

## **Cross-Media Electronic Reporting Regulation (CROMERR)**

### **Legal Certification Guidance for Attorney General or Local Government or Tribe Certifying Official Statement:**

Attached is an example of certification statement language that may be used, in part, to satisfy the certification requirement of 40 C.F.R. § 3.1000(b)(1)(i). We request that you certify as required by the regulation and include it as part of your State, Tribe, or locality's Cross Media Electronic Reporting Regulation ('CROMERR' or 'Regulation') application packet. In addition to including all State, Tribe, or local statutes and regulations relevant to the application, we suggest including a description specifically linking applicable portions of 40 C.F.R. Part 3 with relevant portions of your State, Tribe, or locality's statutes and regulations to assist EPA's review.

All applicable provisions of CROMERR may be relevant to an application. However, below is a list of specific items you may wish to focus on prior to certification and include in your documentation:

- (1) 40 C.F.R. § 3.2000(a)(2) provides that a "valid electronic signature" is required if a person would have been required to "sign the paper document for which the electronic document substitutes . . . ." Please verify that your State, Tribe, or locality is requiring electronic signatures in accordance with the Regulation. Additionally, please verify that your State, Tribe, or local electronic reporting system produces electronic signatures or a wet-ink on paper signature can be provided, where either signature is admissible and sufficiently persuasive that the signature would satisfy the "beyond a reasonable doubt" standard when criminal sanctions are possible. When criminal sanctions are not possible, the signatures produced should be sufficiently persuasive to meet the applicable burden of proof.
- (2) Electronic signatures collected by the electronic reporting system must meet the definition of "valid electronic signature" under 40 C.F.R. § 3.3. See 40 C.F.R. § 3.2000(a)(2). Please verify that the method used to create electronic signatures satisfies the definition in section 3.3.
- (3) Systems must be able to show that "[e]ach signatory had the opportunity, at the time of signing, to review the content or meaning of the required certification statement, including any applicable provisions that false certification carries criminal penalties[.]" 40 C.F.R. § 3.2000(b)(5)(iv). Please verify that the notice provided to signatories is legally sufficient.
- (4) Systems are required to show that "[f]or each electronic signature device used to create an electronic signature on the document, the identity of the individual uniquely entitled to use the device and his or her relation to any entity for which he or she will sign electronic documents has been determined with legal certainty by the issuing state, tribe, or local government." 40 C.F.R. § 3.2000(b)(5)(vii). Please verify that your State, Tribe, or locality's identity-

proofing method is sufficiently robust to meet the “beyond a reasonable doubt” evidentiary standard.

- (5) Please also verify that the requirements of 40 C.F.R. § 3.2000(c) are met. The requirements include:
- a. A person is subject to all appropriate civil, criminal penalties or other remedies under state, tribe, or local law for failure to comply with a reporting requirement if the person fails to comply with the applicable provisions of the Regulation.
  - b. Where an electronic document submitted to satisfy a state, tribe, or local reporting requirement bears an electronic signature, the electronic signature legally binds or obligates the signatory, or makes the signatory responsible, to the same extent as the signatory’s handwritten signature on a paper document would, if the paper document were submitted to satisfy the same reporting requirement.
  - c. Proof that a particular electronic signature device was used to create an electronic signature that is included in or logically associated with an electronic document submitted to satisfy a state, tribe, or local reporting requirement will suffice to establish that the individual uniquely entitled to use the device at the time of signature did so with the intent to sign the electronic document and give it effect.
  - d. Nothing in the authorized program limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings.

**Example for States:**

**Attorney General Certification Statement**

*(If Attorney General signs include the following:)* I, [insert name of Attorney General], am the Attorney General for the State/Commonwealth of [insert State/Commonwealth name].

**or**

*(If Attorney General's designee signs include the following:)* I, [insert name of Attorney General's designee], am the [insert title of Attorney General's designee] for the State/Commonwealth of [insert State/Commonwealth name] and the Attorney General's designee for the purposes of certifying to the appropriate Federal authorities the legal authority of the State/Commonwealth of [insert State/Commonwealth name] to administer any applicable Federal mandates.

I have reviewed [insert State or Commonwealth and State/Commonwealth's Agency's name] application and supporting documentation to EPA to approve electronic reporting for [insert name of reporting system].

I hereby certify:

- (1) that the State/Commonwealth of [insert State/Commonwealth name] has sufficient legal authority provided by [insert State/Commonwealth name]'s lawfully enacted or promulgated statutes or regulations to implement the electronic reporting component of its authorized programs consistent with 40 Code of Federal Regulations § 3.2000 and with this application;
- (2) that such statutes or regulations are in full force and effect on the date of this certification; and
- (3) that [insert State/Commonwealth name] has authority to enforce the affected programs using electronic documents collected under these programs.

I have included with this certification all [insert State/Commonwealth name] statutes and regulations relevant to this application. To assist EPA's review of this application, I also have included a description specifically linking applicable provisions of 40 C.F.R. Part 3 with relevant portions of [insert State/Commonwealth name]'s statutes and regulations.

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*[insert name of Attorney General or Attorney General's Designee]*  
*[insert title]*  
*[insert date]*

**Example for Tribes and Local Governments:**

***[insert Tribe or local certifying official title] Certification Statement***

I, *[insert name of certifying official]*, am the *[insert certifying official title]* for the *[insert Tribe or locality name]*. I have reviewed *[insert Tribe or locality name]* application and supporting documentation to EPA to approve electronic reporting for *[insert name of reporting system]*.

I hereby certify:

- (1) that the *[insert Tribe or locality name]* has sufficient legal authority provided by *[insert Tribe or locality name]*'s lawfully enacted or promulgated statutes, ordinances, or regulations to implement the electronic reporting component of its authorized programs consistent with 40 Code of Federal Regulations § 3.2000 and with this application;
- (2) that such statutes, ordinances, or regulations are in full force and effect on the date of this certification; and
- (3) that *[insert Tribe or locality name]* has authority to enforce the affected programs using electronic documents collected under these programs

I have included with this certification all *[insert Tribe or locality name]* statutes, ordinances, and regulations relevant to this application. To assist EPA's review of this application, I also have included a description specifically linking applicable provisions of 40 C.F.R. Part 3 with relevant portions of *[insert Tribe or locality name]*'s statutes and regulations.

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*[insert name of certifying official]*  
*[insert title]*  
*[insert date]*