

Environmental Protection Agency

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consultation with the appropriate Assistant Administrator, Regional Administrator or Staff Office Director (or, as to employees in the Office of Inspector General, the Inspector General) determines that compliance with the subpoena is clearly in the interests of EPA, the employee must appear at the stated time and place (unless advised by the General Counsel or his designee that the subpoena was not validly issued or served or that the subpoena has been withdrawn) and respectfully refuse to produce the subpoenaed materials. However, where a subpoena *duces tecum* is essentially a written request for documents, the requested documents will be provided or denied in accordance with subparts A and B of this part where approval to respond to the subpoena has not been granted.

§ 2.406 Requests for authenticated copies of EPA documents.

Requests for authenticated copies of EPA documents for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure will be granted for documents which would otherwise be released pursuant to subpart A. For purposes of Rule 44 the *person having legal custody of the record* is the cognizant Assistant Administrator, Regional Administrator, Staff Office Director or Office Director or his designee. The advice of the Office of General Counsel should be obtained concerning the proper form of authentication.

PART 3—CROSS-MEDIA ELECTRONIC REPORTING

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APPENDIX 1 TO PART 3—PRIORITY REPORTS

AUTHORITY: 7 U.S.C. 136 to 136y; 15 U.S.C. 2601 to 2692; 33 U.S.C. 1251 to 1387; 33 U.S.C. 1401 to 1445; 33 U.S.C. 2701 to 2761; 42 U.S.C. 300f to 300j-26; 42 U.S.C. 4852d; 42 U.S.C. 6901-6992k; 42 U.S.C. 7401 to 7671q; 42 U.S.C. 9601 to 9675; 42 U.S.C. 11001 to 11050; 15 U.S.C. 7001; 44 U.S.C. 3504 to 3506.

SOURCE: 70 FR 59879, Oct. 13, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 3.1 Who does this part apply to?

- (a) This part applies to:
 - (1) Persons who submit reports or other documents to EPA to satisfy requirements under Title 40 of the Code of Federal Regulations (CFR); and
 - (2) States, tribes, and local governments administering or seeking to administer authorized programs under Title 40 of the CFR.
- (b) This part does not apply to:
 - (1) Documents submitted via facsimile in satisfaction of reporting requirements as permitted under other parts of Title 40 or under authorized programs;
 - (2) Electronic documents submitted via magnetic or optical media such as diskette, compact disc, digital video disc, or tape in satisfaction of reporting requirements, as permitted under other parts of Title 40 or under authorized programs; or
 - (3) Documents and information submitted under grants, cooperative agreements, or financial assistant regulations contained in Title 40.
- (c) This part does not apply to any data transfers between EPA and states, tribes, or local governments as a part of their authorized programs or as a part of administrative arrangements

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between states, tribes, or local governments and EPA to share data.

[70 FR 59879, Oct. 13, 2005, as amended at 74 FR 59106, Nov. 17, 2009]

§ 3.2 How does this part provide for electronic reporting?

(a) *Electronic reporting to EPA.* Except as provided in § 3.1(b), any person who is required under Title 40 to create and submit or otherwise provide a document to EPA may satisfy this requirement with an electronic document, in lieu of a paper document, provided that:

(1) He or she satisfies the requirements of § 3.10; and

(2) EPA has first published a notice in the FEDERAL REGISTER announcing that EPA is prepared to receive, in electronic form, documents required or permitted by the identified part or subpart of Title 40.

(b) *Electronic reporting under an EPA-authorized state, tribe, or local program.*

(1) An authorized program may allow any document submission requirement under that program to be satisfied with an electronic document provided that the state, tribe, or local government seeks and obtains revision or modification of that program in accordance with § 3.1000 and also meets the requirements of § 3.2000 for such electronic reporting.

(2) A state, tribe, or local government that is applying for initial delegation, authorization, or approval to administer a federal program or a program in lieu of the federal program, and that will allow document submission requirements under the program to be satisfied with an electronic document, must use the procedures for obtaining delegation, authorization, or approval under the relevant part of Title 40 and may not use the procedures set forth in § 3.1000; but the application must contain the information required by § 3.1000(b)(1) and the state, tribe, or local government must meet the requirements of § 3.2000.

(c) *Limitations.* This part does not require submission of electronic documents in lieu of paper. This part confers no right or privilege to submit data electronically and does not obligate EPA, states, tribes, or local gov-

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ernments to accept electronic documents.

§ 3.3 What definitions are applicable to this part?

The definitions set forth in this section apply when used in this part.

Acknowledgment means a confirmation of electronic document receipt.

Administrator means the Administrator of the EPA.

Agency means the EPA or a state, tribe, or local government that administers or seeks to administer an authorized program.

Agreement collection certification means a signed statement by which a local registration authority certifies that a subscriber agreement has been received from a registrant; the agreement has been stored in a manner that prevents unauthorized access to these agreements by anyone other than the local registration authority; and the local registration authority has no basis to believe that any of the collected agreements have been tampered with or prematurely destroyed.

Authorized program means a Federal program that EPA has delegated, authorized, or approved a state, tribe, or local government to administer, or a program that EPA has delegated, authorized, or approved a state, tribe or local government to administer in lieu of a Federal program, under other provisions of Title 40 and such delegation, authorization, or approval has not been withdrawn or expired.

Central Data Exchange means EPA's centralized electronic document receiving system, or its successors, including associated instructions for submitting electronic documents.

Chief Information Officer means the EPA official assigned the functions described in section 5125 of the Clinger Cohen Act (Pub. L. 104–106).

Copy of record means a true and correct copy of an electronic document received by an electronic document receiving system, which copy 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: