

(D) Interim Revisions, 2012,  
 (E) Interim Revisions, 2014,  
 (F) Interim Revisions, 2015, and  
 (G) Interim Revisions, 2018.  
 (vii) [Reserved]  
 (viii) AASHTO LTS-6, Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, 6th Edition, copyright 2013, with:

(A) AASHTO LTS-6-I1, 2015 Interim Revisions to Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2014,

(B) AASHTO LTS-6-I2-OL, 2019 Interim Revisions to Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2018, and

(C) AASHTO LTS-6-I3, 2020 Interim Revisions to Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2019.

(ix) AASHTO LRFDLTS-1, LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, 1st Edition, copyright 2015, with:

(A) AASHTO LRFDLTS-1-I1-OL, 2017 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2016,

(B) AASHTO LRFDLTS-1-I2-OL, 2018 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2017,

(C) AASHTO LRFDLTS-1-I3-OL, 2019 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2018, and

(D) AASHTO LRFDLTS-1-I4, 2020 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2019.

(2) American Welding Society (AWS), 8669 NW 36 Street, #130 Miami, FL 33166-6672; [www.aws.org](http://www.aws.org); or (800) 443-9353 or (305) 443-9353.

(i) AWS D1.1/D1.1M:2015 Structural Welding Code—Steel, 23rd Edition, copyright 2015, including Errata March 2016 (second printing).

(ii) AWS D1.4/D1.4M:2011 Structural Welding Code—Reinforcing Steel, 2011.

(iii) AASHTO/AWS D1.5M/D1.5: 2015-AMD1, Bridge Welding Code, 7th Edition, Amendment: December 12, 2016.

(e) *Additional design resources.* \* \* \*

[FR Doc. 2021-28236 Filed 12-30-21; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### 31 CFR Part 210

Docket No. FISCAL-2021-0002

RIN 1530-AA26

#### Federal Government Participation in the Automated Clearing House

**AGENCY:** Fiscal Service, Bureau of the Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service) is adopting the changes we proposed in an August 2021 notice of proposed rulemaking for our regulation governing the use of the Automated Clearing House (ACH) Network. Consistent with past practice, our regulation adopts, with some exceptions, the Nacha Operating Rules & Operating Guidelines (Operating Rules & Guidelines) developed and published by Nacha as the rules governing the use of the ACH Network by Federal agencies. We are issuing this final rule to address changes that Nacha has made since its publication of the 2019 Operating Rules & Guidelines. These changes include amendments set forth in the 2020 and 2021 Operating Rules & Guidelines, including supplement #1-2021.

**DATES:** Effective February 2, 2022. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 2, 2022.

**ADDRESSES:** You can download this final rule at the following website: [fiscal.treasury.gov/ach/](https://fiscal.treasury.gov/ach/).

**FOR FURTHER INFORMATION CONTACT:** Ian Macoy, Director of Settlement Services, at (202) 874-6835 or [ian.macoy@fiscal.treasury.gov](mailto:ian.macoy@fiscal.treasury.gov); or Frank J. Supik, Senior Counsel, at [frank.supik@fiscal.treasury.gov](mailto:frank.supik@fiscal.treasury.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 18, 2021, the Fiscal Service published a Notice of Proposed Rulemaking at 86 FR 46631 that proposed amendments to title 31 CFR part 210 (part 210). Part 210 governs the use of the ACH Network by Federal agencies.

The ACH Network is a nationwide electronic fund transfer system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions.

The ACH Network facilitates payment transactions between several participants. These participants include the:

- *Originator:* A company or individual that agrees to initiate an ACH entry according to an arrangement with a Receiver.

- *Originating Depository Financial Institution (ODFI):* An institution that receives the payment instruction from the Originator and forwards the ACH entry to the ACH Operator.

- *ACH Operator:* A central clearing facility that receives entries from ODFIs, distributes the entries to appropriate Receiving Depository Financial Institutions, and performs settlement functions for the financial institutions.

- *Receiving Depository Financial Institution (RDFI):* An institution that receives entries from the ACH Operator and posts them to the account of its depositors (Receivers).

- *Receiver:* An organization or consumer that has authorized an Originator to initiate an ACH entry to the Receiver's account with the RDFI.

- *Third-Party Service Provider:* An entity other than the Originator, ODFI, or RDFI that performs any functions on behalf of the Originator, ODFI, or RDFI in connection with processing ACH entries. These functions may include, for example, creating ACH files on behalf of an Originator or ODFI, or acting as a sending point or receiving point on behalf of an ODFI or RDFI.

Rights and obligations among participants in the ACH Network are generally governed by Nacha's Operating Rules & Guidelines. The Operating Rules & Guidelines establish standards for sending and receiving ACH entries, provide specifications and formatting requirements for the electronic transmission of transaction information, set forth the rights and obligations of the entities listed above when transmitting, receiving, or returning ACH entries, and cover other related matters. The Operating Rules & Guidelines also provide guidance regarding best practices to ACH Network participants. There is an industry consensus that the Operating Rules & Guidelines provide a uniform set of standards for ACH transactions and that these standards enable efficient transaction processing.

Part 210 incorporates the Operating Rules & Guidelines by reference, with certain exceptions. The Operating Rules & Guidelines govern the use of the ACH Network by financial institutions and other parties but must be incorporated by reference in part 210 to apply to the Federal Government's use of the ACH Network. From time to time, the Fiscal

Service amends part 210 to address changes that Nacha periodically makes to the Operating Rules & Guidelines or to revise the regulation as otherwise appropriate. The Federal Government generally adopts changes to the Operating Rules & Guidelines unless the changes address enforcement and compliance of the Operating Rules & Guidelines, would adversely impact government operations, or are irrelevant to Federal agency participation in the ACH Network.

Currently, part 210 incorporates the 2019 Operating Rules & Guidelines, subject to certain exceptions. Nacha has adopted several changes since the publication of the 2019 Operating Rules & Guidelines, as reflected in the 2021 Operating Rules & Guidelines and supplements thereto. The Fiscal Service is adopting most of these changes, consistent with the amendments proposed in the NPRM.

## II. Public Comment and Fiscal Service Response

The Fiscal Service sought public comment on the proposed rule to assist the agency in giving full consideration to the matters discussed in the NPRM. We received one substantive comment, which was submitted by Nacha and co-signed by nine Payments Association members (Nacha Comment Letter).

The Nacha Comment Letter expressed support for the Fiscal Service's proposal to adopt the majority of the Operating Rules & Guidelines. The Nacha Comment Letter expressed particular support for the Fiscal Service's adoption of the revised Same Day ACH transaction dollar limit. In light of the NPRM's proposal to not adopt the Nacha Operating Rules & Guidelines' contact registry provisions, the Nacha Comment Letter suggested that the Fiscal Service consider alternative means of providing contact information to industry participants. The transaction dollar limit and contact registry are discussed below.

In addition, the Nacha Comment Letter suggested that the Fiscal Service explore methods of adopting changes to the Nacha Operating Rules & Guidelines. The Fiscal Service will consider alternatives, but the procedures for incorporating the Nacha Operating Rules & Guidelines into the Code of Federal Regulations by reference are established by the Office of the Federal Register. These rules require, among other steps, that the Fiscal Service conduct a rulemaking procedure.

## III. Summary of Final Rule

During the last amendment to part 210, the Fiscal Service adopted, with some exceptions, Nacha's 2019 Operating Rules & Guidelines. Subsequently, Nacha published two versions of the Operating Rules & Guidelines, the 2020 Operating Rules & Guidelines and the 2021 Operating Rules & Guidelines. The relevant 2020 changes are included in the 2021 version that we are incorporating by reference. Below, we outline the major changes that were published in these updates.

### A. 2020 Operating Rules & Guidelines Changes

The 2020 Operating Rules & Guidelines made several changes to the Operating Rules and Guidelines. These changes included raising the Same Day ACH dollar limit, differentiating the codes associated with certain return transactions, modifying data security requirements, clarifying fraud detection standards for WEB Debit transactions, and adding a new Same Day ACH processing window.

#### Same Day ACH per Transaction Dollar Limit Increase

Nacha approved a rule change to update the Same Day ACH per transaction dollar limit from \$100,000 to \$1,000,000.<sup>1</sup> At implementation, both Same Day ACH credits and Same Day ACH debits will be eligible for Same Day ACH processing up to \$1,000,000 per transaction.

We are adopting this rule, effective March 18, 2022. Acceptance of this rule will enable individuals and entities to make Same-Day ACH payments of up to \$1,000,000 to the Federal Government and will enable Federal disbursements up to the same amount.

#### Differentiating Unauthorized Return Codes

The 2020 Operating Rules & Guidelines changed the usage of certain Nacha "Return Reason Codes," which afforded financial institutions more insight into the reason why a transaction was returned.

Under the prior rules, Nacha used one Return Reason Code (the R10 code) as a catch-all to identify transactions that were returned for several underlying return reasons, including some for which a valid authorization existed. Under the revised Rule, Nacha re-purposed another Return Reason Code (the R11 code) to allow ACH network participants to more readily identify

ACH transactions that are being returned due to an error, even though an authorization exists for the transaction (e.g., if the authorization is for a different amount and/or date). The newly re-purposed code is used only to identify the return of a debit transaction in which there is an error, but for which there is an authorization.<sup>2</sup>

The Operating Rules & Guidelines will treat returned transactions using either code (R10 and R11) as unauthorized. However, an Originator will be permitted to correct the underlying error in an R11 return (if possible). Subject to certain other requirements, the Originator may be able to resubmit the underlying ACH transaction without obtaining a new authorization.<sup>3</sup>

We are adopting this change. Doing so will allow the Fiscal Service to remain consistent with industry practice, allowing for consistent operation across the ACH network. Moreover, using the R11 return code will provide greater insight into the reasons for the return of certain transactions.

#### Supplemental Fraud Detection Standards for WEB Debits

The Fiscal Service previously adopted Nacha's updated fraud detection standards for WEB debit transactions.<sup>4</sup> The Fiscal Service adopted this change with a delayed effective date of March 22, 2022.<sup>5</sup> The updated rule clarifies that Nacha requirements for a "commercially reasonable fraudulent transaction detection system" include the use of account validation services for WEB debit transactions. We are adopting the updated rule, which may help reduce ACH return transactions and the incidence of fraudulent transactions affecting the Federal Government.

### B. 2021 Operating Rules & Guidelines Changes

The 2021 Operating Rules & Guidelines implemented several additional changes beyond those in the 2020 Operating Rules & Guidelines. These changes included, but are not limited to, clarifying certain portions of the enforcement provisions of the Operating Rules & Guidelines, implementing a new Same Day ACH

<sup>2</sup> The 2021 Operating Rules & Guidelines implements a second phase of this rule. This second phase is discussed below.

<sup>3</sup> Some transaction errors, such as errors due to the failure to provide certain notices or the failure to use an acceptable "source document," cannot be corrected. In those cases, the Originator will be required to submit a new ACH entry.

<sup>4</sup> See 85 FR 15715 (Mar. 19, 2020).

<sup>5</sup> *Id.*

<sup>1</sup> This rule change was published in Supplement #1-2021 to the Nacha Operating Rules.

processing window, implementing a second phase of Nacha's return code rule, establishing a time limit on certain warranty claims, and implementing Nacha's contact registry. As explained in more detail below, we are not adopting the amendments to the enforcement and contact registry provisions but are adopting the remaining changes.

#### Enforcement

The 2021 Operating Rules & Guidelines defines an "egregious violation" within the context of rules enforcement.

We are not adopting this amendment. Under 31 CFR 210.2(d), the enforcement provisions of the Operating Rules & Guidelines are inapplicable to Federal agencies.

#### Differentiating Unauthorized Return Reasons

As discussed above, Nacha repurposed the R11 Return Reason code to further differentiate between certain returned debit ACH transactions. The 2021 Operating Rules & Guidelines implemented a second phase of this rule change, which will apply Nacha's existing Unauthorized Entry Fee to ACH debit entries that are returned with the newly repurposed code. These transactions are associated with an authorization of a debit transaction when there is an error or defect in the payment such that the entry does not conform to the terms of the authorization.

The Fiscal Service is adopting this rule change. Adopting this change maintains consistency with other ACH Network participants and creates additional incentives to minimize the amount of unauthorized (or incorrectly authorized) ACH transactions.

#### Limitation on Warranty Claims

Nacha's 2021 Operating Rules & Guidelines impose time limits on an RDFI's ability to make a claim against an ODFI's authorization warranty.

The Operating Rules & Guidelines require an ODFI to warrant that an ACH entry has been properly authorized by the Receiver. Under the prior rules, there was no time limit on the ODFI's warranties. Instead, these limits were determined by state statutes of limitations, which may vary.

The change sets forth different time periods, depending upon whether the transaction affects consumer and non-consumer accounts. This rule allows an RDFI to make a claim for one year from the settlement date of an entry to a non-consumer account. In the case of an entry to a consumer account, the RDFI

may make a claim for two years from the entry's Settlement Date. In addition, the RDFI can make a claim for entries settling within 95 calendar days from the Settlement Date of the first unauthorized debit to a consumer account.

The Fiscal Service is adopting this rule change.

#### Supplementing Data Security Requirements

Nacha previously expanded its Data Security Requirements rule, which the Fiscal Service adopted,<sup>6</sup> but in the 2021 Operating Rules & Guidelines Nacha updated the effective date and expanded the existing ACH Security Framework to explicitly require large, non-financial institution Originators, Third-Party Service Providers, and Third-Party Senders to protect account numbers used in the initiation of ACH entries by rendering them unreadable when stored electronically.

The Fiscal Service is adopting the updated rule, which will expand existing security requirements and protect information associated with ACH transactions.

#### ACH Contact Registry

In 2019, Nacha approved a rule creating an ACH contact registry. Under this rule, all ACH financial institutions are required to register contact information for their ACH operations and fraud and/or risk management areas. Financial institutions may voluntarily register contacts for additional personnel or departments at their discretion. The contact information is available to other registered ACH participating financial institutions, payments associations, ACH Operators, and Nacha to use in the event of ACH-related system outages, erroneous payments, duplicates, reversals, fraudulent payments and any other use within scope, such as identifying the proper contact for letters of indemnity. The contact information includes Routing and Transit Numbers (RTNs).

Nacha is implementing the ACH Contact Registry rule in two phases. Phase 1 became effective on July 1, 2020, the date on which the registration portal was opened for "Participating Depository Financial Institutions" to begin to submit and query contact information. Under Phase 2, Nacha's enforcement authority for the Rule becomes effective.

We are not adopting this amendment. Although participation in the registry can be expected to provide some

benefits to the industry, all Federal Government RTNs are controlled by Treasury through the Fiscal Service. The Fiscal Service prohibits debit origination to all Treasury-controlled ACH RTNs. To mitigate the risk of inappropriate use of any Treasury RTNs, the Fiscal Service prohibits their publication. Moreover, under 31 CFR 210.2(d), the enforcement provisions of the Operating Rules & Guidelines are inapplicable to Federal agencies. The Fiscal Service appreciates Nacha's suggestion that the Federal Government consider alternative methods of making appropriate contact information available to financial institutions and may do so in the future.

#### Reversals

The 2021 Operating Rules & Guidelines also clarify the proper circumstances under which an ACH entry may be reversed. The amendments to the Operating Rules & Guidelines specifically state that the initiation of reversing entries or files for any reason other than those explicitly permissible under the Operating Rules & Guidelines is prohibited and define non-exclusive examples of circumstances in which the origination of reversals is improper.

The reversals rule also establishes additional formatting requirements for reversals; limits the ability to modify the contents of other fields in a reversing entry to allow changes only to the extent necessary to facilitate proper processing of the reversal; explicitly permits an RDFI to return an improper reversal; and expands the permissible reasons for a Reversing Entry to include an error in the effective entry date.

The Fiscal Service is adopting this rule, which will clarify the circumstances under which entries can be reversed and assist in the efficient processing of ACH transactions involving the Federal Government.

#### Meaningful Modernization

The 2021 Operating Rules & Guidelines also contain five amendments that Nacha characterizes as "Meaningful Modernization." These five amendments are designed to improve and simplify the ACH user experience by facilitating the adoption of new technologies and channels for the authorization and initiation of ACH payments; reducing barriers to the use of the ACH Network; providing clarity and increasing consistency around certain ACH authorization processes; and reducing certain administrative burdens related to ACH authorizations.

Specifically, the five rules:

<sup>6</sup> See 85 FR 15715 (Mar. 19, 2020).

- Explicitly define the use of standing authorizations for consumer ACH debits;
- Define and allow for oral authorization of consumer ACH debits beyond telephone calls;
- Clarify and provide greater consistency of ACH authorization standards across payment initiation channels;
- Reduce the administrative burden of providing proof of authorization; and
- Better facilitate the use of electronic and oral Written Statements of Unauthorized Debit.

#### Standing Authorizations

The current authorization framework for consumer ACH debits encompasses recurring and single payments. A single entry is a one-time payment and can be between parties that have no previous relationship. ACH Originators that have, or want to use, a different model for ongoing commerce do not have specific rules for payments that are a hybrid, falling somewhere in between recurring and single entries.

This rule change defines a “Standing Authorization” as an advance authorization by a consumer of future debits at various intervals. The consumer would initiate the future debits by additional actions, which differs from the requirements for recurring ACH transactions. The rule allows the use of different Standard Entry Class codes. By allowing standing authorizations, Nacha will fill the gap between single and recurring payments and enable businesses and consumers to make more flexible payment arrangements for relationships that are ongoing in nature.

The Fiscal Service is adopting this rule. The Fiscal Service believes that the Standing Authorization rule may increase options for initiating ACH transactions with the Federal Government. As a result, agencies may be able to adopt new payment processes that better fit their needs and the needs of their customers.

#### Oral Authorizations

The Oral Authorizations rule defines and allows “Oral Authorizations” as a valid authorization method for consumer debits distinct from a telephone call.

Under the rule, any Oral Authorization obtained via any channel needs to meet defined requirements. An Oral Authorization obtained over the internet that is not a telephone call also needs to meet the risk and security requirements that currently apply to Internet-Initiated/Mobile (WEB) ACH entries. The rule will allow for Standing

Authorizations to be obtained orally. In addition, the rule will allow for subsequent entries initiated under a Standing Authorization to be initiated through voice commands, instructions, or affirmations.

The Fiscal Service is adopting this amendment. The Fiscal Service believes that the Oral Authorization rule may increase options for initiating efficient ACH transactions with the Federal Government.

#### Other Authorization Issues

The 2021 Operating Rules & Guidelines also include rule changes grouped as “Other Authorization Issues,” which cover other modifications and re-organizations of the general authorization rules for clarity, flexibility, and consistency.

The rule re-organizes the general authorization rules to better incorporate Standing Authorizations, Oral Authorizations, and other changes. In addition, the amended rule explicitly states that authorization of any credit entry to a consumer account and any entry to a non-consumer account can be by any method allowed by law or regulation. Only consumer debit authorizations require a writing that is signed or similarly authenticated. The amended rule also requires all authorizations to meet the standards of “readily identifiable” and “clear and readily understandable terms,” which aim to reduce the incidence of erroneous transactions. Finally, the rule applies the “minimum data element” standards that currently are only stated in the rules for Telephone-Initiated Entries to all consumer debit authorizations.

The Fiscal Service is adopting these amendments, which will benefit the Federal Government and those who participate in ACH transactions with it.

#### Alternative to Proof of Authorization

The 2021 Operating Rules & Guidelines provide an ODFI and Originator the option of accepting a return of a transaction in lieu of providing a copy of an authorization. Previously, an Originator was required to provide proof of authorization to its ODFI in such time that the ODFI can respond to an RDFI’s request for proof of an authorization within ten banking days.

This change reduces an administrative burden on ODIFIs and their Originators by allowing them to choose their method of response. The rule is intended to help reduce the costs and time needed to resolve some exceptions in which proof of authorization is requested. However, if

the RDFI still needs proof of authorization, the ODFI and its Originator must provide it within ten days of the RDFI’s subsequent request.

The Fiscal Service is adopting these amendments. The Fiscal Service agrees that these rule amendments may make certain ACH transaction processes more efficient. If the Federal Government determines that it is inefficient to provide the requested proof of authorization, the new rule will allow it to return the ACH instead of expending resources to locate and transmit the information to the RDFI and Receiver.

#### Written Statement of Unauthorized Debit via Electronic or Oral Methods

The 2021 Operating Rules & Guidelines change the “Written Statement of Unauthorized Debit” rule, which makes an RDFI responsible for obtaining a consumer’s Written Statement of Unauthorized Debit (WSUD) prior to returning a debit as unauthorized. This change allows for electronic or oral acceptance of WSUDs.

The rule reduces an administrative burden on RDFIs and their customers. The changes emphasize that WSUDs may be obtained and signed electronically, which could include the same methods permissible for obtaining a consumer debit authorization.

The Fiscal Service is adopting these amendments, which may increase the efficiency of ACH transactions involving the Federal Government by allowing electronic records and signatures to be used for WSUDs, expediting the processing of allegedly fraudulent electronic transactions involving the Federal Government and other parties.

#### Minor Rules Topics

Nacha has passed other amendments that change several areas of the Operating Rules & Guidelines to address minor issues or correct errata. These changes have little-to-no impact on ACH participants and no material impact on the Federal Government’s participation in the ACH network. Nacha’s minor rule amendments became effective on various dates, according to the date of the Nacha errata correction or other message.

The Fiscal Service is adopting these minor rule amendments.

### III. Section-by-Section Analysis

In order to incorporate in part 210 the Operating Rules & Guidelines changes that we are accepting, we are replacing references to the 2019 Rules & Guidelines with references to the 2021 Operating Rules & Guidelines.

210.2(a)

We are amending the reference to NACHA—The Electronic Payments Association (NACHA) to simply refer to Nacha.

§ 210.2(d)

We are amending the definition of “applicable ACH Rules” at § 210.2(d) by replacing the reference to the “2019 NACHA Operating Rules and Guidelines” with a reference to the “2021 Nacha Operating Rules & Guidelines” and Supplement #1–2021. In particular, Supplement #1–2021 will increase the Same Day ACH limit to \$1 million, effective March 18, 2022. In addition, we are expanding the list of Operating Rules & Guidelines that are not incorporated by reference to include the Operating Rules & Guidelines governing the Participating DFI registry.

§ 210.3(b)

We are amending § 210.3(b) by replacing the references to the “2019 NACHA Operating Rules & Guidelines” with references to “Nacha’s 2021 Operating Rules & Guidelines,” including Supplement #1–2021.

§ 210.6

We are amending § 210.6(g) by replacing the reference to the “2019 NACHA Operating Rules and Guidelines” with a reference to the “2021 Nacha Operating Rules & Guidelines,” as amended through March 31, 2021.

IV. Incorporation by Reference

The 2021 Operating Rules & Guidelines, including Supplement #1–2021, are incorporated by reference into part 210 with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Office of Federal Register regulations require that agencies discuss in the preamble of a final rule ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. In addition, the preamble of the final rule must summarize the material. 1 CFR 51.5(a). In accordance with the Office of the Federal Register’s requirements, Supplementary Information section I summarizes the Operating Rules & Guidelines and section III summarizes the individual provisions being adopted. Financial institutions utilizing the ACH Network are bound by the Operating Rules & Guidelines and have access to them in the course of their everyday business. The Operating Rules & Guidelines are available as a bound

book or in online form from Nacha, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703–561–1100, info@nacha.org.

V. Procedural Analysis

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

It is hereby certified that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule imposes on the Federal Government a number of changes that Nacha has already adopted and imposed on private sector entities that utilize the ACH Network. The rule does not impose any additional burdens, costs or impacts on any private sector entities, including any small entities. Accordingly, a 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 final rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, Incorporation by reference.

Words of Issuance

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

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

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

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

■ 2. In § 210.2:

■ a. Revise paragraph (a) and paragraph (d) introductory text;

■ b. Redesignate paragraphs (d)(2) through (7) as paragraphs (d)(3) through (8); and

■ c. Add new paragraph (d)(2).

The revisions and addition read as follows:

§ 210.2 Definitions.

\* \* \* \* \*

(a) ACH Rules means the 2021 Operating Rules & Guidelines, including Supplement #1–2021, (both incorporated by reference, see § 210.3(b)) published by Nacha, a national association of regional member clearing house associations, ACH Operators, and participating financial institutions located in the United States.

\* \* \* \* \*

(d) Applicable ACH Rules means the ACH Rules, except:

\* \* \* \* \*

(2) Section 1.14 (governing the Participating DFI Contact registry);

\* \* \* \* \*

■ 3. In § 210.3, revise paragraph (b) to read as follows:

§ 210.3 Governing law.

\* \* \* \* \*

(b) Incorporation by reference. Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Bureau of the Fiscal Service must publish a document in the Federal Register and the material must be available to the public. All approved material is available for inspection at the Bureau of the Fiscal Service, 401 14th Street SW, Room 400A, Washington, DC 20227, ph. (202) 874–6680 and from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(1) Nacha, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703–561–1100, info@nacha.org.

(i) 2021 Nacha Operating Rules & Guidelines: The Guide to the Rules Governing the ACH Network, copyright 2021; into § 210.2.

(ii) Supplement #1–2021, Notice of Amendment to the 2021 Nacha Operating Rules, dated April 8, 2021; into § 210.2.

(2) [Reserved]

\* \* \* \* \*

#### § 210.6 [Amended]

■ 4. In § 210.6, in paragraph (g), remove the text “2019 NACHA Operating Rules and Guidelines” and add in its place the text “applicable ACH Rules”.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2021–28048 Filed 12–30–21; 8:45 am]

BILLING CODE P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

[EPA–HQ–OW–2020–0154; FRL–7998–02–OW]

#### State of New Mexico Underground Injection Control Program; Primacy Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is approving an application from the State of New Mexico under the Safe Drinking Water Act (SDWA) to revise the State’s existing Underground Injection Control (UIC) program for Class I injection wells located within the State, except those in Indian country. New Mexico has revised the State’s UIC Class I program regulations to establish new permit conditions, oversight, and enforcement to manage hazardous waste injection activities by petroleum refineries in such a manner that is protective of underground sources of drinking water. The State’s Class I hazardous waste injection wells are only authorized for use by petroleum refineries for the waste generated by the refinery (“generator”). With this action, EPA is also codifying previously approved, non-substantial changes to the New Mexico UIC program. New Mexico will continue to implement and enforce a State UIC regulatory program that is as stringent as the existing federal program.

**DATES:** This final rule is effective on January 3, 2022. The Director of the

Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on January 3, 2022. For judicial purposes, this final rule is promulgated as of January 3, 2022. **ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2020–0154. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Kyle Carey, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2322; fax number: (202) 564–3754; email address: [carey.kyle@epa.gov](mailto:carey.kyle@epa.gov), or Evelyn Rosborough, Region VI Library (6WD), U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270; telephone number: (214) 665–7515; fax: (214) 665–6490; email address: [rosborough.evelyn@epa.gov](mailto:rosborough.evelyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information is organized as follows:

- I. Introduction
  - A. UIC State Primacy
  - B. New Mexico’s UIC Primacy Program Revision
  - C. UIC Class I Wells
  - D. This Final Rule
- II. Legal Authorities
- III. State UIC Program Requirements
- IV. State of New Mexico’s Application
  - A. Background
  - B. Public Participation Activities Conducted by the State of New Mexico
  - C. Public Participation Activities Conducted by EPA
- V. Public Comments Received on the Proposed Rule and EPA’s Response to Comments
  - A. Public Comments
  - B. EPA’s Response
- VI. Incorporation by Reference
- VII. Effective Date
- VIII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act (PRA)
  - C. Regulatory Flexibility Act (RFA)
  - D. Unfunded Mandates Reform Act (UMRA)

- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)

## I. Introduction

EPA approved the State of New Mexico’s UIC program as meeting the requirements for primary enforcement responsibility (primacy) for Class I, III, IV, and V injection wells, under SDWA Section 1422, on July 11, 1983.

### A. UIC State Primacy

To obtain primacy for the UIC program, EPA conducts a technical and legal review of a state’s primacy application. EPA’s review encompasses a comprehensive evaluation of every aspect of each of the following elements: The state’s UIC statutes and regulations, which must include provisions that are as stringent as the federal requirements; documents describing the public participation process; a request from the state’s governor for primacy under SDWA; the program description; an attorney’s general statement of enforcement authority; and a memorandum of agreement between EPA and the state, describing the administration, implementation, and enforcement of the state’s UIC program.

### B. New Mexico’s UIC Primacy Program Revision

The State of New Mexico has revised its UIC Class I program regulations to establish new permit conditions, oversight, and enforcement to manage Class I hazardous waste disposal wells by petroleum refineries, except those in Indian country. EPA considers New Mexico’s application to be a “substantial” program revision and therefore subject to the agency’s approval procedures specified in the *Code of Federal Regulations* (CFR) at 40 CFR 145.32(b)(2) and (4).

### C. UIC Class I Wells

Class I wells are typically drilled thousands of feet below the lowermost underground source of drinking water as authorized under SDWA. Non-hazardous waste disposal wells include municipal wastewater treatment, food