comments on or before September 19, 2007.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160. Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Jody Donehoo, TRICARE Management Activity, TRICARE Operations, telephone (703) 681-0039.

Questions regarding payment of specific claims under the TRICARE allowable charge method should be addressed to the appropriate TRICARE contractor.

#### SUPPLEMENTARY INFORMATION:

##### **I. Introduction and Background**

A previous interim final rule was published in the **Federal Register** on March 16, 2005, (70 FR 12798-12805) that established requirements and procedures to implement TRICARE Reserve Select under section 701 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA-05) (Pub. L. 108-375). Section 701 of NDAA-05 authorized premium-based medical coverage for certain members of the Selected Reserve and their family members. By April 2005, Selected Reserve members who served on active duty in support of a contingency operation and fulfilled other statutory qualifications could purchase TRICARE Reserve Select coverage for periods proportional to their period of active duty.

A second interim final rule was published in the **Federal Register** on June 21, 2006, (71 FR 35527-35537). That interim final rule revised requirements and procedures for TRICARE Reserve Select pursuant to sections 701 and 702 of the National Defense Authorization Act for Fiscal Year 2006 (NDAA-06) (Pub. L. 109-163). Section 701 enhanced the existing TRICARE Reserve Select program. Section 702 added two new tiers of premium sharing by the government (50 percent and 85 percent member portion) to the existing premium tier (28 percent member portion), making TRICARE Reserve Select available to all Selected Reservists.

Before a final rule could be issued subsequent to the interim final rule published in the **Federal Register** on June 21, 2006, (71 FR 35527-35537) for the TRICARE Reserve Select program, Section 706 of the NDAA-07 amended the statutory provisions in sections 701 and 702 of the NDAA-06 which were implemented in the interim final rule.

Therefore, this interim rule addresses provisions of the National Defense Authorization Act for Fiscal Year 2007 (NDAA-07) (Pub. L. 109-364). First, section 706 of the NDAA-07 expands the availability of the 28 percent premium tier to all Selected Reservists with one exception. Those individuals either enrolled or eligible to enroll in a