

requiring such individual to protect the electronic signature device from compromise; to promptly report to the agency or agencies relying on the electronic signatures created any evidence discovered that the device has been compromised; and to be held as legally bound, obligated, or responsible by the electronic signatures created as by a handwritten signature.

Electronic signature device means a code or other mechanism that is used to create electronic signatures. Where the *device* is used to create an individual's electronic signature, then the code or mechanism must be unique to that individual at the time the signature is created and he or she must be uniquely entitled to use it. The *device* is compromised if the code or mechanism is available for use by any other person.

EPA means the United States Environmental Protection Agency.

Existing electronic document receiving system means an electronic document receiving system that is being used to receive electronic documents in lieu of paper to satisfy requirements under an authorized program on October 13, 2005 or the system, if not in use, has been substantially developed on or before that date as evidenced by the establishment of system services or specifications by contract or other binding agreement.

Federal program means any program administered by EPA under any other provision of Title 40.

Federal reporting requirement means a requirement to report information directly to EPA under any other provision of Title 40.

Handwritten signature means the scripted name or legal mark of an individual, handwritten by that individual with a marking-or writing-instrument such as a pen or stylus and executed or adopted with the present intention to authenticate a writing in a permanent form, where "a writing" means any intentional recording of words in a visual form, whether in the form of handwriting, printing, typewriting, or any other tangible form. The physical instance of the scripted name or mark so created constitutes the handwritten signature. The scripted name or legal mark, while conventionally applied to

paper, may also be applied to other media.

Information or objects of independent origin means data or items that originate from a disinterested individual or are forensic evidence of a unique, immutable trait which is (and may at any time be) attributed to the individual in whose name the device is issued.

Local registration authority means an individual who is authorized by a state, tribe, or local government to issue an agreement collection certification, whose identity has been established by notarized affidavit, and who is authorized in writing by a regulated entity to issue agreement collection certifications on its behalf.

Priority reports means the reports listed in Appendix 1 to part 3.

Subscriber agreement means an electronic signature agreement signed by an individual with a handwritten signature. This agreement must be stored until five years after the associated electronic signature device has been deactivated.

Transmit means to successfully and accurately convey an electronic document so that it is received by the intended recipient in a format that can be processed by the electronic document receiving system.

Valid electronic signature means an electronic signature on an electronic document that has been created with an electronic signature device that the identified signatory is uniquely entitled to use for signing that document, where this device has not been compromised, and where the signatory is an individual who is authorized to sign the document by virtue of his or her legal status and/or his or her relationship to the entity on whose behalf the signature is executed.

§ 3.4 How does this part affect enforcement and compliance provisions of Title 40?

(a) A person is subject to any applicable federal civil, criminal, or other penalties and remedies for failure to comply with a federal reporting requirement if the person submits an electronic document to EPA under this part that fails to comply with the provisions of § 3.10.

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(b) A person is subject to any applicable federal civil, criminal, or other penalties or remedies for failure to comply with a State, tribe, or local reporting requirement if the person submits an electronic document to a State, tribe, or local government under an authorized program and fails to comply with the applicable provisions for electronic reporting.

(c) Where an electronic document submitted to satisfy a federal or authorized program reporting requirement bears an electronic signature, the electronic signature legally binds, obligates, and makes the signatory responsible, to the same extent as the signatory's handwritten signature would on a paper document submitted to satisfy the same federal or authorized program reporting requirement.

(d) Proof that a particular signature device was used to create an electronic signature will suffice to establish that the individual uniquely entitled to use the device did so with the intent to sign the electronic document and give it effect.

(e) Nothing in this part limits the use of electronic documents or information derived from electronic documents as evidence in enforcement or other proceedings.

Subpart B—Electronic Reporting to EPA

§ 3.10 What are the requirements for electronic reporting to EPA?

(a) A person may use an electronic document to satisfy a federal reporting requirement or otherwise substitute for a paper document or submission permitted or required under other provisions of Title 40 only if:

(1) The person transmits the electronic document to EPA's Central Data Exchange, or to another EPA electronic document receiving system that the Administrator may designate for the receipt of specified submissions, complying with the system's requirements for submission; and

(2) The electronic document bears all valid electronic signatures that are required under paragraph (b) of this section.

(b) An electronic document must bear the valid electronic signature of a signatory if that signatory would be required under Title 40 to sign the paper document for which the electronic document substitutes, unless EPA announces special provisions to accept a handwritten signature on a separate paper submission and the signatory provides that handwritten signature.

§ 3.20 How will EPA provide notice of changes to the Central Data Exchange?

(a) Except as provided under paragraph (b) of this section, whenever EPA plans to change Central Data Exchange hardware or software in ways that would affect the transmission process, EPA will provide notice as follows:

(1) *Significant changes to CDX*: Where the equipment, software, or services needed to transmit electronic documents to the Central Data Exchange would be changed significantly, EPA will provide public notice and seek comment on the change and the proposed implementation schedule through the FEDERAL REGISTER;

(2) *Other changes to CDX*: EPA will provide notice of other changes to Central Data Exchange users at least sixty (60) days in advance of implementation.

(3) *De minimis or transparent changes to CDX*: For *de minimis* or transparent changes that have minimal or no impact on the transmission process, EPA may provide notice if appropriate on a case-by-case basis.

(b) *Emergency changes to CDX*: Any change which EPA's Chief Information Officer or his or her designee determines is needed to ensure the security and integrity of the Central Data Exchange is exempt from the provisions of paragraph (a) of this section. However, to the extent consistent with ensuring the security and integrity of the system, EPA will provide notice for any change other than *de minimis* or transparent changes to the Central Data Exchange.

Subpart C [Reserved]