

liability to consumers for the property, the effect of this provision is to permit cards and their underlying funds to expire sooner than is permitted under the EFTA and Regulation E. Section 66–29–116 of the Tennessee Act thus permits an act or practice that is prohibited by the Federal law.

In reaching this conclusion, the Bureau has considered whether § 66–29–116 of the Tennessee Act, as applied to gift cards, is more protective of consumers than Federal law. The Bureau has concluded that it is not, because the Bureau has not identified any consumer benefit flowing from an issuer's ability to decline a gift card at the point-of-sale sooner than the card and its underlying funds are permitted to expire under Federal law. The Bureau notes that any benefits a consumer might experience from having a gift card treated as abandoned property would result from the transfer of the unused gift card value to the State, not from an issuer's declining to honor the card.<sup>35</sup>

For the reasons stated above, the Bureau finds that the Tennessee Act is inconsistent with the EFTA and Regulation E and therefore is preempted to the extent that it permits issuers to refuse to honor gift cards sooner than the gift cards and their underlying funds are permitted to expire under Federal law.<sup>36</sup> In reaching this determination, the Bureau acknowledges commenters'

concerns that the requirement both to transfer the unused value from abandoned gift cards to the State while at the same time complying with the EFTA and Regulation E imposes possibly burdensome obligations on gift card issuers. However, the primary concern of the relevant provision of the EFTA is to ensure that consumers will be able to use their gift cards for the prescribed periods of time. So long as consumers can continue to use their cards at the point-of-sale for as long as Federal law guarantees, the fact that issuers may face an increased burden or cost to comply with both Federal law and the Tennessee Act—at least to the degree of burden the commenters discussed—does not change the Bureau's conclusion. Also, as with Maine, the Bureau expresses no opinion on the constitutional due process concerns raised by certain commenters, because the Bureau's role is solely to determine whether State law inconsistent with the requirements of the EFTA and Regulation E, not to determine whether State law is constitutional. In this regard, the Bureau notes that its determination is limited to the conclusion that § 66–29–116 of the Tennessee Act, as applied to gift cards, is preempted, and the Bureau does not otherwise opine on how the Tennessee Act should apply to gift cards in light of this determination.

This is an official staff interpretation of Regulation E, issued pursuant to § 1005.12(b) of Regulation E. The Bureau believes that the nuances of States' unclaimed property laws warrant independent consideration of whether a particular State's unclaimed property law as applied to gift cards is inconsistent with and preempted by the EFTA and Regulation E. Thus, notwithstanding certain commenters' requests that the Bureau set forth a uniform, national standard, this determination is limited to the facts and issues discussed above and does not constitute a determination with respect to the laws of any other States.

#### List of Subjects

##### 12 CFR Part 1005

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

#### Preemption Determination

The following order sets forth the preemption determination, which also will be reflected in Supplement I to Part 1005—Official Interpretations.

#### Order

Pursuant to § 1639q of the Electronic Fund Transfers Act (EFTA) and § 1005.12(b) of Regulation E, the Bureau has determined that § 66–29–116 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act (the Tennessee Act) is preempted by the EFTA and Regulation E to the extent that the Tennessee Act permits gift certificates to be declined at the point-of-sale sooner than the gift certificates and their underlying funds are permitted to expire under § 1005.20(e) of Regulation E. The Bureau's determination applies only with respect to those devices that are gift certificates, store gift cards, and stored-value cards, as defined in 12 CFR 1005.20(a), and are also covered by the Tennessee Act.

Dated: April 19, 2013.

#### Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, May 1, 2013, 10:00 a.m.–11:00 a.m.

**PLACE:** Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Commission Meeting—Open to the Public.

**MATTERS TO BE CONSIDERED:** Decisional Matter: Section 1110 Certificates of Compliance—Notice of Proposed Rulemaking.

A live webcast of the Meeting can be viewed at [www.cpsc.gov/live](http://www.cpsc.gov/live).

For a recorded message containing the latest agenda information, call (301) 504–7948.

#### CONTACT PERSON FOR MORE INFORMATION:

Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: April 23, 2013.

#### Todd A. Stevenson,

Secretary.

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<sup>35</sup> Similarly, the Bureau concludes that its determination that § 66–29–116 of the Tennessee Act is not more protective of consumers than the EFTA and Regulation E is not inconsistent with the judicial decision discussed in the Bureau's Notice. That case, in which the U.S. Court of Appeals for the Third Circuit upheld a decision by the U.S. District Court for the District of New Jersey that declined to preliminarily enjoin the application to gift cards of New Jersey's unclaimed property law, weighed the benefits to consumers of New Jersey's unclaimed property scheme for gift cards. In finding that the plaintiffs were unlikely to prove that Federal law preempted New Jersey's unclaimed gift card law, the court emphasized several possible benefits to consumers of having their unused gift card value transfer to the State that, in the court's view, weighed in favor of a conclusion that New Jersey law was more protective of consumers than the EFTA and Regulation E. See *N.J. Retail Merchants Ass'n v. Sidamon-Eristoff*, 669 F.3d 374 (3d Cir. 2012), *reh'g denied* (3d Cir. Feb. 24, 2012). Because the Bureau's preemption determination with respect to Tennessee law applies to the provision of Tennessee law that permits issuers to decline to honor abandoned gift cards at the point-of-sale, rather than to the provision that requires unused gift card value to be transferred to the State, the purported benefits of any such transfer are not germane to the Bureau's decision.

<sup>36</sup> The Bureau's determination with respect to the Tennessee Act reflects the Bureau's understanding of how the Tennessee Act currently operates and is based in part on communications with the Tennessee Department of Treasury's Unclaimed Property Division. If legislative, judicial, or other official action effected a relevant change in how Tennessee law applied to gift cards, the Bureau could revisit its determination.