



# CROMERR

## Frequently Asked Questions- State, Tribe, and Local Government

### I. SCOPE

#### **Q1. What is CROMERR?**

A1. CROMERR stands for the Cross-Media Electronic Reporting Regulation. It provides the legal framework for electronic reporting under Title 40 of the Code of Federal Regulations to EPA and state, tribe, and local governments (hereafter referred to simply as “authorized programs”) that are authorized to administer federal programs. The regulation authorizes and facilitates electronic reporting for environmental programs while maintaining the level of corporate and individual responsibility and accountability that exists for paper submissions.

#### **Q2. Does CROMERR require electronic reporting?**

A2. No. CROMERR does not mandate that authorized programs institute electronic reporting or accept documents electronically. It also does not require that regulated entities use electronic reporting for reporting directly to EPA. However, CROMERR does not prohibit authorized programs from requiring electronic reporting if they otherwise possess the authority to mandate electronic reporting.

#### **Q3. Does CROMERR apply to all reporting that uses electronic media or related technology?**

A3. No. CROMERR does not affect the submission of any electronic document via magnetic or optical media (e.g., diskette, compact disk, or tape) or via fax.

#### **Q4. What regulatory programs are affected by CROMERR?**

A4. CROMERR affects all regulatory programs that EPA implements under Title 40 of the Code of Federal Regulations (CFR), and all state, tribe and local government programs authorized by EPA under Title 40 of the CFR.

#### **Q5. How does CROMERR affect authorized programs?**

A5. CROMERR affects authorized programs in a number of ways.

- It requires authorized programs to seek EPA approval of program modifications or revisions if they implement or wish to implement electronic reporting under their authorized programs.
- CROMERR sets requirements for electronic reporting under authorized programs, including standards for the systems that authorized programs use to receive electronic reports.
- It establishes a special, streamlined approval process for revisions or modifications to authorized programs related to electronic reporting.



**Q6. Does CROMERR affect all data transfers from authorized programs to EPA?**

A6. No. CROMERR does not apply to data transfers between EPA and authorized programs as a part of their authorized programs or as a part of administrative arrangements between authorized programs and EPA to share data.

**Q7. Does the rule cover electronic record-keeping?**

A7. No, with the exception of the requirement to maintain a "copy of record" for those reports filed electronically. Although the proposed rule included provisions for electronic record-keeping, EPA is not issuing final record-keeping rules at this time.

**Q8. What else does CROMERR not do?**

A8. CROMERR does not:

- Change any substantive regulatory requirements that appear in Title 40 of the Code of Federal Regulations.
- Change any substantive regulatory requirements under authorized state programs.
- Confer any right or privilege to submit data electronically.
- Require any state program to accept electronic documents.
- Require signatures on electronic documents if Title 40 does not require signatures on the corresponding paper documents.

**II. CROMERR REQUIREMENTS**

**Q1. What are the CROMERR requirements for electronic reporting systems?**

A1. Authorized programs seeking to meet the requirements should consult the actual language of section VI.E of the Preamble and §3.2000(b) of the rule for more detail. The subject-areas addressed by the requirements include:

- Timeliness of data generation.
- Copy of record.
- Integrity of the electronic document.
- Submission knowingly.
- Opportunity to review and repudiate copy of record.
- Validity of the electronic signature.
- Binding signature to the document.
- Opportunity to review.
- Understanding the act of signing.
- Electronic signature or subscriber agreement.
- Acknowledgement of receipt.
- Determining the identity of the individual uniquely entitled to use a signature device.

**Q2. How is an application for an electronic reporting system submitted to EPA for review?**

A2. Authorized programs can submit an application for program modification or revision using the special 40 CFR Part 3 approval process or by using applicable program approval or revision processes under other Parts of Title 40.



**Q3. What is the approval process created by CROMERR?**

A3. The CROMERR approval process allows authorized programs to submit a consolidated application to seek approval of multiple program revisions or modifications related to electronic reporting. CROMERR provides a single, straightforward EPA review process for consolidated applications, with deadlines for EPA action written into the rule.

**Q4. How will EPA assess authorized program electronic reporting systems as part of the CROMERR approval process?**

A4. Approval will be based on conformance with the CROMERR performance-based requirements for electronic reporting systems, provided in §3.2000(b) of the rule. These requirements reflect the need to assure the authenticity and integrity of electronic documents so that they will meet the Agency's legal and business needs to the same extent as their paper counterparts.

**Q5. In consolidated applications with multiple program revisions or modifications, does CROMERR require that EPA take the same action on each program in the consolidated application?**

A5. No. For example, EPA can approve some of the program revisions or modifications in the consolidated application, and disapprove others.

**Q6. When do new authorized program electronic reporting systems need to have EPA approval?**

A6. For new electronic reporting systems, authorized programs must obtain EPA approval of the associated program modifications or revisions before electronic reports can be received.

**Q7. When do existing authorized program electronic reporting systems need to have EPA approval?**

A7. Authorized programs must submit applications for program revisions or modifications related to existing electronic reporting systems no later than January 13, 2010. This deadline can be extended on a case-by-case basis and at the request of the authorized program, where legislative or regulatory changes are necessary before a complete application can be submitted.

**Q8. What happens if an application is not submitted by the January 13, 2010 deadline for an existing authorized program electronic reporting system?**

A8. Authorized programs that fail to meet the CROMERR deadline and continue to operate their existing electronic reporting systems without EPA approval may jeopardize the enforceability of affected programs.

**Q9. Can the application deadline for an existing authorized program electronic reporting system be extended?**

A9. CROMERR does allow the EPA Administrator to extend the January 13, 2010, deadline on a case-by-case basis, if an authorized program can demonstrate that it needs additional time to make legislative or regulatory changes required for CROMERR compliance.



### **Q10. When do authorized program electronic reporting systems that are under development need EPA approval?**

A10. Authorized programs must submit applications for program revisions or modifications related to electronic reporting systems that are “substantially developed” no later than January 13, 2010 (see §3.1000(a)(3) of the regulation). In the context of CROMERR, “substantially developed” means that system services or specifications are already established by existing contracts or other binding agreements. This would include cases where a state agency has already made legally binding agreements to procure the services and/or components that will constitute the system. Systems under development, but not “substantially developed,” need EPA approval before they are used to receive electronic reports. (See §3.3. of the regulation for definition of *existing electronic document receiving system*.)

### **Q11. Once approved electronic reporting systems are operational, what happens if the system needs to be changed?**

A11. Once authorized programs begin operating approved electronic reporting systems, they must notify EPA of system changes that have the potential to affect compliance with CROMERR. If there are substantial changes to approved systems, EPA may ask—based on a determination by the Administrator—that the authorized program submit a new application for EPA approval. (See §3.1000(a)(4) of the regulation.)

## **III. AUTHORIZED PROGRAM APPLICATIONS**

### **Q1. What do CROMERR applications need to contain?**

A1. Look to the Regulation for specific requirements (see §3.1000). However, applications generally must contain:

1. A signed certification that state, tribe, or local laws and/or regulations provide sufficient legal authority to implement electronic reporting and to enforce the affected authorized programs using electronic documents collected under those programs – together with copies of the relevant laws and/or regulations.
2. A listing of the electronic document receiving systems that do or will receive electronic submissions addressed by the program revisions or modifications being requested, together with a description of each system that specifies in detail how it will satisfy the requirements of CROMERR. The application should indicate, for each system, which electronic submissions the system will be used to receive, and, for each such submission, whether the submission involves electronic signatures.
3. For each system, a schedule of upgrades that may affect future CROMERR compliance – to the extent that such upgrades can be anticipated.
4. Other information necessary to demonstrate compliance with CROMERR.

### **Q2. How should electronic reporting systems be described in the CROMERR application?**

A2. For each electronic reporting system, the application should explain the approach, both system functions and business processes, to addressing the applicable CROMERR requirements as detailed in section VI.E of the Preamble and §3.2000(b) of the rule. (Note that many of these



requirements may not apply to electronic document receiving systems that do not receive submissions with electronic signatures.) The description should provide detailed information for EPA to be able to understand what functions the system will perform to address the requirement and the technologies that will be used to achieve this functionality.

**Q3. Who needs to sign the certification of legal authority to implement electronic reporting under CROMERR?**

A3. For states, the certification must be signed by the Attorney General or his or her designee. For tribes and local governments, the certification must be signed by the chief administrative official or officer or his or her designee. (See §3.1000(b)(1)(i) of the regulation.)

**IV. APPLICATION REVIEW PROCESS**

**Q1. How does EPA review CROMERR applications?**

A1. Within 75 days of receipt of the application, EPA typically notifies an applicant whether an application is complete. EPA then determines whether to approve or disapprove the revisions or modifications addressed by the application. In most cases, the agency has 180 days from notification of completeness to act on the application, unless the authorized program requests the deadline be extended; in certain circumstances the deadline is 360 days. If EPA does not meet the applicable deadline, then the revisions or modifications in the application are automatically approved (see §3.1000(c)(4) of the regulation).

**Q2. Who reviews the CROMERR applications?**

A2. EPA convened the CROMERR Technical Review Committee (TRC) to review applications submitted under CROMERR for authorized programs. The TRC reflects an Agency-wide perspective, with representatives from each of the EPA Regions and Program Offices. The TRC reviews applications from authorized programs that are submitted under the new CROMERR Part 3 process, which sets relatively tight deadlines for EPA action. The TRC also can be called upon to work with Program and Regional Offices that review CROMERR-required applications submitted under other Title 40 processes for program revision or modification.

**Q3. Is the review any different in cases of existing systems?**

A3. The review is the same, but in certain cases the timing of that review may vary. Under CROMERR, authorized programs with existing systems have until January 13, 2010 to submit their applications. For applications for existing systems that are received after July 30, 2007, EPA has up to 360 days (rather than 180 days) to act on any modification or revision requested in the application.

**Q4. Can applications be amended once they have been deemed complete by EPA?**

A4. Yes. An authorized program may amend its application after EPA has determined the application package to be complete. However, the application will be considered to have been withdrawn and resubmitted as a new package, and a new 75-day completeness determination process will begin. (See §3.1000(e) of the regulation.)



**Q5. Can the review period be extended?**

A5. The 180-day or 360-day review period may be extended, but only at the request of the authorized program submitting the application (see §3.1000(c)(4) of the regulation).

**Q6. When does the approval become effective?**

A6. The approval becomes effective as soon as EPA publishes a notice of the approval in the *Federal Register*.

**Q7. What happens if EPA determines that an application is incomplete?**

A7. For applications that EPA deems incomplete, the agency will provide notice to the applicant along with information about the application's deficiencies. Authorized programs can then either withdraw their application and re-submit a new application, or they may submit an amended application. EPA has 75 calendar days to respond to the resubmitted new application with a completeness determination and 30 calendar days to respond to an amended application with a completeness determination.

**Q8. What happens if EPA denies a requested modification or revision covered by an application?**

A8. If EPA denies a requested modification or revision, the Agency will explain the reasons for the action and advise the applicant of the steps that can be taken to remedy the application's deficiencies. EPA will work with the applicant to identify the issues that have posed an obstacle to approval. Authorized programs may then re-submit applications for reconsideration.

**Q9. Are there special provisions for public water system programs?**

A9. Yes. Where authorized programs apply for approval of an electronic reporting system for a public water system program (under 40 CFR Part 142), the application approach is the same as for any other system except that EPA's approval or denial of the request is considered a "preliminary determination" and is followed by a public hearing process. Following this approach, EPA publishes a notice of the preliminary determination in the *Federal Register* and informs members of the public that they can request a public hearing. If no public hearing is requested (or determined necessary by EPA), then the preliminary determination becomes effective 30 days after the initial *Federal Register* publication. If there is a hearing, EPA reviews the hearing record, and, by order, either affirms or rescinds the preliminary determination; EPA then publishes a notice of its decision in the *Federal Register*. If the order is to approve the revision or modification, the approval will be effective upon publication of the order in the *Federal Register*.

**V. CHALLENGE-QUESTION "SECOND FACTOR" APPROACH**

**Q1. Does CROMERR require systems use a challenge-question second-factor approach for e-signatures?**

A1. No, but CROMERR does require an approach that demonstrates that e-signatures are valid as defined by the rule. Among other things, a valid PIN/password-based e-signature needs to demonstrate that the PIN (or password) has not been compromised. The CROMERR Preamble suggests that where an e-signature is executed with a PIN (or password), preventing device



compromise requires a second 'factor' that is not easy to share by accident or one the owner is likely not to wish to share.

**Q2. Is the challenge-question approach the only "second factor" available to strengthen a PIN/password-based e-signature?**

A2. No, candidate second-factors include private knowledge (such as a 'challenge-question'), biometrics, and hardware devices (e.g., smart cards, USBs, PIN/Password Generators, RSA tokens, cell-phones). EPA recommends PIN-based e-signatures use a challenge-question as a "second factor" because compared with the alternatives, the challenge-question approach provides significant added protection against signature repudiation at a relatively low cost – the approach is low-tech, relatively cheap and easy to implement, and is widely used for commercial applications such as banking. States are welcome to propose other options that demonstrate that the PIN/password has not been compromised.

**Q3. When a system uses a challenge-question as a "second factor" to strengthen a PIN/password-based e-signature -- by helping to ensure that the PIN/password has not**

**been compromised -- how many challenge-questions need to be presented to users each time they enter their PIN or password to execute a signature?**

A3. A single challenge-question is usually sufficient. It should be randomly selected from the set of questions for which the user has provided pre-arranged answers, so that the user cannot predict which question will be presented in any particular case.

**Q4. To set up a challenge-question "second factor" approach, how many questions does the user need to provide with pre-arranged answers?**

A4. Five pre-arranged question-answer pairs are usually sufficient to allow the system to present a single question in a truly unpredictable way to a user who is executing an e-signature. Any less than five pre-arranged question-answer pairs are too few to allow meaningful unpredictability.

**Q5. When asking users to select questions to provide with pre-arranged answers, how long should the list of candidate questions be from which users get to choose?**

A5. The answer depends in part on how many pre-arranged question-answer pairs there will be, and in part on the nature of the questions. Where there will be five pre-arranged question-answer pairs, then a list of ten candidate questions may be sufficient, although EPA recommends twenty candidate questions, to give users the best chance of finding five questions they can answer with certainty from memory based on private knowledge. If there will be more than five question-answer pairs, then a longer list may be needed. In any event, the list of candidate questions needs to be significantly longer than the number of questions to be given pre-arranged answers, because questions that address the private knowledge of some users may not relate to the private knowledge of others. For example, "What is the name of your favorite pet?" wouldn't work for someone who doesn't have a pet at all or who has pets but no clear favorite. It is possible that questions could be identified that really do relate to the private knowledge of almost any user -- "What is your mother's maiden name?" may be an example of this. A relatively short list of candidates that consists entirely of such generally applicable



questions may meet the requirements of a challenge-question implementation as well or better than a much longer list of questions that do not have such universal applicability.

**Q6. What are the numbers of questions asked, pre-arranged question-answer pairs, and candidate questions associated with challenge-question implementations of CROMERR-approved systems?**

A6. Here's a matrix of the numbers for the currently approved systems. We'll update this matrix as we approve additional systems.

<b>Number of:</b>	<b>CDX</b>	<b>Net DMR</b>
Questions asked at signature	1	1
Question-answer pairs pre-arranged by user	5	5
Candidate questions available for user to chose from at registration	20	10 – 20