

demands for production of documents or information, and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States.

#### § 1703.4 Procedure for production.

(a) Whenever a demand is made for ODNI information or material, the employee who received the demand shall immediately notify OGC ((703) 275-2527). The OGC and the ODNI employee shall then follow the procedures set forth in this section.

(b) The OGC may assert any and all defenses before any search for potentially responsive ODNI information or material begins. Further, in its sole discretion the ODNI may decline to begin a search for potentially responsive ODNI information or material until a final and non-appealable disposition of any or all of the asserted defenses is made by the federal, state, local or government entity of competent jurisdiction. When the OGC determines that it is appropriate to search for potentially responsive ODNI information and material, the OGC will forward the demand to the appropriate ODNI offices or entities with responsibility for the ODNI information or material sought in the demand. Those ODNI offices or entities shall then search for and provide to the OGC all potentially responsive ODNI information and material. The OGC may then assert any and all defenses to the production of what it determines is responsive ODNI information or material.

(c) In reaching a decision on whether to produce responsive ODNI information or material, or to object to the demand, the OGC shall consider whether:

- (1) Any relevant privileges are applicable;
- (2) The applicable rules of discovery or procedure require production;
- (3) Production would violate a statute, regulation, executive order or other provision of law;
- (4) Production would violate a non-disclosure agreement;
- (5) Production would be inconsistent with the ODNI's responsibility to protect intelligence sources and methods, or reveal classified information or state secrets;

(6) Production would violate a specific ODNI policy issuance or instruction; and

(7) Production would unduly interfere with the orderly conduct of ODNI functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the ODNI is not a party, a

reasonably detailed description of the testimony sought in the form of an affidavit, or a written statement if that is not feasible, by the party seeking the testimony or its attorney must be furnished to the OGC.

(e) The OGC shall notify the appropriate employees of all decisions regarding responses to demands and provide advice and counsel for the implementation of the decisions.

(f) If response to a demand is required before a decision is made whether to provide responsive ODNI information or material, an OGC attorney will request that a Department of Justice attorney appear with the ODNI employee upon whom that demand has been made before the court or other competent authority and provide it with a copy of this regulation and inform the court or other authority as to the status of the demand. The court will be requested to stay the demand pending resolution by the ODNI. If the request for a stay is denied or there is a ruling that the demand must be complied with irrespective of instructions rendered in accordance with this Part, the employee upon whom the demand was made shall, if directed to do so by the General Counsel or its designee, respectfully decline to comply with the demand under the authority of *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this regulation.

(g) ODNI officials may delegate in writing any authority given to them in this Part to subordinate officials.

(h) Any individual or entity not an ODNI employee as defined in this Part who receives a demand for the production or disclosure of ODNI information or material acquired because of that person's or entity's association with the ODNI should notify the OGC ((703) 275-2527) for guidance and assistance. In such cases the provisions of this regulation shall be applicable.

#### § 1703.5 Interpretation.

Any questions concerning interpretation of this Regulation shall be referred to the OGC for resolution.

Dated: October 2, 2008.

**Corin R. Stone,**

*Deputy General Counsel, Office of the Director of National Intelligence.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 3

[EPA-HQ-OEI-2003-0001; FRL-8730-7]

RIN 2025-AA23

### Extension of Cross-Media Electronic Reporting Rule Deadline for Authorized Programs

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the Final Cross-Media Electronic Reporting Rule (CROMERR) deadline for authorized programs (states, tribes, or local governments) with existing electronic document receiving systems to submit an application for EPA approval to revise or modify their authorized programs. This action proposes to extend the current October 13, 2008, deadline until January 13, 2010. Additionally, in the "Rules and Regulations" section of this **Federal Register**, EPA is making this revision as a direct final rule without a prior proposed rule. If the Agency receives no relevant adverse comment, EPA will not take further action on this proposed rule.

**DATES:** Written comments must be received by November 3, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OEI-2003-0001, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: [oei.docket@epa.gov](mailto:oei.docket@epa.gov).
- *Mail*: CROMERR Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: EPA Docket Room, EPA West, Room 3334, 1301 Constitution Avenue, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OEI-2003-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the CROMERR Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through

Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the CROMERR Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** Evi Huffer, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566-1697; [huffer.evi@epa.gov](mailto:huffer.evi@epa.gov), or David Schwarz, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566-1704; [schwarz.david@epa.gov](mailto:schwarz.david@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. What Does This Rule Do?**

This rule proposes to provide temporary regulatory relief to states, tribes, and local governments with “authorized programs” as defined in 40 Code of Federal Regulations (CFR) 3.3. Any such authorized program that operates an “existing electronic document receiving system” as defined in 40 CFR 3.3 will have an additional 15 months to submit an application to revise or modify its authorized program to meet the requirements of 40 CFR part 3. Specifically, this rule proposes to amend 40 CFR 3.1000(a)(3) by extending the October 13, 2008, deadline to January 13, 2010.

**II. Why Is EPA Issuing This Proposed Rule?**

EPA proposes to extend the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements beyond those imposed by the

underlying final rule (70 FR 59848, October 13, 2005). EPA has published a direct final rule in the “Rules and Regulations” section of this **Federal Register** because EPA views this as a noncontroversial action and anticipates no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If EPA receives no adverse comment, the Agency will not take further action on this proposed rule. If EPA receives adverse comment, the Agency will withdraw the direct final rule and it will not take effect. EPA will address all relevant public comments in any subsequent final rule based on this proposed rule.

EPA will not institute a second comment period on this action. Any parties interested in commenting on this proposed rule or the direct final rule listed elsewhere in today’s **Federal Register** must do so at this time. For further information about commenting, please see the **ADDRESSES** section of this document.

**III. Does This Action Apply to Me?**

This action will affect states, tribes, and local governments that have an authorized program as defined in 40 CFR 3.3 and also have an existing electronic document receiving system, as defined in 40 CFR 3.3. For purposes of this rulemaking, the term “state” includes the District of Columbia and the United States territories, as specified in the applicable statutes. That is, the term “state” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and the Trust Territory of the Pacific Islands, depending on the statute.

Category	Examples of affected entities
Local government .....	Publicly owned treatment works, owners and operators of treatment works treating domestic sewage, local and regional air boards, local and regional waste management authorities, and municipal and other drinking water authorities.
Tribe and State governments .....	States, tribes or territories that administer any federal environmental programs delegated, authorized, or approved by EPA under Title 40 of the CFR.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**IV. What Should I Consider as I Prepare My Comments for EPA?**

*A. Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific

information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*B. Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## V. Summary of Rule

This proposed rule would amend 40 CFR 3.1000(a)(3) by extending the current October 13, 2008 deadline for authorized programs with existing electronic document receiving systems to submit applications to January 13, 2010.

For additional discussion of the proposed rule change, see the direct final rule EPA has published in the “Rules and Regulations” section of today’s **Federal Register**. This proposal incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O.

### B. Paperwork Reduction Act

This action does not impose any information collection burden. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. However, the

Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 3) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2025–0003, EPA ICR number 2002.03. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or by calling (202) 566–1672. The ICR is also available electronically in [www.regulations.gov](http://www.regulations.gov).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business that meets the definition for small businesses based on SBA size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a

population of less than 50,000 (Under the RFA definition, States and tribal governments are not considered small governmental jurisdictions.); and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the possibility of economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are small governmental jurisdictions. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems. EPA has therefore concluded that today’s action will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, tribe, or local governments or the private sector. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. EPA has determined that this rule does not contain a federal mandate that may result in expenditures of \$100 million or more for states, tribes, and local governments, in the aggregate, or the private sector in any one year. Therefore, this action is not subject to

the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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 action does not have federalism implications. It 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, as specified in Executive Order 13132. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and

imposes no additional requirements. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045: Children's Health Protection*

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant action as defined by Executive Order 12866 and it does not establish an environmental standard intended to mitigate health or safety risks. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements.

#### *H. Executive Order 13211: Energy Effects*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise

impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. EPA's compliance with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113, 12(d) (15 U.S.C. 272 note)) has been addressed in the preamble of the underlying final rule [70 FR 59848, October 13, 2007].

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule merely extends the current regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems.

#### **List of Subjects in 40 CFR Part 3**

Environmental protection, Conflict of interests, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

Dated: October 10, 2008.

**Stephen L. Johnson,**  
*Administrator.*

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