

October 18, 2005

U.S. EPA's New Cross-Media Electronic Reporting Rule

The U.S. Environmental Protection Agency (EPA) just published a final rule that it is referring to as the "Cross-Media Electronic Reporting Rule" (CROMERR). The rule sets out the EPA's framework for accepting electronic reports from regulated entities required under various environmental regulatory programs.

According to EPA, the CROMERR:

- Provides a uniform, technology-neutral framework for electronic reporting across all EPA programs;
- Allows EPA programs to offer electronic reporting as they become ready (without any additional rule-making beyond CROMERR);
- Provides states with a streamlined process – together with a uniform set of criteria – for approval of their electronic reporting implementations for all their EPA-authorized programs; and
- Ensures that electronic reporting under EPA and EPA-authorized state programs does not compromise the enforceability of environmental programs.

EPA indicates that the purpose of this rule is to make environmental reporting easier. As such, CROMERR will allow states, tribes and local governments to accept electronic reporting, including electronic signatures, from regulated facilities under most environmental regulations. In addition, CROMERR will enable facilities to file electronic reports instead of paper reports, thus reducing the cost and effort of data transfer. According to the EPA, CROMERR has been carefully designed to maintain corporate and individual accountability for all reports that are currently filed by paper, ensuring enforcement actions are not in any way affected by this rule.

Specifically, under the new CROMERR rules, the electronic reporting (ER) provisions include:

- Modification of current requirements in the *Code of Federal Regulations* to remove any obstacles to ER.
- Allowing regulated entities to submit any report electronically, but only after EPA announces that ER is available for the specific report.

- Requiring submission of electronic reports to EPA's Central Data Exchange (CDX) or to another designated EPA system.
- Requiring validation of electronic signatures on reports submitted to EPA through CDX (or another designated EPA system) and ensuring that valid electronic signatures have the same legal force as their "wet-ink" counterparts.
- Setting forth requirements that EPA-authorized programs must satisfy when implementing ER, and providing a streamlined process for these programs to get EPA approval of their ER implementations.

Under the rule, EPA programs must comply with CROMERR within two years of its effective date, which is January 11, 2006. Also, each EPA program (air, water, solid waste) may implement electronic reporting as it becomes ready, without any additional rulemaking.

For authorized programs that have "existing" electronic document receiving systems as of October 13, 2005, EPA is deferring the deadline for these programs to submit their applications for program revisions or modifications under CROMERR with respect to such systems. The deferral is generally until October 13, 2007.

The CROMERR provisions apply to reporting entities that submit electronic reports directly to EPA. By contrast, the rule contains no requirements that apply directly to entities who submit electronic reports to state, tribe, or local government agencies. However, the rule does contain requirements that apply to state, tribe, or local government agencies that operate EPA-authorized programs. For instance, this rule does not require states, tribes, or local governments to allow or require electronic reporting. Where such choose to do so, CROMERR generally provides that they must revise or modify such programs to ensure that their electronic reporting implementation will meet the electronic reporting requirements. Additionally, once these authorized programs begin operating the electronic reporting systems under EPA-approved revisions or modifications, they must keep EPA informed of changes to laws, policies or the electronic reporting systems that could affect the program's compliance.

For more information about CROMERR or for a copy of the final rule, please contact the Environmental, Safety & Toxic Tort Attorney with whom you normally work or any attorney on our website at www.seyfarth.com.



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