

outlines are received from the persons testifying and make copies available free of charge at the hearing.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel (Procedure & Administration).*

[FR Doc. 03-8963 Filed 4-10-03; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 73

[Notice No. 5]

RIN 1512-AC84

#### Electronic Signatures; Electronic Submission of Forms (2000R-458P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its regulations to permit industry members to use electronic technology to reduce the need for and storage of paper documents. In order to accomplish our goals, we are proposing to allow you to use electronic, rather than handwritten, signatures to sign certain forms, and to submit certain forms to TTB electronically through a TTB-approved electronic document receiving system.

**DATES:** If you wish to comment on this proposal, we must receive your written comments on or before May 12, 2003.

**ADDRESSES:** You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, PO Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 5);

- (202) 927-8525 (facsimile);

- [nprm@ttb.gov](mailto:nprm@ttb.gov) (e-mail);

- <http://www.ttb.gov> (online). A comment form is available with the online version of this notice posted on our Internet Web site.

You may view copies of the proposed regulations and any comments received on this notice by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226; phone (202) 927-8210.

See the Public Participation section of this notice for specific instructions and requirements.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and

Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226; phone (301) 290-1460 or e-mail

#### SUPPLEMENTARY INFORMATION:

##### What Would These Proposed Regulations Do?

This proposal would amend the regulations to allow you to:

- Use electronic signatures to sign certain forms you submit to us instead of using traditional handwritten signatures; and
- Submit certain forms to TTB electronically through an electronic document receiving system that we approve.

##### Why Does TTB Want To Allow You To Submit Certain Forms Electronically?

We believe that by giving you the option to submit certain forms electronically, instead of requiring paper documents, we can:

- Reduce the costs associated with submitting and maintaining large volumes of paper documents;
- Improve the quality and accessibility of data;
- Allow for the faster review and approval of a variety of documents; and
- Allow for a variety of our documents to be available around the clock.

##### What Is TTB's Authority To Propose These Regulations?

Our authority to propose these regulations comes from:

(1) *Government Paperwork Elimination Act (GPEA)*. GPEA was signed into law on October 21, 1998. GPEA directs federal agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic recordkeeping, where practical, by October 2003. (See §§ 1702-1710 of Pub. L. 105-277.)

(2) *Internal Revenue Code of 1986 (26 U.S.C.)*. The Internal Revenue Code of 1986 authorizes the Secretary of the Treasury to, by regulation, encourage electronic filing, address what constitutes a timely filed electronic document, and develop procedures for the acceptance of signatures in digital or other electronic form. (See 26 U.S.C. 6011, 6061, and 7502.)

(3) *Electronic Signatures in Global and National Commerce Act of 2000 (E-SIGN)*. E-SIGN provides that no contract, signature, or record relating to a transaction shall be denied legal effect *solely* because it is in electronic form, nor may a document be denied legal effect *solely* because an electronic signature or record was used in its

formation. E-SIGN applies to documents that are created in a commercial, consumer, or business transaction. It does not cover transactions that are uniquely governmental such as a compliance report. (See Pub. L. 106-229.)

(4) *Office of Management and Budget Circular A-130*. OMB's Circular A-130 requires agencies to employ electronic information collection techniques where such means will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service. (See Circular A-130, Para. 8.a.1(k).)

##### How Does TTB Plan on Implementing Electronic Filing?

We are proposing to create a new part 73 in title 27 CFR, chapter I, entitled *Electronic Signatures; Electronic Submission of Forms*. This proposed part 73 will explain our overall policy regarding electronic signatures and the electronic submission of certain forms to TTB.

##### *Electronic Signatures*

Once we publish the final rule, we will recognize electronic signatures executed to certain electronic forms as the full equivalent of, and having the same legal effect as, traditional handwritten signatures executed on paper. We will notify you, by publishing a general notice in the **Federal Register** and on our Web site (<http://www.ttb.gov>), when you may use electronic signatures to execute certain electronic forms. The general notice will provide you with specific instructions about how to submit and what technology will be acceptable to TTB.

##### *Electronic Submission of Forms to TTB*

We are in the process of developing the means to allow you to submit forms electronically. This is a lengthy process; we will need to develop the hardware and software components to accept each different type of form. Once we are able to accept a certain form, we will announce in the **Federal Register** and on our Web site that you may register to submit that form electronically. The announcement will provide you with instructions on how to register.

##### Will I Still Have To Maintain Paper Copies?

If the regulations require you to maintain certain documents in paper format, you must continue to maintain those documents in paper format even if you submit them to us electronically. Nothing in this proposed part alters any other regulatory or statutory requirement that records be maintained in paper format. This part does provide

that TTB may publish a general notice in the **Federal Register** authorizing you to maintain certain documents electronically instead of in paper form.

### Regulatory Analyses and Notices

#### *Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new reporting or recordkeeping requirements.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, provides that whenever a Federal agency proposes regulations that may have a significant economic impact on a substantial number of small entities, the agency must prepare a regulatory flexibility analysis. Today's proposal is not subject to the Act because the electronic submission of forms to TTB and the use of electronic signatures are voluntary. This proposal, if finalized, will only apply to those people who seek our approval to transmit certain forms electronically to us. These proposed regulations would reduce the burden on all affected entities, including small businesses. We have submitted a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f).

#### *Executive Order 12866*

This regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this rule is not subject to the analysis required by this Executive Order.

#### *Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires Federal agencies to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." We certify that this proposed rule does not have federalism implications. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would not require States to accept electronic reports. The effect of this rule would be to provide additional regulatory flexibility to States because States could choose to accept electronic data that would also satisfy our reporting requirements.

### Public Participation

#### *Who May Comment on This Notice?*

We request comments from all interested parties. In addition, we specifically request comments on the clarity of this proposed rule and how it may be made easier to understand. We will carefully consider any comments we receive on or before the closing date. We will give comments received after that date the same consideration if it is practical to do so. We regard all comments as originals.

#### *How Do I Send Comments?*

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202-927-8525. Faxed comments must—
  - (1) Be on 8½ x 11-inch paper;
  - (2) Contain a legible, written signature; and
  - (3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *By e-mail:* You may e-mail comments to [nprm@ttb.gov](mailto:nprm@ttb.gov). Comments transmitted by electronic-mail must—
  - (1) Contain your e-mail address;
  - (2) Reference this notice number on the subject line; and
  - (3) Be legible when printed on 8½ x 11-inch paper.
- *Online:* We provide a comment form with the online copy of this proposed rule on the TTB Internet Web site at <http://www.ttb.gov/alcohol/rules/index.htm>. On this Web page, select "Send comments via e-mail" under this notice number.

#### *Can I Review Comments Received?*

You may inspect copies of the proposed regulations and any written comments by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per page. You may call (202) 927-8210 if you want to schedule an appointment or to request copies of comments.

For your convenience, we will post comments received in response to this notice on the TTB Web site. All comments posted on our Web site will show the names of commenters, but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in our reference library. To access online copies of the comments on

this rulemaking, visit <http://www.ttb.gov/alcohol/rules/index.htm> and select "View Comments" under this notice number.

#### *Will TTB Keep My Comments Confidential?*

We do not recognize any submitted material as confidential. We will disclose all information on comments and commenters. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

#### *Can I Request a Public Hearing?*

Yes; you may write to the Administrator within the 30-day comment period to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

### Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

### List of Subjects in 27 CFR Part 73

Electronic signatures, Reporting and recordkeeping requirements.

### Authority and Issuance

For the reasons set out in the preamble, we propose to amend chapter I of title 27 of the Code of Federal Regulations by adding a new part 73 to read as follows:

## **PART 73—ELECTRONIC SIGNATURES; ELECTRONIC SUBMISSION OF FORMS**

### **Subpart A—General Provisions**

Sec.

#### **Scope**

73.1 What does this part do?

#### **Definitions**

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### **Subpart C—Electronic Filing of Documents With TTB**

73.30 What does subpart C cover?

73.31 Can I submit forms electronically to TTB?

73.32 May I electronically sign forms I submit electronically to TTB?

73.33 Am I legally bound by a form I sign electronically?

73.34 When is an electronically submitted form considered timely filed?

73.35 Do I need to keep paper copies of forms I submit to TTB electronically?

**Authority:** 26 U.S.C. 6011, 6061, 7502; 15 U.S.C. 7001, 7004.

## Subpart A—General Provisions

### Scope

#### § 73.1 What does this part do?

(a) This part provides the conditions under which we will allow you to:

(1) Use electronic signatures or digital signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms.

(2) Electronically submit certain forms to TTB.

(b) This part does not require you to submit forms to us electronically.

### Definitions

#### § 73.3 What terms must I know to understand this part?

You need to know the following terms to understand this part:

*27 CFR.* Title 27 of the Code of Federal Regulations, chapter I.

*Biometrics.* A method of verifying an individual's identity based on measurement of the individual's physical feature(s) or repeatable action(s) where those features and/or actions are both unique to that individual and measurable.

*Digital signature.* An electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified. A signer creates a digital signature by using public-key encryption to transform a message digest of an electronic message. If a recipient of the digital signature has an electronic message, message digest function, and the signer's public key, the recipient can verify:

(1) Whether the transformation was accomplished with the private key that corresponds to the signer's public key; and

(2) Whether the electronic message has been altered since the transformation was made.

*Electronic document receiving system.* Any set of apparatus, procedures, software, records, or documentation used to receive documents communicated to it via a telecommunications network.

*Electronic signature.* A computer data compilation of any symbol or series of symbols executed, adopted, or authorized by an individual to be the legally binding equivalent of the

individual's handwritten signature, and that:

(1) Identifies and authenticates a particular person as the source of the electronic message; and

(2) Indicates such person's approval of the information contained in the electronic message.

*Form(s).* The term form(s), when used in this part, includes all documents required by 27 CFR, chapter I, to be submitted to TTB.

*Handwritten signature.* The scripted name or legal mark of an individual handwritten by that individual and executed or adopted with the present intention to authenticate a writing in a permanent form. The act of signing with a writing or marking instrument such as a pen or stylus is preserved. The scripted name or legal mark, while conventionally applied to paper, may also be applied to other materials or devices that capture the name or mark.

*Paper format.* A paper document.

*TTB.* Refers to the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury.

*You and I.* "You" and "I" refer to the organization or person who must maintain records or submit documents to TTB to satisfy the requirements of 27 CFR, chapter I.

## Subpart B—Electronic Signatures

#### § 73.10 What does subpart B cover?

This subpart provides the conditions under which TTB will allow you to use electronic signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms. Where electronic signatures and their associated electronic forms meet the requirements of this part, TTB will consider the electronic signatures to be the equivalent of full handwritten signatures, initials, and other general signings this chapter requires.

#### § 73.11 What are the required components and controls for acceptable electronic signatures?

(a) *Electronic signatures not based on biometrics.* If you use electronic signatures that are not based upon biometrics you must:

(1) Employ at least two distinct identification components such as an identification code and a password.

(2) Use both identification components when executing an electronic signature to an electronic document.

(3) Ensure that the electronic signature can only be used by the authorized user.

(b) *Electronic signatures based on biometrics.* If you use electronic

signatures based upon biometrics, they must be designed to ensure that they cannot be used by anyone other than their genuine owners.

#### § 73.12 What security controls must I use for identification codes/passwords?

If you use electronic signatures based upon use of identification codes in combination with passwords, you must employ controls to ensure their security and integrity. Such controls must include:

(a) Maintaining the uniqueness of each combined identification code and password, such that no two individuals have the same combination of identification code and password.

(b) Ensuring that identification code and password issuances are periodically checked, recalled, or revised (*e.g.*, to cover such events as password aging).

(c) Following loss management procedures to electronically deauthorize lost, stolen, missing, or otherwise potentially compromised tokens, cards, or other devices that bear or generate identification code or password information, and to issue temporary or permanent replacements using suitable, rigorous controls.

(d) Use of transaction safeguards to prevent unauthorized use of passwords and/or identification codes, and to detect and report in an immediate and urgent manner any attempts at their unauthorized use to the system security unit, and, as appropriate, to organizational management.

(e) Initial and periodic testing of devices, such as tokens or cards, that bear or generate identification code or password information to ensure that they function properly and have not been altered in any unauthorized manner.

## Subpart C—Electronic Filing of Documents with TTB

#### § 73.30 What does subpart C cover?

This subpart provides the conditions under which we will allow you to satisfy certain reporting requirements of this chapter by submitting forms to us electronically.

#### § 73.31 Can I submit forms electronically to TTB?

Yes; you may submit an electronic form, instead of a paper form, to satisfy any reporting requirement in this chapter, only if:

(a) We have published a notice in the **Federal Register** and on our Web site (<http://www.ttb.gov>) announcing that we are prepared to receive a particular form electronically.

(b) You have registered to do so pursuant to the instructions in a notice

published in the **Federal Register** and on our Web site as stated above.

(c) You submit the electronic form to an electronic document receiving system that we have designated for the receipt of that specific form.

(d) The electronic form bears valid electronic signatures, as provided in subpart B of this part, to the same extent that the paper submission for which it substitutes would bear handwritten signatures.

**§ 73.32 May I electronically sign forms I submit electronically to TTB?**

You may electronically sign the electronic form you submit to us if:

(a) You have registered with TTB to do so and have certified, prior to the time of such use, that the electronic signatures or digital signatures in your system are intended to be the legally binding equivalent of traditional handwritten signatures;

(b) The electronic or digital signature meets the standards of this part and is authorized by TTB in accordance with this part; and

(c) The electronic or digital signature is sufficiently trustworthy and reliable that the signing party may not repudiate the signature.

**§ 73.33 Am I legally bound by a form I sign electronically?**

Yes; by electronically signing a form you submit to us, you are agreeing to be legally bound to the same extent as if you applied a traditional handwritten signature on a paper document submitted to satisfy the same reporting requirement. Persons using electronic signatures shall, upon TTB's request, provide additional certification or testimony that a specific electronic signature is the legally binding equivalent of the signer's handwritten signature.

**§ 73.34 When is an electronically submitted form considered timely filed?**

If you submit a form to our electronic document receiving system, your report will be considered filed on the date of the electronic postmark given by that system.

**§ 73.35 Do I need to keep paper copies of forms I submit to TTB electronically?**

Nothing in this part alters any other regulatory or statutory requirement that records be maintained in paper format. If the regulations in this chapter require you to keep paper copies of certain forms, you must continue to do so unless TTB otherwise authorizes you to maintain electronic copies of these documents through a general notice in the **Federal Register** or through a variance.

Signed: February 13, 2003.

**Arthur J. Libertucci,**  
*Administrator.*

Approved: March 11, 2003.

**Timothy E. Skud,**  
*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 03-8816 Filed 4-10-03; 8:45 am]

**BILLING CODE 4810-31-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[WV059-6027b; FRL-7480-1]

**Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; State of West Virginia; Control of Emissions from Existing Commercial/Industrial Incineration (CISWI) Units**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the commercial and industrial solid waste incinerator 111(d)/129 plan (the "plan") submitted by the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ). The plan was submitted to EPA by the DAQ on November 29, 2001, and amended on September 25, 2002, and January 22, 2003. In the Final Rules section of this **Federal Register**, EPA is approving the State of West Virginia's CISWI plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipate no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by May 12, 2003.

**ADDRESSES:** Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and

Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale at (215) 814-2190, or by e-mail at [topsale.jim@epa.gov](mailto:topsale.jim@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 31, 2003.

**Thomas C. Voltaggio,**  
*Acting Regional Administrator, Region III.*  
[FR Doc. 03-8830 Filed 4-10-03; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 89**

[AMS-FRL-7481-9]

**Control of Emissions From New Nonroad Diesel Engines: Amendments to the Nonroad Engine Definition**

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

**ACTION:** Notice of proposed rule.

**SUMMARY:** EPA is proposing to revise the definition of nonroad engines to include all diesel-powered engines used in agricultural operations in the State of California that are certified by the engine maker to meet the applicable nonroad emission standards. Under this proposed rule, such engines would be considered nonroad engines without regard to whether these engines are portable or transportable or how long these engines remain in one fixed location at a farm.

In the "Rules and Regulations" section of this **Federal Register**, we are making this amendment as a direct final rule without prior proposal.

We have explained our reasons for this amendment in the preamble to the