

### § 3.10

### 40 CFR Ch. I (7–1–20 Edition)

electronic signature legally binds, obligates, and makes the signatory responsible, to the same extent as the signatory's handwritten signature would on a paper document submitted to satisfy the same federal or authorized program reporting requirement.

(d) Proof that a particular signature device was used to create an electronic signature will suffice to establish that the individual uniquely entitled to use the device did so with the intent to sign the electronic document and give it effect.

(e) Nothing in this part limits the use of electronic documents or information derived from electronic documents as evidence in enforcement or other proceedings.

#### Subpart B—Electronic Reporting to EPA

##### § 3.10 What are the requirements for electronic reporting to EPA?

(a) A person may use an electronic document to satisfy a federal reporting requirement or otherwise substitute for a paper document or submission permitted or required under other provisions of Title 40 only if:

(1) The person transmits the electronic document to EPA's Central Data Exchange, or to another EPA electronic document receiving system that the Administrator may designate for the receipt of specified submissions, complying with the system's requirements for submission; and

(2) The electronic document bears all valid electronic signatures that are required under paragraph (b) of this section.

(b) An electronic document must bear the valid electronic signature of a signatory if that signatory would be required under Title 40 to sign the paper document for which the electronic document substitutes, unless EPA announces special provisions to accept a handwritten signature on a separate paper submission and the signatory provides that handwritten signature.

##### § 3.20 How will EPA provide notice of changes to the Central Data Exchange?

(a) Except as provided under paragraph (b) of this section, whenever EPA

plans to change Central Data Exchange hardware or software in ways that would affect the transmission process, EPA will provide notice as follows:

(1) *Significant changes to CDX*: Where the equipment, software, or services needed to transmit electronic documents to the Central Data Exchange would be changed significantly, EPA will provide public notice and seek comment on the change and the proposed implementation schedule through the FEDERAL REGISTER;

(2) *Other changes to CDX*: EPA will provide notice of other changes to Central Data Exchange users at least sixty (60) days in advance of implementation.

(3) *De minimis or transparent changes to CDX*: For *de minimis* or transparent changes that have minimal or no impact on the transmission process, EPA may provide notice if appropriate on a case-by-case basis.

(b) *Emergency changes to CDX*: Any change which EPA's Chief Information Officer or his or her designee determines is needed to ensure the security and integrity of the Central Data Exchange is exempt from the provisions of paragraph (a) of this section. However, to the extent consistent with ensuring the security and integrity of the system, EPA will provide notice for any change other than *de minimis* or transparent changes to the Central Data Exchange.

#### Subpart C [Reserved]

#### Subpart D—Electronic Reporting Under EPA-Authorized State, Tribe, and Local Programs

##### § 3.1000 How does a state, tribe, or local government revise or modify its authorized program to allow electronic reporting?

(a) A state, tribe, or local government that receives or plans to begin receiving electronic documents in lieu of paper documents to satisfy requirements under an authorized program must revise or modify such authorized program to ensure that it meets the requirements of this part.

(1) *General procedures for program modification or revision*: To revise or modify an authorized program to meet

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the requirements of this part, a state, tribe, or local government must submit an application that complies with paragraph (b)(1) of this section and must follow either the applicable procedures for program revision or modification in other parts of Title 40, or, at the applicant's option, the procedures provided in paragraphs (b) through (e) of this section.

(2) *Programs planning to receive electronic documents under an authorized program:* A state, tribe, or local government that does not have an existing electronic document receiving system for an authorized program must receive EPA approval of revisions or modifications to such program in compliance with paragraph (a)(1) of this section before the program may receive electronic documents in lieu of paper documents to satisfy program requirements.

(3) *Programs already receiving electronic documents under an authorized program:* A state, tribe, or local government with an existing electronic document receiving system for an authorized program must submit an application to revise or modify such authorized program in compliance with paragraph (a)(1) of this section no later than January 13, 2010. On a case-by-case basis, this deadline may be extended by the Administrator, upon request of the state, tribe, or local government, where the Administrator determines that the state, tribe, or local government needs additional time to make legislative or regulatory changes in order to meet the requirements of this part.

(4) *Programs with approved electronic document receiving systems:* An authorized program that has EPA's approval to accept electronic documents in lieu of paper documents must keep EPA apprised of those changes to laws, policies, or the electronic document receiving systems that have the potential to affect program compliance with § 3.2000. Where the Administrator determines that such changes require EPA review and approval, EPA may request that the state, tribe, or local government submit an application for program revision or modification; additionally, a state, tribe, or local government on its own initiative may submit an applica-

tion for program revision or modification respecting their receipt of electronic documents. Such applications must comply with paragraph (a)(1) of this section.

(5) *Restrictions on the use of procedures in this section:* The procedures provided in paragraphs (b) through (e) of this section may only be used for revising or modifying an authorized program to provide for electronic reporting and for subsequent revisions or modifications to the electronic reporting elements of an authorized program as provided under paragraph (a)(4) of this section.

(b)(1) To obtain EPA approval of program revisions or modifications using procedures provided under this section, a state, tribe, or local government must submit an application to the Administrator that includes the following elements:

(i) A certification that the state, tribe, or local government has sufficient legal authority provided by lawfully enacted or promulgated statutes or regulations that are in full force and effect on the date of the certification to implement the electronic reporting component of its authorized programs covered by the application in conformance with § 3.2000 and to enforce the affected programs using electronic documents collected under these programs, together with copies of the relevant statutes and regulations, signed by the State Attorney General or his or her designee, or, in the case of an authorized tribe or local government program, by the chief executive or administrative official or officer of the governmental entity, or his or her designee;

(ii) A listing of all the state, tribe, or local government electronic document receiving systems to accept the electronic documents being addressed by the program revisions or modifications that are covered by the application, together with a description for each such system that specifies how the system meets the applicable requirements in § 3.2000 with respect to those electronic documents;

(iii) A schedule of upgrades for the electronic document receiving systems listed under paragraph (b)(1)(ii) of this

section that have the potential to affect the program's continued conformance with § 3.2000; and

(iv) Other information that the Administrator may request to fully evaluate the application.

(2) A state, tribe, or local government that revises or modifies more than one authorized program for receipt of electronic documents in lieu of paper documents may submit a consolidated application under this section covering more than one authorized program, provided the consolidated application complies with paragraph (b)(1) of this section for each authorized program.

(3)(i) Within 75 calendar days of receiving an application for program revision or modification submitted under paragraph (b)(1) of this section, the Administrator will respond with a letter that either notifies the state, tribe, or local government that the application is complete or identifies deficiencies in the application that render the application incomplete. The state, tribe, or local government receiving a notice of deficiencies may amend the application and resubmit it. Within 30 calendar days of receiving the amended application, the Administrator will respond with a letter that either notifies the applicant that the amended application is complete or identifies remaining deficiencies that render the application incomplete.

(ii) If a state, tribe, or local government receiving notice of deficiencies under paragraph (b)(3)(i) of this section does not remedy the deficiencies and resubmit the subject application within a reasonable period of time, the Administrator may act on the incomplete application under paragraph (c) of this section.

(c)(1) The Administrator will act on an application by approving or denying the state's, tribe's or local government's request for program revision or modification.

(2) Where a consolidated application submitted under paragraph (b)(2) of this section addresses revisions or modifications to more than one authorized program, the Administrator may approve or deny the request for revision or modification of each authorized program in the application separately;

the Administrator need not take the same action with respect to the requested revisions or modifications for each such program.

(3) When an application under paragraph (b) of this section requests revision or modification of an authorized public water system program under part 142 of this title, the Administrator will, in accordance with the procedures in paragraph (f) of this section, provide an opportunity for a public hearing before a final determination pursuant to paragraph (c)(1) of this section with respect to that component of the application.

(4) Except as provided under paragraph (c)(4)(i) and (ii) of this section, if the Administrator does not take any action under paragraph (c)(1) of this section on a specific request for revision or modification of a specific authorized program addressed by an application submitted under paragraph (b) of this section within 180 calendar days of notifying the state, tribe, or local government under paragraph (b)(3) of this section that the application is complete, the specific request for program revision or modification for the specific authorized program is considered automatically approved by EPA at the end of the 180 calendar days unless the review period is extended at the request of the state, tribe, or local government submitting the application.

(i) Where an opportunity for public hearing is required under paragraph (c)(3) of this section, the Administrator's action on the requested revision or modification will be in accordance with paragraph (f) of this section.

(ii) Where a requested revision or modification addressed by an application submitted under paragraph (b) of this section is to an authorized program with an existing electronic document receiving system, and where notification under paragraph (b)(3) of this section that the application is complete is executed after October 13, 2007, if the Administrator does not take any action under paragraph (c)(1) of this section on the specific request for revision or modification within 360 calendar days of such notification, the specific request is considered automatically approved by EPA at the end

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of the 360 calendar days unless the review period is extended at the request of the state, tribe, or local government submitting the application.

(d) Except where an opportunity for public hearing is required under paragraph (c)(3) of this section, EPA's approval of a program revision or modification under this section will be effective upon publication of a notice of EPA's approval of the program revision or modification in the FEDERAL REGISTER. EPA will publish such a notice promptly after approving a program revision or modification under paragraph (c)(1) of this section or after an EPA approval occurs automatically under paragraph (c)(4) of this section.

(e) If a state, tribe, or local government submits material to amend its application under paragraph (b)(1) of this section after the date that the Administrator sends notification under paragraph (b)(3)(i) of this section that the application is complete, this new submission will constitute withdrawal of the pending application and submission of a new, amended application for program revision or modification under paragraph (b)(1) of this section, and the 180-day time period in paragraph (c)(4) of this section or the 360-day time period in paragraph (c)(4)(ii) of this section will begin again only when the Administrator makes a new determination and notifies the state, tribe, or local government under paragraph (b)(3)(i) of this section that the amended application is complete.

(f) For an application under this section that requests revision or modification of an authorized public water system program under part 142 of this chapter:

(1) The Administrator will publish notice of the Administrator's preliminary determination under paragraph (c)(1) of this section in the FEDERAL REGISTER, stating the reasons for the determination and informing interested persons that they may request a public hearing on the Administrator's determination. Frivolous or insubstantial requests for a hearing may be denied by the Administrator;

(2) Requests for a hearing submitted under this section must be submitted to the Administrator within 30 days after publication of the notice of op-

portunity for hearing in the FEDERAL REGISTER. The Administrator will give notice in the FEDERAL REGISTER of any hearing to be held pursuant to a request submitted by an interested person or on the Administrator's own motion. Notice of hearing will be given not less than 15 days prior to the time scheduled for the hearing;

(3) The hearing will be conducted by a designated hearing officer in an informal, orderly, and expeditious manner. The hearing officer will have authority to take such action as may be necessary to assure the fair and efficient conduct of the hearing; and

(4) After reviewing the record of the hearing, the Administrator will issue an order either affirming the determination the Administrator made under paragraph (c)(1) of this section or rescinding such determination and will promptly publish a notice of the order in the FEDERAL REGISTER. If the order is to approve the program revision or modification, EPA's approval will be effective upon publication of the notice in the FEDERAL REGISTER. If no timely request for a hearing is received and the Administrator does not determine to hold a hearing on the Administrator's own motion, the Administrator's determination made under paragraph (c)(1) of this section will be effective 30 days after notice is published pursuant to paragraph (f)(1) of this section.

[70 FR 59879, Oct. 13, 2005, as amended at 72 FR 43169, Aug. 3, 2007; 73 FR 78994, Dec. 24, 2008]

### **§ 3.2000 What are the requirements authorized state, tribe, and local programs' reporting systems must meet?**

(a) Authorized programs that receive electronic documents in lieu of paper to satisfy requirements under such programs must:

(1) Use an acceptable electronic document receiving system as specified under paragraphs (b) and (c) of this section; and

(2) Require that any electronic document must bear the 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, unless the program