

**RULES
OF
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

**CHAPTER 0400-01-40
ELECTRONIC REPORTING**

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0400-01-40-.01 APPLICABILITY.

- (1) Except as paragraph (2) of this rule provides otherwise, this chapter applies to persons who submit reports or other documents to the Department electronically to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69.
- (2) This chapter does not apply to:
 - (a) Documents submitted to the Department by facsimile or e-mail;
 - (b) Electronic documents submitted to the Department by magnetic or optical media such as diskette, compact disk, digital video disk, or tape;
 - (c) Documents and information submitted to the Department under grants issued by the Department, unless the conditions of the grant provide otherwise;
 - (d) Documents and information submitted to the Department under cooperative agreements entered into with the Department, unless the conditions of the agreement provides otherwise; or
 - (e) Data transfers between EPA and the Department.
- (3) This chapter provides the framework for guiding the Department to implement electronic reporting and for guiding any person who submits reports or other documents to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68, and 69. It is intended that divisions of the Department that implement electronic reporting in their programs will develop such provisions through their own programs. The Department will receive, in electronic form, reports and other documents after each program prepares and becomes ready for electronic reporting.

Authority: T.C.A. §§ 11-1-101, 47-10-101 et seq., and 4-5-201 et seq. **Administrative History:** Original rule filed September 28, 2015; effective December 27, 2015.

0400-01-40-.02 DEFINITIONS.

The definitions set forth in this rule apply when used in this chapter.

- (1) "Acknowledgement" means a confirmation of electronic document receipt.

(Rule 0400-01-40-.02, continued)

- (2) "Commissioner" means the Commissioner of the Department of Environment and Conservation.
- (3) "Copy of Record" means a true and correct copy of an electronic document received by an electronic document receiving system, which copy can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information. A "copy of record" includes:
 - (a) All electronic signatures contained in or logically associated with that document;
 - (b) The date and time of receipt; and
 - (c) Any other information used to record the meaning of the document or the circumstances of its receipt.
- (4) "Department" means the Tennessee Department of Environment and Conservation.
- (5) "Disinterested individual" means an individual who is not connected with the person in whose name the electronic signature device is issued. A "disinterested individual" is not any of the following:
 - (a) The person's employer or employer's corporate parent, subsidiary, or affiliate;
 - (b) The person's contracting agent;
 - (c) Member of the person's household; or
 - (d) Relative with whom the person has a personal relationship.
- (6) "Electronic document" means any information in digital form that is conveyed to an agency or third-party, where "information" may include data, text, sounds, codes, computer programs, software, or databases. "Data" in this context, refers to a delimited set of data elements, each of which consists of a context or value together with an understanding of what the content or value means; where the electronic document includes data, this understanding of what the data element content or value means must be explicitly included in the electronic document itself or else be readily available to the electronic document recipient.
- (7) "Electronic document receiving system" means any set of apparatus, procedures, software, records, or documentation used to receive electronic documents.
- (8) "Electronic signature" means any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content. The electronic document bears or has on it an electronic signature where it includes or has logically associated with it such information.
- (9) "Electronic signature agreement" means an agreement signed by an individual with respect to an electronic signature device that the individual will use to create his or her signatures 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.
- (10) "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

(Rule 0400-01-40-.02, continued)

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.

- (11) “EPA” means the United States Environmental Protection Agency.
- (12) “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.
- (13) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character, including another agency.
- (14) “Subscriber agreement” means an electronic signature agreement signed by an individual with a handwritten signature. This agreement must be stored until five (5) years after the associated electronic signature device has been deactivated.
- (15) “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.
- (16) “Valid electronic signature” means an electronic signature on an electronic document that has been created with an electronic 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 or his or her relationship to the entity on whose behalf the signature is executed.

Authority: T.C.A. §§ 11-1-101, 47-10-101 et seq., and 4-5-201 et seq. **Administrative History:** Original rule filed September 28, 2015; effective December 27, 2015.

0400-01-40-.03 ENFORCEMENT AND COMPLIANCE.

- (1) A person is subject to any applicable state civil, criminal, or other penalties and remedies for failure to submit reports or other documents or otherwise comply with a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68, and 69 if the person fails to comply with the applicable provisions for electronic reporting.
- (2) When an electronic document is submitted to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69, 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 reporting requirement.
- (3) 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.
- (4) Nothing in this chapter limits the use of electronic documents or information derived from electronic documents as evidence in enforcement or other proceedings.

(Rule 0400-01-40-.03, continued)

Authority: T.C.A. §§ 11-1-101, 47-10-101 et seq., and 4-5-201 et seq. **Administrative History:** Original rule filed September 28, 2015; effective December 27, 2015.

0400-01-40-.04 ELECTRONIC REPORTING.

- (1) When allowed by the Department, a person may submit reports or other documents to the Department electronically to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69, provided that person complies with the requirements of paragraph (3) of this rule.
- (2) When required by the Department, a person must submit reports or other documents to the Department electronically to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69 in compliance with the requirements of paragraph (3) of this rule.
- (3)
 - (a) The person that transmits the electronic document to the Department's applicable electronic document receiving system must comply with the system's requirements for submission; and
 - (b) The electronic document must bear all valid electronic signatures that are required by paragraph (4) of this rule.
- (4) An electronic document must bear the valid electronic signature of a signatory if that signatory would be required to satisfy a statutory obligation or regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69 to sign the paper document for which the electronic document substitutes, unless the Department includes specific provisions to accept a handwritten signature on a separate paper submission and the signatory provides that handwritten signature. The paper submission must contain references to the electronic document sufficient for legal certainty that the signature was executed with the intention to certify to, attest to, or agree to the content of that electronic document.

Authority: T.C.A. §§ 11-1-101, 47-10-101 et seq., and 4-5-201 et seq. **Administrative History:** Original rule filed September 28, 2015; effective December 27, 2015.

0400-01-40-.05 ELECTRONIC REPORTING SYSTEM.

The Department's electronic document receiving system that receives electronic documents submitted in lieu of paper documents to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69 must be able to generate data with respect to any such electronic document, as needed and in a timely manner, including a copy of record for the electronic document, sufficient to prove, in private litigation, civil enforcement proceedings, and criminal proceedings, that:

- (1) The electronic document was not altered without detection during transmission or at any time after receipt;
- (2) Any alterations to the electronic document during transmission or after receipt are fully documented;
- (3) The electronic document was submitted knowingly and not by accident;

(Rule 0400-01-40-.05, continued)

- (4) Any individual identified in the electronic document submission as a submitter or signatory had the opportunity to review the copy of record in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information and had the opportunity to repudiate the electronic document based on this review; and
- (5) In the case of an electronic document that must bear electronic signatures of individuals as provided by paragraph (4) of Rule 0400-01-40-.04, that:
 - (a) Each electronic signature was a valid electronic signature at the time of signing;
 - (b) The electronic document cannot be altered without detection at any time after being signed;
 - (c) Each signatory had signed the opportunity to review in a human-readable format the content of the electronic document that he or she was certifying to, attesting to or agreeing to by signing;
 - (d) Each signatory had the opportunity, at the time of signing, to review the content or meaning of the required certification statement, including any applicable provisions that false certification carries criminal penalties;
 - (e) Each signatory had signed either an electronic signature agreement or a subscriber agreement with respect to the electronic signature device used to create his or her electronic signature on the electronic document;
 - (f) The electronic document receiving system had automatically responded to the receipt of the electronic document with an acknowledgement that identifies the electronic document received, including the signatory and the date and time of receipt, and was sent to at least one address that does not share the same access controls as the account used to make the electronic submission; and
 - (g) For each electronic signature device used to create an electronic signature on the document, the identity of the individual uniquely entitled to use the device and his or her relation to any entity for which he or she will sign electronic documents had been determined with legal certainty by the Department. In the case of electronic documents submitted in lieu of paper documents to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69, this determination had been made before the electronic document was received, by means of:
 - 1. Identifiers or attributes that are verified (and that may be re-verified at any time) by attestation of disinterested individuals to be uniquely true of (or attributable to) the individual in whose name the application is submitted, based on information or objects of independent origin, at least one item of which is not subject to change with governmental action or authorization;
 - 2. A method of determining identity no less stringent than would be permitted by part 1 of this subparagraph; or
 - 3. Collection of either a subscriber agreement or a certification from the Department that such an agreement has been received and securely stored.

(Rule 0400-01-40-.05, continued)

Authority: T.C.A. §§ 11-1-101, 47-10-101 et seq., and 4-5-201 et seq. **Administrative History:** Original rule filed September 28, 2015; effective December 27, 2015.