

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Electronic Documents and Signatures
(LAC 33:I.2101, 2103, 2105, and 2107) (OS079)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt the Office of the Secretary regulations, LAC 33:I.2101, 2103, 2105, and 2107 (Log #OS079).

This rule will establish procedures for the use of electronic documents and electronic signatures associated with documents that are required for compliance with the environmental regulations and are submitted to and processed by the Department of Environmental Quality. Electronic submittal of documents will be a voluntary process offered to the regulated community. The federal Cross-Media Electronic Reporting Rule (CROMERR) sets standards for EPA-delegated programs to receive electronic documents and electronic signatures. The federal rule was promulgated on October 13, 2005, and was published at 70 FR 59848. CROMERR standards must be established by the states to provide security and validation for documents and those submitting the documents for compliance purposes to the department. The department is given authority in R.S. 30:2043(D) and (E) to regulate the use of electronic documents and electronic signatures. This rule provides the process required for acceptance of these documents as mandated by the statutes and in order to be in compliance with CROMERR. The basis and rationale for this rule are to comply with R.S. 30:2043(D) and (E) and the federal CROMERR application process. This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on June 24, 2008, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS079. Such comments must be received no later than July 1, 2008, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed

regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS079. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 21. Electronic Submittals and Electronic Signatures

§2101. Purpose

A. Pursuant to R.S. 30:2043, electronic documents will be accepted by the department in satisfaction of the requirements of department regulations, notwithstanding any other department regulation to the contrary.

B. This Chapter provides for the submittal of electronic documents and electronic signatures to the department as original documents to meet requirements set forth in department regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2043 and 9:2601.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**

§2103. Definitions

A. For all purposes of this Chapter, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

Department—the Louisiana Department of Environmental Quality.

Electronic Document—any document in electronic, magnetic, optical, or other format, except an audio recording, used to create, transfer, approve, or store the document for subsequent retrieval. This may include data, text, codes, computer programs, software, or databases.

Electronic Document Receiving System—a set of apparatus, procedures, software, and/or records used to receive electronic documents.

Electronic Signature—any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content. An electronic document bears or has on it an *electronic signature* when it includes or has logically associated with it such information.

Subscriber—a person who has submitted a subscriber agreement to the department and has received authorization from the department to submit electronic documents using one of the department's electronic document receiving systems.

Subscriber Agreement—a document drafted by the department and signed with a handwritten wet ink signature by a *person* as defined in R.S. 30:2004, or with respect to an electronic signature device that the person will use to create his or her electronic signature, and whereon the person acknowledges the obligations connected with preventing compromise of the electronic signature device.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2043 and 9:2601.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**

§2105. Procedures

A. Any person may submit an electronic document to the department, in lieu of a paper document, provided that:

1. the person has executed the proper subscriber agreement in accordance with department instructions;
2. the secretary has first published a notice on the department's website announcing that the department is prepared to receive, in electronic form, documents submitted to satisfy the requirements of one or more specific programs;
3. the person transmits the electronic document to an electronic document receiving system designated by the department for the receipt of such submissions, complying with the system's requirements for submission; and
4. the electronic document bears valid electronic signatures at all locations where the signatory would be required to sign the paper document for which the electronic document substitutes.

B. Each subscriber agreement shall include one or more handwritten wet ink signatures, receive approval from the department, and be retained on file with the department while the subscriber agreement is active and for an additional five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2043 and 9:2601.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**

§2107. Enforcement

A. A person who submits an electronic document and fails to comply with the provisions of this Chapter is subject to penalties and remedies for failure to comply with department reporting requirements.

B. When an electronic document 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 would on a paper document.

C. Nothing in this Chapter limits the use of an electronic document or information derived from electronic documents as evidence in enforcement or other proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2043 and 9:2601.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULESLOG #: OS079

Person

Preparing

Statement: Sharon Parker
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Return

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Rule

Title: Electronic Documents and Signatures
(LAC 33:I.2101, 2103, 2105, and 2107)

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The electronic submittal of documents to the department that is provided for in this proposed rule will be voluntary. The computer program was developed as a small task of a larger enhancement to the department's database system with funding acquired from an EPA grant of \$498,250.00. Therefore, no additional expenditure of state money will be used for the development of the electronic submittal program. Once the program is in place and operational it will allow alternatives for submittal of documents that will reduce the handling of paperwork and ultimately decrease staff workload. This proposed rule will allow local governmental staff to submit compliance documents electronically, which will decrease their expenditures for postage, document preparation, and staff handling.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no change in revenue collections for state or local governments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This program is voluntary, but those in the regulated community who choose to use the process could see a savings as a result of the proposed action. Paperwork and document preparation costs are greatly reduced when submitting documents electronically.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no affect on competition or employment.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule will establish procedures for the use of electronic documents and electronic signatures associated with documents that are required to be submitted to and processed by the Department of Environmental Quality. Electronic submittal of documents will be a voluntary process offered to the regulated community.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The federal Cross-media Electronic Reporting Rule (CROMERR), sets standards for EPA-delegated programs to receive electronic documents and electronic signatures. The federal rule was promulgated on October 13, 2005, and was published at 70 FR 59848. CROMERR standards must be established by the states to provide security and validation for documents and those submitting the documents for compliance purposes to the department. The Louisiana Legislature passed legislation in 1999 and 2001 to provide authority for the department to accept electronic documents and electronic signatures. This proposed rule provides the process required for acceptance of these documents as mandated by the Louisiana statute and in order to be in compliance with CROMERR.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No increase in expenditure of funds will be needed.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ___ Yes. If yes, attach documentation.

(b) ___ No. If no, provide justification as to why this rule change should be published at this time.

This question does not apply.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY07-08	FY08-09	FY09-10
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR			
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The electronic submittal of documents to the department will be voluntary. The computer program was developed as a small task of a larger enhancement to the department's database system with funding acquired from an EPA grant of \$498,250.00. Therefore, no additional expenditure of state money will be used for the development of the electronic submittal program. Once the program is in place and operational it will allow alternatives for submittal of documents that will reduce the handling of paperwork, which will ultimately decrease staff workloads.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY07-08	FY08-09	FY09-10
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS		See above discussion.	
OTHER (Specify)			
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Funding is adequate for the implementation of the rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule will allow local governmental staff to submit compliance documents electronically, which will decrease their expenditures for postage, document preparation, and staff handling.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

Any savings that may result from the new procedure would affect proceeds of local governmental funding sources generally.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY07-08	FY08-09	FY09-10
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

There will be no change in revenue collections of state and local governments.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

This program will be voluntary, but those in the regulated community who choose to use the process could see savings as a result of the proposed action. Paperwork and document preparation costs are greatly reduced when submitting documents electronically.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There should be no impact on receipts or income of the affected persons.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no affect on competition or employment.