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Alliance OF AUTOMOBILE MANUFACTURERS

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Enforcement and Compliance Docket and Information Center
1200 Pennsylvania Avenue, N. W.
4th Floor, Room 4033
Washington, D.C. 20004
Tel. 202-564-2614 or 2119

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COMMENTS OF THE ALLIANCE OF AUTOMOBILE MANUFACTURERS
Re: Establishment of Electronic Reporting, Electronic Records: Proposed Rule
66 Fed. Reg. 46162, August 31, 2001

These comments are submitted by the Alliance of Automobile Manufacturers (Alliance) in response to the proposed rule on establishment of Cross Media Electronic Reporting and Record-keeping Requirements (CROMERRR), (66 Fed. Reg. 46162, August 31, 2001)[1]. The Alliance also incorporates by reference the comments by the Coalition for Effective Environmental Information (CEEI) and the American Chemistry Council (ACC). The Alliance comments complement the points these organizations have made.

The Alliance of Automobile Manufacturers is a coalition of 13 car and light truck manufacturers, whose members have approximately 600,000 employees in the United States, and more than 250 facilities in 35 states, including 56 car and light truck manufacturing facilities. Alliance members represent more than 90 percent of U.S vehicle sales. Electronic data management is integral to industry operations, including environmental compliance. The CROMERRR rulemaking affects every auto manufacturer and its suppliers, and has generated extremely high concern.

1. EPA Should Withdraw the CROMERRR Rulemaking

CROMERRR has been characterized by EPA as a "totally voluntary" initiative to comply with the Government Paperwork Elimination Act (GPEA) goal of eliminating barriers to electronic reporting and record-keeping for regulatory compliance, compared with paper systems. Actually, this proposal would have the opposite effect. CROMERRR would mandate onerous requirements that would complicate and confound use of electronic media for environmental regulatory requirements. EPA has made several basic errors that pervade the entire proposal. First, it is based on the unrealistic premise that facilities can elect NOT to use electronic systems (i.e., to revert back to an all-paper data collection system or otherwise "opt out" of these requirements). As a result, the proposed rule turns on completely flawed regulatory and cost analyses, and fails to address what is technically feasible and cost effective for the very broad variety of data and

[1] See also, Extension of Comment Period (67 Fed. Reg. 278, January 3, 2002).

businesses that would be encompassed by this rule. Second, the proposal fails to demonstrate adequate *benefit* from the new requirements or to evaluate other alternatives than the model EPA relied upon from the Food and Drug Administration (FDA).[2] EPA also fails to address effective electronic reporting systems already working at the state level, to show how this rulemaking would cost-effectively enhance them. Fourth, EPA's proposal fails to grapple with the issues of these requirements chilling use of new technology, or record retention and maintenance of legacy systems for electronic information.

Therefore the Alliance urges EPA to withdraw the rule and develop a simpler and more flexible approach that would suffice to implement the Government Paperwork Elimination Act, and avoid detrimental interference with successful, existing electronic reporting and record-keeping for EPA regulations and in state-delegated programs.

2. The Proposed Rule Has Been Mischaracterized as Voluntary, Resulting in Flaws in EPA's Regulatory Analyses and Raising Legal Issues.

The proposed rule has been characterized as a voluntary program for the regulated community[3], but is based on an expansive definition of "electronic record" as "any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved or distributed by a computer." [4] Finding a commercial facility not catapulted into the requirements would be difficult.

Manual data collection and typed or hand-written record-keeping are no longer the primary methods for record and report generation. The regulated community gathers data from computer monitors, digital readouts, panel view terminals, programmable logic controllers, and a multitude of electronic display sources. It is nearly impossible to efficiently operate and monitor an industrial facility without the use of electronic data generating points. For the complexities of environmental compliance reporting, capturing precise operating data is mandatory for submission of accurate and timely reports and maintaining chronologies of facility activities.

Electronic data capture is ubiquitous in automobile manufacturing. But it is also done differently, with different hardware and software architecture, from facility to facility, and from company to company. The scale of electronic data collection is very large. For example, vehicle assembly plants operating under state air permits (which usually include federally delegated requirements) must monitor scores of parameters to ensure compliance. These plants track material inventory, paint usage and analyses from different suppliers, along with solvent usage in the paint booths. Depending upon the specific needs of a facility, various equipment components may be monitored to ensure proper operation, and may include booth airflows, exhaust stack pressure and temperature, abatement equipment inlets, outlets, combustion and/or bed temperatures, and fuel usage. Any required data points may be transmitted to one or more server databases for electronic archiving. Some vehicle assembly plants have over five miles of

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[2] As detailed in comments by the American Chemistry Council, CEEI, and others, the FDA approach continues to be extremely expensive, and technically problematic for the pharmaceutical industry and regulators.

[3] 66 Fed. Reg. 46162, and 46186.

[4] Id. at 46189, and discussion at 46163-4.

conveyors in the paint shop alone and 25 miles of conveyors in the plant, all requiring some form of data monitoring for operation. Hundreds of data collection points would need to be retrofitted to comply with CROMERRR. As computer systems have evolved, industry has increased electronic data capture and electronic facility monitoring for operational efficiency, but many of the same systems installed decades ago continue to effectively survey plant operations daily as part of the overall system. CROMERRR would mandate that multiple generations of computer systems and software applications be overhauled or not be used for environmental data collection. No single software program or patch exists which would cost- effectively bring the multitude of computer systems into conformity. In addition to updating current systems and software, the problem of converting archived data is even more difficult. Taking data from an early generation system and transforming it into a dissimilar format very often causes significant data loss, if the transfer is even possible. Similar issues would exist for other regulatory monitoring functions (e.g., for water and waste systems).

The EPA cost estimates for system upgrade and software integration do not consider the numbers and diverse types of electronic data capture equipment manufacturing plants employ. Automotive facilities do not use a single "stand alone" system to operate and monitor their processes. With several operational groups in a facility (e.g. body shop, paint shop, general assembly, final repair), each having their own unique process controls, modifying these systems would take significant time and money. EPA's estimate of $40,000 per facility should be multiplied many times over for systems operating in a typical automobile manufacturing plant. In addition to the systemic changes necessary, the cost of downtime should be reflected as a cost consideration. The task of upgrading each server and its associated operating systems would require significant process down time. This project would cascade along a lengthy timeline involving computer specialists working on premium time, usually weekends and off-shifts, then troubleshooting servers and systems when new installation of hardware and/or software occurs.

Not only does EPA's proposal miss the mark on its impacts, but EPA has never corrected the characterization of the requirements as voluntary. Therefore, the Agency has failed to meet the notice and comment requirements of the Administrative Procedure Act, as elaborated upon in the American Chemistry Council and CEEI comments. The requirements of the Regulatory Flexibility Act and Small Business Regulatory Efficiency and Fairness Act (SBREFA) should also have been addressed in this proposal.

3. The Proposal's Electronic Reporting Requirements Create Unwarranted Obstacles

The proposed requirements governing reporting do not conform to the EPA's stated goals -- to reduce the cost for both the sender and the recipient; to improve data quality by automating quality control functions and eliminating re-keying; and to improve the speed and ease with which the data can be accessed by all who need to use it. The requirements also appear to interfere with *existing* electronic reporting.

First, EPA's proposal has the perhaps unintended effect of obfuscating the legal status of electronic reports already submitted or being submitted to EPA or to states under delegated programs, and underlying electronic record-keeping, by making an apparent requirement for

"pre-approval" by EPA for electronic reporting or records to be acceptable.[5] EPA should clarify that past and ongoing reporting and electronic record-keeping initiated prior to any final rule are not affected by the rule. EPA should also invest in much better understanding of existing successful electronic reporting experiences before imposing prospective new requirements.

Alliance members support the use of electronic record-keeping and reporting to fulfill obligations under the numerous environmental programs. Many, if not all, states in which the member companies own and operate manufacturing facilities have established some form of electronic reporting, and accept various forms of electronic records to accomplish the requirements imposed by environmental regulations adopted to satisfy EPA delegated programs. EPA should allow the States to continue using the systems that they have developed to meet the federal regulatory programs and allow the regulated community to use the electronic record-keeping systems in which they have made significant investment.

For example, Ohio has been accepting (and requiring) submittal of electronic data via telecommunications for years to implement an EPA-approved program, and these efforts have been successful. In the mid 1990's, Ohio EPA developed a computer system called "STARShip", (which seems to be similar to the concept of EPA's Central Data Exchange or CDX) which has been used to transmit permit applications and emission reports required under the Clean Air Act. The files were initially submitted via the telephone modem directly to the Ohio EPA computer using the pre-Internet computer-computer file transfer protocols in 1995-1996. Submitting the electronic data via magnetic media was accepted during the first years of the STARShip. Currently, the electronically files are submitted via e-mail using the Internet. Similarly, waste reporting is submitted via the Internet.

Second, EPA is proposing to require states and tribes to establish criteria related to system security, electronic signature and certification, chain-of-custody, and archiving and data transfers, that go well beyond measures for paper or magnetic media, and therefore do nothing to facilitate electronic reporting. EPA's distinction putting additional burdens on electronic transmissions vs. paperless reporting by magnetic media or facsimile to fulfill the GPEA is not well justified. EPA discusses potential fraudulent changes to the electronic documents, but once received by EPA as reports, tampering with the data should not be an issue. In terms of record-keeping, magnetic media storage, and indeed paper copies, are also susceptible to fraudulent changes by someone so inclined. The risks vs. benefits need much more analysis before constraints are imposed.

Third, in the proposal EPA plans to require the adoption of best practices for electronic records management. By its very nature, best practices evolve and change with time. What constitutes "best" today is replaced with something better tomorrow. Nowhere does "best" seem to change faster than in the computer industry. EPA should not mandate "best" practice, because it only exists temporarily. EPA should allow electronic record-keeping and reporting practices to evolve at their own pace. However, to encourage use of electronic reporting, EPA should continue to adjust its receiving systems so that they are compatible with the capabilities of the majority of industry and pubic sector users.

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[5] Id. at 46162, 46164, 46171, and 46191.

Under the electronic signature part of the proposal, a signatory must register with EPA and agree to keep the signature secret and protected from use by another person, and must agree never to delegate its use. Second, the signatory must attest that he/she understands that use of the E-Signature is equivalent to a written signature (legally bound) and that legal action can be taken against him. He must acknowledge that the submission as received will be made available to him, and agree to review the acknowledgement and copies of documents, and report within 24 hours discovery of any evidence of loss, theft, compromise of the E-Signature, or discrepancy of the submitted report. In addition, the authorized signatory must inform EPA when he or she changes positions or leaves the job. EPA is contemplating requiring the E-Signature to be renewable.[6]

EPA further proposes to prohibit electronic submittals should the E-Signature be "compromised".[7] This could have the effect of preventing a required report from being submitted by the regulatory deadline, placing the signatory at risk of violating another regulatory requirement.

Other than responsibility for the substantive certification required for the document in any format, none of these impositions exist today in the paper signature system. For example, a signatory can delegate responsibility for signing reports to several responsible subordinates under current rules, a necessity in today's high travel environment and in light of the number and frequency of reports. Current certification requirements and penalties are sufficiently strong to prevent carelessness with respect to E-Signatures. These proposed criteria are excessively burdensome and the need for them in this context is not documented in the proposed rule. They are barriers to electronic reporting rather than elimination of existing regulatory obstacles.

4. EPA's Cost and Benefit Analyses Are Deficient.

The Alliance agrees with the comments from the American Petroleum Institute, CEEI, the American Chemistry Council, and several of the industry representatives' statements at EPA's public meetings, that EPA has vastly underestimated the eventual costs of such a proposal, particularly for complex manufacturing industries. The Agency also provides no direct cost calculations from states themselves on the economic impact upon them. Serious comparison among alternative approaches is missing, despite Executive Order 12866 and OMB's Procedures and Guidance for Implementation of the GPEA (65 Fed. Reg. 25508, May 2, 2000).

The Agency should avoid the trap of trying to set rigid requirements for the rapidly evolving technological arena for electronic data production and transmission. It should focus first on assuring that data submitted to the Agency, in whatever form, (1) is received accurately, (2) from an identifiable contact, (3) that there is a mechanism for timely and appropriate correction (dated, and if necessary, explained), and (4) that data integrity is maintained by the Agency over time and in various regulatory applications. Additional outreach by EPA concerning the Central Data Exchange should continue. Correspondingly, EPA should implement the GPEA in a simpler and more incremental fashion so that it can respond to specifically documented problems with well-targeted and cost-effective solutions. The opportunity cost to businesses and government at stake

[6] Id. at 46173.
[7] Id.

from this proposal is extremely significant, and justifies withdrawal and reconsideration of the proposal in its entirety.

We look forward to working with the Agency as it addresses the comments to the proposal, and would be happy to answer any questions.

Very truly yours,

Valerie Ughetta
Director of Stationary Sources
202-326-5549
vughetta@autoalliance.org

Email ccs: Evi Huffer (huffer.evi@epa.gov)
David Schwarz (schwarz.david@epa.gov)