

ENVIRONMENTAL QUALITY

CHAPTER 4

PROCEDURAL RULES

Subchapter 8

Electronic Filing of Documents

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Subchapter 8

Electronic Filing of Documents

17.4.801 APPLICABILITY (1) The rules in this subchapter apply to a person who submits electronic documents to the department, or to the U.S. Environmental Protection Agency (EPA), pursuant to a specific rule of the board or department or pursuant to a department permit or license condition that allows submission of electronic documents in lieu of paper documents and that requires conformance with this subchapter.

(2) The rules in this subchapter do not apply to a person who submits a document via:

- (a) facsimile transmission; or
- (b) magnetic or optical media such as a diskette, compact disc, digital video disc, or tape. (History: 30-18-118, MCA; IMP, 30-18-117, MCA; NEW, 2011 MAR p. 1135, Eff. 6/24/11.)

17.4.802 DEFINITIONS (1) For the purposes of this subchapter, the following definitions apply:

- (a) "Electronic record" means any electronic record, as defined in 30-18-102, MCA, that is submitted to the department or to EPA, pursuant to this subchapter.
- (b) "Electronic record receiving system" means the information processing system, including the apparatus, procedures, software, records, and documentation, established and used by the department or EPA to receive electronic records submitted pursuant to this subchapter.
- (c) "Electronic signature" has the meaning given in 30-18-102, MCA.
- (d) "Electronic signature device" means a code, such as a password, or other mechanism that is used to create electronic signatures. The code or mechanism must be unique to the individual person creating the signature at the time the signature is created, and that person must be uniquely entitled to use it.
- (e) "Electronic subscriber agreement" means a written agreement prepared by the department and signed by an individual person with respect to submittal of electronic records to the department, requiring the individual to:
 - (i) protect any account security information from compromise;
 - (ii) promptly report to the department any evidence discovered that account security information has been compromised;
 - (iii) be held as legally bound, obligated, or responsible by the submittal and content of electronic records as by the submittal and content of paper documents for which the electronic records are substituted; and
 - (iv) for electronic records submitted by the person in lieu of paper documents on which a signature is required:
 - (A) protect the person's electronic signature device from compromise;
 - (B) promptly report to the department any evidence discovered that the person's electronic signature device has been compromised; and
 - (C) be held as legally bound, obligated, or responsible by the electronic signature created as by a handwritten signature.

(f) "Handwritten signature" means the scripted name or legal mark of an individual, handwritten by that individual, with the present intention to authenticate a writing in a permanent form.

(g) "Information" has the meaning given in 30-18-102, MCA.

(h) "Information processing system" has the meaning given in 30-18-102, MCA.

(i) "Record" has the meaning given in 30-18-102, MCA.

(j) "Signatory" means an individual who is authorized to sign, and who signs, a record submitted to the department's or EPA's electronic record receiving system, pursuant to an electronic subscriber agreement.

(k) "Valid electronic signature" means an electronic signature on an electronic record that has been created with an electronic signature device that the identified signatory is uniquely entitled to use for signing that record, when the device has not been compromised and the signatory is an individual person who is authorized to sign the record by virtue of legal status or relationship to the entity on whose behalf the signature is executed. (History: 30-18-118, MCA; IMP, 30-18-102, 30-18-117, MCA; NEW, 2011 MAR p. 1135, Eff. 6/24/11.)

17.4.803 USE OF ELECTRONIC RECORD RECEIVING SYSTEM

(1) If the board or department has adopted a rule, or, if the department has issued a permit or license that includes a provision or condition allowing submission of an electronic record pursuant to this subchapter in lieu of submission of a paper document, a person who submits an electronic record pursuant to the rule, permit, or license shall submit the record to the department's electronic record receiving system that is appropriate for the particular record, or an authorized EPA electronic record receiving system, such as EPA's NetDMR system, that meets the requirements of 40 CFR Part 3, EPA's Cross-Media Electronic Reporting Regulation, and that is appropriate for the particular record.

(2) All electronic records submitted pursuant to this subchapter must bear a valid electronic signature of a signatory if the signatory would be required to sign the paper document for which the electronic record is substituted.

(3) A person submitting an electronic record pursuant to this subchapter is legally bound, obligated, or responsible by the submittal and content of the record to the same extent as by the submittal and content of the paper document for which the electronic record is substituted. (History: 30-18-118, MCA; IMP, 30-18-117, MCA; NEW, 2011 MAR p. 1135, Eff. 6/24/11.)

17.4.804 ELECTRONIC SUBSCRIBER AGREEMENT (1) Before submitting an electronic record pursuant to a specific rule of the board or department or a department permit or license condition that allows submission of electronic records in lieu of paper documents and that requires conformance with this subchapter, a person shall first execute a written electronic subscriber agreement on a form provided by the department and submit the original signed paper agreement by U.S. Mail or hand delivery to the department staff member designated in the rule, permit, or license.

(2) The agreement form may be obtained from the department or downloaded and printed from the department's web site and must include the following agreements by each person who will submit electronic records:

(a) to protect the person's account security information and any required electronic signature device from compromise and from use by anyone other than that person;

(b) to contact the department staff member designated in the rule, permit, or license as soon as possible, but no later than one business day, after suspecting or determining that the person's account security information or any required electronic signature device has become lost, stolen, or otherwise compromised;

(c) to review the contents of all electronic submissions prior to submission;

(d) to be held as legally bound, obligated, or responsible by the submittal and content of electronic records as by the submittal and content of the paper documents for which the electronic records are substituted;

(e) for a person submitting an electronic record for which a signature is required, to be obligated and legally bound by use of an electronic signature in the same manner as with a handwritten signature;

(f) to contact the department staff member designated in the rule, permit, or license within five business days after submitting an electronic record pursuant to this subchapter if the person submitting the record does not receive an electronic notification identifying the record received, the signatory or other person submitting the record, and the date and time of receipt;

(g) if the person represents any person or entity other than himself or herself as an individual, to notify the department staff member designated in the rule, permit, or license if the person ceases to represent the other person or entity, as soon as this change in relationship occurs; and

(h) to retain a copy of the electronic subscriber agreement as long as the person is a signatory, or otherwise is responsible, for electronic submissions to the department or EPA pursuant to this subchapter.

(3) The identity and authority of each person submitting an electronic subscriber agreement must be verified by the department. After the department has completed the verification, the department shall notify the person electronically, forward account security information, as applicable, and issue an electronic signature device to the person, if the person will be submitting records for which a signature is required. (History: 30-18-118, MCA; IMP, 30-18-117, MCA; NEW, 2011 MAR p. 1135, Eff. 6/24/11.)

17.4.805 VALID ELECTRONIC SIGNATURE (1) When a person uses an electronic signature device to create the person's electronic signature, the code or mechanism must be unique to that person at the time the signature is created.

(2) An authorized signatory may not allow another person to use the electronic signature device unique to his or her electronic signature.

(3) A signatory shall protect his or her electronic signature device from use by any other person and shall report to the department staff member designated in the rule, permit, or license, within one business day of discovery, any evidence that the security of the device has been compromised. (History: 30-18-118, MCA; IMP, 30-18-117, MCA; NEW, 2011 MAR p. 1135, Eff. 6/24/11.)

17.4.806 EFFECT OF ELECTRONIC SIGNATURE (1) The presence of an electronic signature on an electronic record submitted pursuant to this subchapter establishes that the signatory intended to sign the electronic record and submit it to fulfill the purpose of the record.

(2) When an electronic record submitted pursuant to this subchapter bears an electronic signature, the electronic signature obligates and legally binds the person to the same extent as the signatory's handwritten signature on a paper document submitted to satisfy the same requirement. (History: 30-18-118, MCA; IMP, 30-18-108, 30-18-117, MCA; NEW, 2011 MAR p. 1135, Eff. 6/24/11.)

17.4.807 ENFORCEMENT (1) If a person submitting an electronic record pursuant to this subchapter fails to comply with a requirement of this subchapter or a requirement of an electronic subscriber agreement, the person is subject to the same penalties or other remedies available for failure to submit the record.

(2) Nothing in this subchapter is intended to limit the use of an electronic record, copy of an electronic record, or other information derived from an electronic record as evidence in an enforcement proceeding or other proceeding. (History: 30-18-118, MCA; IMP, 30-18-117, MCA; NEW, 2011 MAR p. 1135, Eff. 6/24/11.)

