

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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**ITEM**

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**INFORMATION**

**TOPIC**

**Proposed Rule – Chapter 15 – Cross Media Electronic Reporting**

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The attached Notice of Intended Action to add a Chapter 15 “Cross Media Electronic Reporting” of the 567 Iowa Administrative Code is being presented to the Commission for information.

The purpose of the proposed rule changes is to adopt the U.S. Environmental Protection Agency’s (EPA) electronic reporting requirements for programs under Title 40 of the Code of Federal Regulations (CFR). EPA’s Cross Media Electronic Reporting Rule (CROMERR), which is found in 40 CFR Part 3, establishes electronic reporting as an acceptable regulatory alternative across a broad spectrum of EPA programs and institutes standards for e-reporting systems to ensure that electronic documents are as legally dependable as their paper counterparts. CROMERR impacts electronic data currently received or planned to be received in federally mandated programs in the Environmental Services Division.

CROMERR does not require regulated entities to submit electronic data or require programs to accept electronic data. CROMERR establishes the performance standards for accepting electronic documents if the option is or will be available. Programs already receiving electronic information must modify the system(s) or create new systems to be compliant with CROMERR.

Adoption of this rule is required for the CROMERR application to EPA. States are required to submit CROMERR applications to EPA for existing electronic document receiving systems by January 13, 2010.

An Administrative Rule Fiscal Impact Statement is attached.

Wayne Gieselman, Division Administrator  
Environmental Services Division

July 27, 2009

## **ENVIRONMENTAL PROTECTION COMMISSION [567]**

### **Notice of Intended Action**

Pursuant to the authority of Iowa Code section 455B.133 and 554D, the Environmental Protection Commission hereby gives Notice of Intended Action to add Chapter 15, “Cross Media Electronic Reporting” of the Iowa Administrative Code.

The purpose of the proposed rule changes is to adopt the U.S. Environmental Protection Agency’s (EPA) electronic reporting requirements for programs under Title 40 of the Code of Federal Regulations. EPA’s Cross Media Electronic Reporting Rule (CROMERR) was born out of EPA’s goal to make electronic reporting and electronic recordkeeping available under authorized programs. EPA expects that this will (1) reduce the cost and burden of data transfer and maintenance for all parties to the data exchanges; (2) improve the data and the various business processes associated with its use; and (3) maintain the level of corporate and individual responsibility and accountability for electronic reports and records that currently exist in the paper environment.

CROMERR applies to states, tribes, and local programs that administer or seek to administer authorized programs under Title 40 and establishes standards for acceptable electronic document receiving systems against which EPA will assess authorized program electronic reporting elements. These standards address six function-specific categories: (1) system security; (2) electronic signature method; (3) submitter registration; (4) signature/certification scenario; (5) transaction record; and (6) system archives.

CROMERR impacts 40 CFR Parts 3, 9, 51, 60, 61, 63, 64, 69, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763. This rulemaking impacts electronic data currently received or planned to be received in federally mandated programs in the Environmental Services Division. Programs already receiving electronic information must modify the system(s) or create new systems to be compliant with CROMERR standards.

CROMERR does not require regulated entities to submit electronic data or require programs to accept electronic data; however, it requires that any Title 40 authorized program that chooses to use electronic submission rather than paper for reporting purposes must receive EPA approval of program revisions or modifications that address its electronic reporting implementations. As a result, Programs accepting or planning on accepting submission of electronic documents must submit an application as required by 40 CFR Part 3 for EPA review and approval. Adoption of this rule is required for the CROMERR application to EPA.

These amendments are intended to implement Iowa Code section 455B.133 in order to comply with 554D.

The following amendments are proposed.

ITEM 1. Adopt a **new** 567—Chapter 15 as follows:

## CHAPTER 15

### CROSS MEDIA ELECTRONIC REPORTING

**567—15.1(455B, 554D) Purpose.** This rule implements the cross media electronic reporting rule (sometimes referred to as CROMERR) as defined by 40 CFR Part 3.

**15.1(1). Applicability.** The provisions of this subrule shall apply to persons and signatories who submit electronic reports or other documents to satisfy requirements of Title 40 of the Code of Federal Regulations for authorized programs for which the Department is accepting specified electronic documents and other media used for electronic reporting except as follows:

- a) documents submitted via facsimile;
- b) electronic documents submitted via magnetic or optical media such as diskette, compact disc, digital video disc, or tape;
- c) electronic documents submitted through an electronic document receiving system pursuant to a non-federal state-only program; or

- d) data transfers between the department and the U. S. Environmental Protection Agency, local governments, or tribes as part of an authorized program or administrative arrangement.

**15.1(2) Definitions.** For the purpose of these rules, the following terms shall have the meaning indicated in this chapter.

*"Authorized program"* means a federal program that the United States Environmental Protection Agency (EPA) has delegated to, authorized, or approved the Department, on behalf of the State of Iowa, to administer, or a program that the EPA has delegated to, authorized, or approved the Department to administer in lieu of a federal program, under provisions of 40 CFR and for which the delegation, authorization or approval has not been withdrawn or expired.

*"Copy of record"* means a true and correct copy of an electronic document received by an electronic document receiving system, which can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information. A copy of record includes:

- (1) any electronic signature contained in or logically associated with the document;
- (2) the date and time of receipt; and
- (3) any other information used to record the meaning of the document or the circumstances of its receipt.

*"Electronic document"* means any information that is submitted to one of the Department's electronic document receiving systems in digital form to satisfy requirements of an authorized program and may include data, text, sounds, codes, computer programs, software, or databases.

*"Electronic document receiving system"* means the apparatus, procedures, software, or records established and used by the Department to receive electronic documents in lieu of paper.

*"Electronic signature"* means any information in digital form attached to or logically associated with a record submitted to one of the Department's electronic document receiving

systems and executed or adopted by a person with the intent of expressing the same meaning as would a handwritten signature if affixed to an equivalent paper document with the same content.

*"Electronic signature agreement"* means a written agreement prepared by the Department and signed by an individual with respect to an electronic signature device that the individual will use to create his or her electronic signature.

*"Electronic signature device"* means a code or other mechanism, assigned to an individual who is uniquely entitled to use it and that is then used to create the individual's electronic signature.

*"Federal program"* means any program administered by EPA under any provision of 40 CFR.

*"Handwritten signature"* means the scripted name or legal mark of an individual made by that individual with the present intention to authenticate a writing in a permanent form.

*"Signatory"* means an individual authorized to and who signs a document submitted to one of the Department's electronic document receiving systems pursuant to an electronic signature agreement.

*"State program"* means any program other than an authorized program that is implemented by the Department under the laws of the State of Iowa.

*"Valid electronic signature"* means an electronic signature on an electronic document created by using an electronic signature device that the identified signatory is uniquely entitled to use for signing the electronic document, provided the device has not been compromised and provided the signatory is an individual authorized to sign the document by virtue of legal status or relationship to the entity on whose behalf the signature is created.

**15.1(3) Use of electronic document receiving systems.**

(a) *Announcement on public website.* When the Director has announced on the Department's public website that the Department is accepting specified electronic documents in lieu of paper to satisfy requirements under each authorized program, individuals who submit such

electronic documents must use the Department's CROMERR-compliant electronic document receiving systems.

(b) *Submittals requiring signature.* Any electronic document submitted must bear a valid electronic signature of a signatory, if that signatory would be required under the authorized program to sign the paper document for which the electronic document substitutes.

(c) *Submittals not requiring signature.* If no signature is required under the authorized program, individuals may submit electronic documents in lieu of paper to satisfy requirements of such programs through the Department's CROMERR-compliant electronic document receiving system without an electronic signature or an electronic signature agreement.

**15.1(4) *Electronic signature agreement.***

(a) *Agreement to be executed.* In the case of an electronic document that must bear the electronic signature of a signatory under an authorized program, each signatory must execute an electronic signature agreement.

(b) *Form and content of agreement.* All agreements shall be in writing and filed with the electronic document receiving system administrator via a mail delivery service or by hand delivery. The agreement shall include the information and follow the format as defined by the Department. The agreement form may be downloaded and printed for execution from the Department's public website.

(c) *Verification.* The identity and authority of each individual submitting an electronic signature agreement shall be verified by the State of Iowa. After the State has satisfactorily completed the verification, the Department shall notify the individual electronically, issue a unique electronic signature device to the individual, and request that the individual establish a password to be used in connection with the device.

(d) *Certification.* Each submission authorized by an electronic signature shall contain the following statement "I certify under penalty of law that I have had the opportunity to review, in human-readable format, the content of the electronic document to which I here certify and attest,

and I further certify under penalty of law that, based on the information and belief formed after reasonable inquiry, the statements and information contained in this submission are true, accurate, and complete. I understand that making any false statement, representation, or certification of this submission may result in criminal penalties.”

**15.1(5) *Valid electronic signature.***

(a) *Signatory.* An authorized signatory may not allow another individual to use the electronic signature device unique to his or her electronic signature.

(b) *Unique signature device.* When the electronic signature device is used to create an individual's electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. The signatory shall:

- (1) protect the electronic signature device from compromise; and
- (2) report to the Department and State, within one business day of discovery, any evidence that the security of the device has been compromised.

**15.1(6) *Effect of electronic signature.***

(a) *Electronic signature establishes intent.* The presence of an electronic signature on an electronic document submitted to the Department establishes that the signatory intended to sign the electronic document and to submit it to the Department to fulfill the purpose of the electronic document.

(b) *Electronic signature legally binding.* Where an electronic document submitted to satisfy a reporting requirement of an authorized program bears an electronic signature, the electronic signature legally binds, obligates, and makes the signatory responsible to the same extent as the signatory's handwritten signature on a paper document submitted to satisfy the same reporting requirement. If an applicable law or rule requires a handwritten signature on a document, an electronic signature satisfies that requirement.

**15.1(7) *Enforcement.***

(a) *Penalties and other remedies.* If the submitter or signatory fails to comply with a reporting requirement by failing to comply with the provisions of this subchapter, the electronic signature agreement, or other applicable reporting requirements, the submitter or signatory is subject to any appropriate civil or criminal penalties or other remedies under State law.

(b) *Electronic document as evidence.* Nothing in this subchapter or the authorized program limits the use of an electronic document, copy of record, or other information derived from an electronic document as evidence in enforcement proceedings.

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Date

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Richard A. Leopold, Director

## Administrative Rule Fiscal Impact Statement

Date: June 29, 2009

**Agency:** Department of Natural Resources

**IAC Citation:** 567 IAC 15

**Agency Contact:** Anne Preziosi

**Summary of the Rule:**

The rule proposes to adopt federal electronic reporting requirements for programs under Title 40 of the Code of Federal Regulations. EPA's Cross Media Electronic Reporting Rule (CROMERR) does not require regulated entities to submit electronic data or require the above programs to accept electronic data. CROMERR establishes the signature and security performance standards for accepting electronic documents via electronic document receiving systems if the option is or will be available. Electronic receiving systems, typically databases, have signature and security performance standards under CROMERR.

Programs already receiving electronic information must modify the system(s) or create new systems to be compliant with CROMERR. Existing systems that must comply with CROMERR are as follows: State Permitting and Air Reporting System (SPARS), Wastewater Permit information Exchange (WWPIE), NPDS database (used for NPDES permitting), and Safe Drinking Water Information System (SDWIS).

*Fill in this box if the impact meets these criteria:*

No Fiscal Impact to the State.

Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.

Fiscal Impact cannot be determined.

Brief Explanation:

CROMERR does not require the Department to accept electronic data. Currently the Department does not have a proposal to create or revise an existing database to meet CROMERR. The additional cost of creating future computer systems that meet the CROMERR requirements is uncertain. Existing systems may need significant revision or replacement to meet CROMERR but it is not known with any degree of certainty at this time what the fiscal impact will be or when it will be incurred.

*Fill in the form below if the impact does not fit the criteria above:*

Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.

\* Fill in the rest of the Fiscal Impact Statement form.

***Assumptions:***

***Describe how estimates were derived:***

***Estimated Impact to the State by Fiscal Year***

	<u>Year 1 (FY    )</u>	<u>Year 2 (FY    )</u>
<b>Revenue by Each Source:</b>		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)	_____	_____
<b>TOTAL REVENUE</b>		
<b>Expenditures:</b>		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)	_____	_____
<b>TOTAL EXPENDITURES</b>		
<b>NET IMPACT</b>		

This rule is required by State law or Federal mandate.

*Please identify the state or federal law:*

40 Code of Federal Regulations Parts 3, 9, 51, 60, 61, 63, 64, 69, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763

EPA indicated in the Federal Register (70 FR 59848-59889) that the Government Paperwork Elimination Act of 1998 was a strong driver for CROMERR.

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

Funding has not been provided for the rule.

*Please explain how the agency will pay for the rule change:*

The Department will seek financial assistance from the Iowa Access Advisory Council, Iowa Technology Governance Board, EPA, and others, as appropriate. Revenue from fees within the Department may also fund projects.

***Fiscal impact to persons affected by the rule:***

To be updated in the Notice of Intended Action.

***Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):***

Counties or local governments with delegation of the affected Title 40 of the Code of Federal Regulations programs are also subject to this federal requirement.

\* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: Wendy Rains  
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