## F. Failure to Conduct EDI

Circumstances may arise which render the reporting party unable to submit RFG and anti-dumping reports via EDI. Such circumstances may include, but are not limited to, so-called "acts of God."

Nothing herein is intended to relieve the reporting party of the obligation to file a timely report. If a report cannot be filed in a timely manner via EDI, then the reporting party must submit a paper document as required by 40 CFR 80.75 and 80.105.

II. Subject

Responsible corporate officer:

Reporting party: (Company name as registered with EPA)

EPA RFG Company Registration number:

Corporate Address: (as registered with EPA)

(List of facilities who will report via EDI to be included in Part V, below.)

## III. Terms and Conditions

The reporting party who has signed this Terms and Conditions Memorandum to submit reports via EDI, agrees to use only those transaction sets approved for general use by the American National Standards Institute ("ANSI") Accredited Standards Committee ("ASC") X.12 and in accordance with the requirements of the technical guidance and the **Federal Register** notice. The reporting party further agrees:

(a) That both company and individual PINs shall be included on each and every report submitted and that such inclusion of the PINs constitutes the signature and certification that the report is correct within the meaning of 40 CFR 80.75(n)(2) and 80.105(d)(3) for that report and constitutes a "signed document" within the meaning of this Memorandum.

(b) That electronically submitted RFG reports (i.e., RFG reports submitted via EDI) are equivalent to, and in substitution for, paper documents and that any document properly transmitted pursuant to this Memorandum, the technical guidance, and the Federal Register notice, shall be considered to be a "writing" or "in writing," and any such document when containing, or to which there is affixed, a signature ("signed documents") shall be deemed for all purposes to have been "signed" and to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

(c) Not to contest the validity or enforceability of signed documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed documents, if introduced into evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records

originated and maintained in documentary form. Neither party shall contest the admissibility of copies of signed documents under either the business records exception to the hearsay rule or the best evidence rule on the basis that the signed documents were not originated or maintained in documentary form.

(d) To provide and maintain the equipment, software, services, and testing necessary to effectively and reliably transmit and receive documents and to accept responsibility for interfacing the EDI application to the EDI system and be responsible for all problems at the application level, including, but not limited to, wrong or missing fields or wrong data in fields.

(e) To safeguard electronic data from tampering and unauthorized disclosure to ensure, at a minimum, the same level of protection required for paper documents.

(f) To safeguard Personal Identification Numbers (PINs) and to notify EPA of any loss of or compromising of a PIN <sup>2</sup> and to treat all individual PINs as non-transferrable. EPA will issue no PINs without the written request of a responsible corporate officer on letterhead, consistent with the requirements of Paragraph V, below.

(g) That no document will be considered to have been received by EPA until it is accessible to EPA at its receipt computer. No document shall be of any legal effect until it is received. Upon receipt of any report, EPA will promptly (i.e., within five [5] business days) and properly submit a functional acknowledgement in return. The functional acknowledgement will constitute conclusive evidence that a report has been properly received by EPA. If a functional acknowledgement is not received in return for a document transmitted to EPA, then the reporting party who transmitted the document shall be responsible for re-sending the document.

(h) To retransmit any document for which a functional acknowledgement was not received. Such re-transmission is to occur within five (5) days of request by EPA.

(i) To maintain records and archives of documents sent and received for not less than five (5) years.<sup>3</sup> Such archives must include a complete record of the data interchanged representing the messages between the parties (i.e., the transaction or data log).

(j) To promptly notify EPA of any inability to properly conduct EDI<sup>4</sup> and to file paper reports on forms provided by EPA or under circumstances where an electronic report cannot be filed by the applicable regulatory deadline.

(k) To notify EPA, in writing, of any information for which the party claims business confidentiality.<sup>5</sup>

IV. Acceptance and Duration of Agreement

This Memorandum and the Federal Register notice and the technical guidance constitute the complete agreement of the parties relating to the matters specified in this agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this agreement shall be binding on either party. As the parties develop additional capabilities respecting EDI, additional addenda may be added to this agreement. Each addendum shall be signed and dated by both the reporting party and EPA. The date of the last signature shall be the effective data, and each addendum shall be appended to this agreement. This agreement is for the benefit of, and shall be binding upon, the reporting party and its respective successors and assigns.

Acceptance by the reporting party of this Terms and Conditions Memorandum is upon return of the original agreement, signed by a responsible corporate officer, to the Director, Field Operations and Support Division (64061), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

This Terms and Conditions memorandum is effective upon the date indicated in Section VII, below. The agreement shall remain in effect until terminated by either the reporting party or EPA. Termination shall require 30 days written notice, specifying the effective date of the termination. If the reporting party wishes to terminate this agreement, written notice shall be sent to the Director, Field Operations and Support Division, at the above listed address. Such written notice shall be on company letterhead and signed by a responsible corporate officer.

Any termination shall not affect the respective obligations or rights of the parties arising under this Memorandum or the **Federal Register** notice and technical guidance document, which are part and parcel to this Memorandum. Termination of this agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination. Emergency temporary termination of computer connections may be made to protect data from illegal access or other incidental damage.

V. List of Reporting Facilities and Authorized Representatives to Receive Individual PINs

The responsible corporate officer agrees to submit in writing, on company letterhead, a list of "Authorized Representatives" to submit reformulated gasoline and antidumping reports and the facilities for which these representatives are authorized to reports. Such list shall include appropriate company and facility identification number(s) (issued by EPA), as well as the address, phone number, and title of each

<sup>&</sup>lt;sup>2</sup> EPA will promptly issue within fourteen (14) business days a new PIN upon request of the regulated party.

<sup>&</sup>lt;sup>3</sup> Examples of documents sent and received include all outgoing transmissions and incoming functional acknowledgements.

 $<sup>^4\</sup>mathrm{Notification}$  does not relieve the party of any reporting requirements under the RFG regulation.

<sup>&</sup>lt;sup>5</sup>EPA recognizes that information required to be submitted under "Table 2" or "the detail area" of

the transaction sets may be claimed as business confidential by the reporting party. For reports due for calendar year 1995, the party may claim confidentiality for the information contained in "Table 2" or "the detail area" by initialing the clause in Section VI. Beginning with the report due May 31, 1996, the party must claim confidentiality with respect to each EDI submission.