



Cross-Media Electronic Reporting Regulation (CROMERR)

Legal Certification Guide for State Attorney General or Local Government or Tribe Certifying Official
Statement

Certification Requirements for States.....	2
Certification Requirements for Tribes and Local Governments	3
Example for States	5
Example for Tribes and Local Governments	6
Example Completed 40 CFR Part 3 Crosswalk	7
40 CFR Part 3 Crosswalk Template.....	11



Certification Requirements for States

Attachment 1 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's Cross Media Electronic Reporting Regulation ('CROMERR' or 'Regulation') application packet. In addition to including all State 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'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 is requiring electronic signatures in accordance with the Regulation. Additionally, please verify that your 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 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 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 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 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.

Nothing in the authorized program limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings.

Crosswalk

The certification must include copies of all State statutes and regulations relevant to the application. EPA suggests also including a description specifically linking applicable portions of 40 CFR Part 3 to relevant portions of the State statutes and regulations to facilitate EPA's review. A completed example of this comparison and a comparison template are provided below in Attachments 3 and 4, respectively.

Signatory Authorization

If the certification document is signed and dated by the State Attorney General ("State AG") on official letterhead, no further action is needed for the purposes of certification. However, if the certification document is not signed by the State AG, you may wish to provide other means for EPA to rely on when determining whether certification requirements have been met, including but not limited to:

- (1) A delegation statement signed and dated on official letterhead by the State AG that:
 - a. authorizes a named individual within the State AG's office to sign the certification document on the State AG's behalf; or
 - b. designates any individual serving in a specified official position to sign the certification document;

OR

- (2) A copy of an official State policy or regulation that authorizes an individual in a named position to represent the State AG in the matter.

Certification Requirements for Tribes and Local Governments

EPA requests that all Tribal and local applicants review Tribal and local statutes, regulations, and ordinances to verify that they do not affect CROMERR implementation. In conducting this review, we recommend consulting with any city, county, Tribal, or State agencies, departments, or other regulatory bodies with subject matter expertise in any potentially conflicting



or limiting statutes. EPA requests that all Tribal and local applicants submit a certification that their Tribal and local statutes, regulations, and ordinances do not affect CROMERR implementation. No crosswalk is required. An example is provided in Attachment 2.

Signatory Authorization

EPA requests that the certification be made by an individual in your organization that has the authority to represent your organization and certify the document. This is the chief executive or administrative official of the Tribal or local organization or the office of the government entity collecting electronic reports (“official”), or his or her designee. EPA also requests that the certification be provided on official letterhead of the Tribal or local organization or office. If the certification document is signed and dated by the official referenced above, on official letterhead, no further action is needed for the purposes of certification. However, if the certification document is not signed by the official referenced above, but is instead signed by his or her designee, you may wish to provide other means for EPA to rely on when determining whether certification requirements have been met, including but not limited to:

- (1) A delegation statement signed and dated on official letterhead by the official that:
 - c. authorizes a named individual within the official’s office to sign the certification document on the official’s behalf; or
 - d. designates any individual serving in a specified official position to sign the certification document;

OR

- (2) A copy of an official Tribe or local government policy or regulation that authorizes an individual in a named position to represent the official referenced above in the matter.

If a Statute, Regulation, or Ordinance Affects CROMERR Implementation

If a Tribal or local government determines that they do have statutes, regulations, or ordinances that affect the implementation of CROMERR, EPA recommends following the process outlined in “Certification Requirements for States” above including:

1. A certification statement signed by signed and dated by the chief executive or administrative official or officer of a governmental entity (“official”) of an authorized Tribe or local government program, on official letterhead. EPA recommends using the Example for States provided below as a template.
2. A completed crosswalk, as described in the “Certification Requirements for States” above. An example crosswalk is provided in “Example Completed 40 CFR Part 3 Crosswalk” below.



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. To demonstrate my authority to make this certification, I have attached [insert either "a delegation statement from the Attorney General" or reference to the policy or regulation giving authority].

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.

[insert name of Attorney General or Attorney General's Designee]

[insert title]

[insert date]



Example for Tribes and Local Governments

This example is applicable when Tribal and local statutes, regulations, and ordinances do not affect CROMERR implementation. If CROMERR implementation is affected, EPA recommends using the process outlined under “Certification Process for States” and the example under “Example for States”.

***[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 possess the authority to represent *[insert Tribe or locality name]* through this certification document. 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 that the *[insert Tribe or locality name]* has no lawfully enacted or promulgated statutes, ordinances, or regulations that affect the implementation of the electronic reporting component of its authorized programs consistent with 40 Code of Federal Regulations § 3.2000 and with this application.

[insert name of certifying official]

[insert title]

[insert date]



Example Completed 40 CFR Part 3 Crosswalk

To assist EPA’s review of this application, I have included a description prepared by the ODEQ which specifically links applicable provisions of 40 C.F.R. Part 3 with relevant portions of the Oklahoma statutes and ODEQ regulations. The description shows ODEQ’s authority to implement electronic reporting. I have also included with this certification descriptions and copies of all State statutes and regulations relevant to this application. These statutes and regulations demonstrate the ODEQ’s authority to enforce the affected authorized programs using electronic documents.

I. ODEQ LEGAL AUTHORITY TO IMPLEMENT ELECTRONIC REPORTING IN CONFORMANCE WITH 40 CFR § 3.2000

FEDERAL RULE	RELEVANT STATE STATUTE OR RULE
40 CFR 3.2000(a)(2) – “valid electronic signature” is required if a person would have been required to sign the paper document	OAC 252:4-17-3(b)
40 CFR 3.2000(a)(2) – verify that State electronic reporting system produces electronic signatures that will satisfy the “beyond a reasonable doubt” standard when criminal sanctions are possible (e.g., individual signatory is uniquely authorized to use the signature device assigned to him/her)	OAC 252:4-17-5(b)
40 CFR 3.2000 (a)(2) – verify that the method used to create electronic signatures satisfies the definition of “valid electronic signature” in 40 CFR 3.3	OAC 252:4-17-5(b) 12A O.S. § 15-109(a)
40 CFR 3.2000(b)(5)(iv) – verify that each signatory will have 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	OAC 252:4-17-5 OAC 252:4 Appendix E – Electronic Signature Agreement
40 CFR 3.2000(b)(5)(vii) – verify that for each	OAC 252:4-17-5



FEDERAL RULE	RELEVANT STATE STATUTE OR RULE
<p>electronic signature device used to create an electronic signature, the identity of the individual uniquely entitled to use the device and his/her relation to the entity has been determined with legal certainty (e.g., identity-proofing method is sufficiently robust to meet the “beyond a reasonable doubt” evidentiary standard)</p>	<p>OAC 252:4 Appendix E – Electronic Signature Agreement</p>
<p>40 CFR 3.2000(c) – verify that a person is subject to all appropriate civil, criminal penalties or other remedies for failure to comply with a reporting requirement if the person fails to comply with the applicable federal regulation</p>	<p>OAC 252:4-17-7 27A O.S. §§ 2-3-502 and 2-3-504 21 O.S. § 463</p>
<p>40 CFR 3.2000(c) – verify that where an electronic document submitted to satisfy a 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</p>	<p>OAC 252:4-17-6(b) 12A O.S. § 15-107</p>
<p>40 CFR 3.2000(c) – verify that the signatory will be uniquely entitled to use the electronic signature device at the time of signature</p>	<p>OAC 252:4-17-5(b)</p>
<p>40 CFR 3.2000(c) – verify that nothing in the state program limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings</p>	<p>OAC 252:4-17-7(b) 12A O.S. § 15-113</p>

II. GENERAL AUTHORITY OF ODEQ AS “STATE AGENCY” FOR PURPOSES OF 40 CFR § 3.2000:

Sections 15-117 and -118 of the Uniform Electronic Transactions Act (12A O.S. §§ 15-101 et seq.)(hereinafter “UETA”)



provides that each government agency of the State of Oklahoma shall determine whether, and the extent to which, it will create and retain electronic records, and the extent to which it will send and accept electronic records and electronic signatures to and from other persons.

The ODEQ is created in **§ 2-3-101(A)(1) of the Oklahoma Environmental Quality Code (hereinafter “Code”)** and identified as a “state environmental agency” in **§ 1-1-201(13) of the Oklahoma Environmental Quality Act (27A O.S. §§ 1-1-101 et seq.) (hereinafter “Act”)**.

Section 15-107 of the UETA provides legal recognition of electronic records, electronic signatures, and electronic contracts; if a law requires a record to be in writing or if the law requires a signature, an electronic writing or an electronic signature satisfies the law.

Section 15-109(a) of the UETA provides that an electronic record or signature is attributable to a person if it was the act of the person, which may be shown in any feasible manner including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

Section 15-113 of the UETA provides that, in a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

III. GENERAL REGULATORY AND ENFORCEMENT AUTHORITY OF ODEQ

The ODEQ has the power and duty to require the establishment and maintenance of records and reports. **27A O.S. §§ 2-3-202(A)(8) and 2-3-501(C)**

Section 2-3-502 of the Code provides that the ODEQ, upon determining that there are reasonable grounds to believe that any person is in violation of the Code or any rule promulgated thereunder or of an order, permit or license issued pursuant to the Code, may issue a notice of violation and, afterward, a compliance order requiring the violator to correct the violation. Additionally, the ODEQ may assess an administrative penalty or initiate other appropriate remedies in order to compel compliance with the requirements of the Code.

Section 2-3-504(A) of the Code provides that any person who violates any of the provisions of or who fails to perform any duty imposed by the Code or who violates any order, permit or license issued by the ODEQ or rule promulgated by the Board shall be guilty of a misdemeanor and may be punished in civil proceedings in district court by assessment of a civil penalty.

The ODEQ has authority to bring an action for injunctive relief to redress or restrain a violation by any person of the Code or of any rule promulgated thereunder, or order, license, or permit issued pursuant thereto or for recovery of any administrative or civil penalty assessed pursuant to the Code. **27A § 2-3-504(A)(4) and (F)**



IV. SPECIFIC AUTHORITY OF ODEQ TO ENFORCE THE AFFECTED AUTHORIZED PROGRAMS USING ELECTRONIC DOCUMENTS

- **Air Quality:** *The Oklahoma Clean Air Act* (27A O.S. §§ 2-5-101 *et seq.*, including enforcement provisions at § 2-5-110; § 2-5-114; § 2-5-116; and § 2-5-117); Oklahoma Administrative Code (“OAC”) 252:100, *Air Pollution Control Rules* (incorporates federal Air Quality reporting rules by reference)
- **Water Quality:** The Oklahoma Water Quality provisions of the Code (27A O.S. §§ 2-6-101 *et seq.*, including enforcement provisions at § 2-6-206; § 2-6-308; § 2-6-901); OAC 252:631, *Public Water Supply Operation Rules* (incorporates federal PWS reporting rules by reference); OAC 252:606, *Oklahoma Pollutant Discharge Elimination System Standards* (incorporates federal NPDES reporting rules by reference); OAC 252:652, *Underground Injection Control Rules* (incorporates federal UIC reporting rules by reference)
- **Land Protection:** The Oklahoma Hazardous Waste Management Act (27A O.S. §§ 2-7-101 *et seq.*, including enforcement provisions at § 2-7-126; § 2-7-129; § 2-7-130); OAC 252:205, *Hazardous Waste Management Rules* (incorporates federal hazardous waste reporting rules by reference)

Hazardous Materials Reporting: The Oklahoma Hazardous Materials Planning and Notification Act (27A O.S. §§ 4-1-101 *et seq.*); OAC 252:020, *Emergency Planning and Community Right-to-Know Rules* (incorporates federal Tier II reporting rules by reference)



40 CFR Part 3 Crosswalk Template

To assist EPA’s review of this application, [Insert Local/Tribal/State Agency Acronym] has included a description which specifically links applicable provisions of 40 C.F.R. Part 3 with relevant portions of the [Insert Local Area/Tribal Area/State Name] statutes and [Insert Local/Tribal/State Agency Acronym] regulations. The description shows [Insert Local/ Tribal/State Agency Acronym] authority to implement electronic reporting. This certification also includes descriptions and copies of all State statutes and regulations relevant to this application. These statutes and regulations demonstrate the [Insert Local/ Tribal/State Agency Acronym] authority to enforce the affected authorized programs using electronic documents.

I. [INSERT LOCAL/ Tribal/State AGENCY ACRONYM] LEGAL AUTHORITY TO IMPLEMENT ELECTRONIC REPORTING IN CONFORMANCE WITH 40 CFR § 3.2000

FEDERAL RULE	RELEVANT LOCAL/TRIBAL/STATE STATUTE OR RULE
40 CFR 3.2000(a)(2) – “valid electronic signature” is required if a person would have been required to sign the paper document	
40 CFR 3.2000(a)(2) – verify that State electronic reporting system produces electronic signatures that will satisfy the “beyond a reasonable doubt” standard when criminal sanctions are possible (e.g., individual signatory is uniquely authorized to use the signature device assigned to him/her)	
40 CFR 3.2000 (a)(2) – verify that the method used to create electronic signatures satisfies the definition of “valid electronic signature” in 40 CFR 3.3	
40 CFR 3.2000(b)(5)(iv) – verify that each signatory will have 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	



FEDERAL RULE	RELEVANT LOCAL/TRIBAL/STATE STATUTE OR RULE
penalties	
40 CFR 3.2000(b)(5)(vii) – verify that for each electronic signature device used to create an electronic signature, the identity of the individual uniquely entitled to use the device and his/her relation to the entity has been determined with legal certainty (e.g., identity-proofing method is sufficiently robust to meet the “beyond a reasonable doubt” evidentiary standard)	
40 CFR 3.2000(c) – verify that a person is subject to all appropriate civil, criminal penalties or other remedies for failure to comply with a reporting requirement if the person fails to comply with the applicable federal regulation	
40 CFR 3.2000(c) – verify that where an electronic document submitted to satisfy a 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	
40 CFR 3.2000(c) – verify that the signatory will be uniquely entitled to use the electronic signature device at the time of signature	
40 CFR 3.2000(c) – verify that nothing in the state program limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings	



II. GENERAL AUTHORITY OF [Insert Local/Tribal/State Agency Acronym] AS “[STATE or LOCAL] AGENCY” FOR PURPOSES OF 40 CFR 3.2000:

[Insert Descriptions of Statutes Providing General Authority for Purposes of 40 CFR § 3.2000]

III. GENERAL REGULATORY AND ENFORCEMENT AUTHORITY OF [Insert Local/Tribal/State Agency Acronym]

[Insert Descriptions of Statutes Providing General Regulatory and Enforcement Authority]

IV. SPECIFIC AUTHORITY OF [Insert Local/Tribal/State Agency Acronym] TO ENFORCE THE AFFECTED AUTHORIZED PROGRAMS USING ELECTRONIC DOCUMENTS

- **Air Quality:** [Insert References to Relevant Statutes]
- **Water Quality:** [Insert References to Relevant Statutes]
- **Drinking Water:** [Insert References to Relevant Statutes]
- **Land Protection:** [Insert References to Relevant Statutes]
- **Hazardous Materials Reporting:** [Insert References to Relevant Statutes]
- **Other Authorized Programs:** [Insert References to Relevant Statutes]