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Dayton Area Chamber of Commerce

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ACCREDITED CHAMBER OF COMMERCE

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February 25, 2002

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Enforcement & Compliance Docket & Information Center

United States Environmental Protection Agency
Enforcement and Compliance Docket and Information Center, Mail Code 2201A,
Docket Number EC-2000-007
1200 Pennsylvania Avenue NW
Washington, DC, 20460

RE: Establishment of Electronic Reporting: Electronic Records; Proposed Rule (66 FR 46162)

To Whom It May Concern:

Thank you for the opportunity to submit comments on the proposed electronic reporting rule. The Dayton Area Chamber of Commerce is a business trade association with more than 3,300 business members in a seven-county area of Southwest Ohio. Our members employ more than 200,000 workers and represent a diverse segment of industries, from manufacturing and service sectors to retail and wholesale providers.

Because the proposed electronic reporting rule could have far-reaching implications on the businesses located in our region, the members of the Chamber's Environmental Committee have expressed strong concern regarding the possible enactment of this rule and have prepared the following public comments in response to the Environmental Protection Agency's (EPA's) Notice of Proposed Rulemaking (NPRM) on Electronic Records published in the Federal Register at *66 FR 46162*.

Although the Dayton region is known for large automotive plants, the fact remains that the majority of our members are small to mid-sized businesses. Most of the environmental attorneys, consultants, and compliance officers who serve on the Dayton Area Chamber of Commerce's Environmental Committee represent smaller enterprises that fuel the economic engine of the entire Dayton region.

Our committee members are well-educated professionals with a genuine concern for protecting natural resources. In their desire to promote environmentally responsible business practices, these members go to great lengths to ensure their compliance with federal, state and local environmental laws. Our members operate complex environmental management systems in order to ensure the accuracy of the environmental data that they report in accordance with existing federal recordkeeping requirements.

Upon lengthy discussion at the Environmental Committee's February meeting, it was decided that the Chamber would oppose EPA's proposed Cross-Media Electronic Reporting and Recordkeeping Rule (CROMERRR) and would specifically highlight our concerns by submitting these public comments.

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Among other items, Chamber members expressed concerns that the rule, while containing the illusion of being a voluntary program, actually mandates that all businesses adhere to certain requirements in order to maintain compliance. In addition, CROMERRR would be expensive to implement and is overly onerous through a "one size fits all" approach taken by EPA. If implemented, the rule would affect nearly all of our members and their individual facilities that are required to report data and other information to the EPA. Specific information to back up our concerns are listed in the comments below:

Mandatory Recordkeeping Provisions

The Agency's proposal portrays the recordkeeping provisions as voluntary stating that, "Under today's proposal, electronic document submission or electronic recordkeeping will be totally voluntary." The Chamber respectfully disagrees with this assessment. In fact, the proposal as written appears to apply to each and every regulated entity that electronically maintains any record required by EPA. The proposal defines "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 system."

If information meets this definition, a regulated entity could satisfy CROMERRR's recordkeeping requirements only if the data "is generated and maintained by an acceptable electronic record-retention system as specified" in the proposed rule. Thus, where regulated entities routinely store data on a computer (e.g., monitoring data, emissions data), such storage alone would likely subject the regulated entities to the CROMERRR requirements.

Our members routinely store monitoring and emissions data and other information on a computer, typically in a database program. Under terms of the proposed rule, such storage would subject our members to all mandatory CROMERRR requirements for electronic recordkeeping. The Chamber respectfully requests therefore that the proposal be modified to ensure that the rule is strictly voluntary in nature.

Expensive Compliance Costs

The Dayton Area Chamber of Commerce believes that our members will face high compliance costs if this rule is implemented as written. The Chamber is aware of the numerous problems associated with the Food & Drug Administration's (FDA) implementation of a similar electronic recordkeeping rule a few years ago. Experience with the FDA regulation sheds light on the expected impact of EPA's proposal. The CROMERRR economic analysis declares that the cost of complying with the recordkeeping provisions would be about $40,000 per facility. Yet in complying with the FDA rule, the pharmaceutical industry has found that costs often run much higher, even, in some cases, into the millions.

But even if EPA's seemingly low estimates are correct, CROMERRR will constitute one of the federal government's more expensive regulations. Figures obtained by the Dayton Area Chamber of Commerce from the U.S. Chamber of Commerce indicate that because CROMERRR is not voluntary, the $40,000 cost will be borne by nearly all of the 1.2 million reporting facilities, resulting in a total regulatory compliance cost of $48 billion. On top of this initial cost, EPA estimates a yearly cost of $17,000 per facility, or more than $20 billion in annual regulatory burden.

Considering that government mandates already have a disproportionate burden on small to mid-sized companies, the Chamber believes that the expense associated with the rules make them impractical for final promulgation.

The Rule Does Not Allow for Flexibility

Upon our review of CROMERRR's reporting requirements, the Dayton Area Chamber of Commerce believes that more flexibility could be written into the proposal in order to make electronic reporting easier for companies to implement. The proposal, as currently written, contains too many rigorous provisions that serve as a deterrent for businesses.

For example, CROMERRR imposes substantial anti-fraud provisions that most current computer systems simply do not have. These requirements apply both to new systems and to existing systems. A more flexible system would not subject businesses to additional anti-fraud provisions, and instead would require compliance with current anti-fraud provisions.

In addition, the CROMERRR anti-fraud provisions are particularly onerous. Since the federal criminal code already prohibits environmental professionals from making a false statement to the government or from submitting fraudulent records, an additional provision seems unnecessary. EPA's "one size fits all" approach does very little to improve the proposed rule. Considering that EPA already has relationships with the companies that submit data, it appears that the risk of fraud is probably quite low.

To conclude, the Dayton Area Chamber of Commerce opposes the current rule being promulgated by EPA. This position is based on our concerns that while portrayed as voluntary, the rule would in fact be mandatory for almost all entities using computers to store data intended to meet current EPA recordkeeping requirements. This mandate in turn would require that Chamber members purchase expensive upgrades for current computer systems, which creates a substantial financial burden on regulated entities, especially our small business members. In the alternative, they could be forced to abandon current practice of storing data on and preparing reports using personal computers and return to more error prone, more manual, paper based record keeping. The Chamber believes that electronic recordkeeping and reporting has the potential to reduce paperwork, making compliance more efficient and less burdensome for the regulated community. However, the current proposed rule fails to accomplish this objective. CROMERRR is an extremely costly and arduous regulation that provides no real benefit to environmental professionals or the business community.

The Dayton Area Chamber of Commerce appreciates the opportunity to comment on EPA's the CROMERRR proposal. Our members are always willing to assist in the development of environmental regulations that balance strong environmental protection with regulatory restraint. Please contact me at (937) 226-8277 or via email at ajs@dacc.org if you have any questions regarding the comments we have submitted.

Sincerely,

Amy Schrimpf

Amy Schrimpf
Senior Manager of Public Policy