

**ENVIRONMENTAL PROTECTION
AGENCY**
[FRL-5601-4]
**Notice of Agency's General Policy for
Accepting Filing of Environmental
Reports via Electronic Data
Interchange (EDI)**
AGENCY: Environmental Protection Agency.

ACTION: Interim final notice.

SUMMARY: Agency regulations require that specified parties submit environmental reports under various statutory and regulatory provisions. These reports are to be submitted via forms and procedures specified by the Administrator. Today's notice of policy announces the Environmental Protection Agency's (EPA's) general approach for accepting electronic filing of environmental reports via Electronic Data Interchange (EDI). As specific EPA programs adopt EDI for their reports, details about specific reporting requirements will be announced, supplementing today's notice.

This action supports the President's overall regulatory reinvention goals of reducing the burdens of compliance and streamline regulatory reporting, as stated in the President's March, 1996, Reinventing Environmental Regulation Report. Also, EDI directly supports the Administrator's "One-Stop Reporting" initiative, the reengineering of regulatory reporting under the Common Sense Initiative (CSI), and the Administrator's goal of reducing baseline reporting burden by twenty-five percent. The use of EDI under this policy will make the tools of automation and business process reengineering available wherever the goal is to streamline and simplify the regulatory reporting processes. In addition, transmission of reports via EDI facilitates the availability of more timely and accurate environmental information to the public, in support of the Agency's efforts to improve public access to data and information.

The scope of this policy includes any Agency regulatory, compliance, or informational (e.g., voluntary reporting programs) reporting via EDI, and excludes any procurement-related reporting, as well any reporting via other electronic means that may be adopted in the future. In addition to EDI, the Agency is currently evaluating alternative means of electronic reporting for those reporting facilities that may not be equipped to engage in EDI.

This policy is based on EPA's experience with pilot tests of EDI for compliance reports and reflects

substantial involvement, as well as ongoing dialogue, with our state and industry partners. While the policy does not explicitly address state-delegated reporting, EPA urges uniform EDI implementation across State-delegated programs and believes it is in the interest of all the participants to conform to the approach set forth in today's policy. The Agency will continue to consult and work with States to address the implementation of EDI under delegated programs in the Final Notice. We are therefore very interested in receiving comments on our EDI policy from States and from submitters subject to State-delegated reporting.

DATES: This action is effective on September 4, 1996.

ADDRESSES: The Agency is soliciting public comments on today's notice. EPA is particularly interested in comments on the PIN Management System outlined in today's notice, on common business practices for maintaining electronic files associated with the conduct of EDI (e.g., transmission logs), and on the Generic Terms and Conditions Agreement Model. The Agency also invites the regulated community, contractors, and vendors to provide comments on viable electronic alternatives to EDI and viable methods of handling other forms of electronic commerce.

Comments should be addressed to EPA EDI Implementation Policy Comment Clerk, Water Docket MC-4101; United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Commenters are requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by December 30, 1996. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments and data will also be accepted on disks in WordPerfect 5.1

format or ASCII file format. All comments and data in electronic form must be identified by the Federal Register Notice title and date. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Comments on *electronic alternatives* to EDI should also be directed to: U.S. Environmental Protection Agency, RTP (MD-34), ATTN: Julie Dyrdek, Research Triangle Park, North Carolina 27711 OR sent by FAX to (919) 541-5091; OR by Internet to Dyrdek. Julie@EPAMail.EPA.GOV.

FOR FURTHER INFORMATION CONTACT: For questions about this policy notice or EPA EDI environmental reporting in general, contact Evi Huffer, U.S. Environmental Protection Agency, OPPE (2137), ATTN: EDI Team, 401 M Street, S.W., Washington, D.C. 20460 or call (202) 260-4825 and leave a brief message. This telephone number has been setup to respond to inquiries concerning today's notice.

SUPPLEMENTARY INFORMATION:
I. Introduction
Generally

The primary purpose of today's notice is to announce the Agency's general policies concerning the receipt of electronic submissions of EPA environmental reports from the reporting community via Electronic Data Interchange (EDI). Unless specified in a separate program-specific notice, members of the reporting community are not required to use EDI to submit reports. However, EPA is making EDI available because there are specific, well-documented advantages to using EDI in lieu of paper forms. To get the full benefits of these advantages, this policy is designed to promote consistency across EPA program offices implementing EDI.

For environmental reports covered by this policy, today's notice presents an overall framework for accepting electronic reports filed via EDI. This notice does not announce EPA's intent at this time to accept any specific report via EDI.¹ As specific EPA programs adopt EDI for the filing of a specific report, the Agency will publish a separate notice in the Federal Register announcing our intent to accept filing of that report via EDI. Such subsequent program-specific notices shall supplement today's notice, following

¹ EPA currently accepts electronic filing via EDI for the Reformulated Gasoline and Anti-Dumping Reports under 40 CFR Part 80 and, starting in August, 1996, for the Discharge Monitoring Report under the National Pollution Discharge Elimination System.

the general approach outlined in this notice of policy, and providing detailed information for electronically filing those specific reports.

EDI and Its Benefits

EDI is the transmission, in a standard syntax, of unambiguous information between computers that may belong to organizations completely external to each other. It has been widely used by the private sector for commercial transactions. As an "open systems" approach to data exchange, EDI is largely independent of technology environments, providing a transparent bridge between incompatible hardware and software platforms.

EDI is the dominant form of electronic commerce across almost all business sectors—from aerospace to wood products—both nationally and internationally. EDI also predominates in the Federal government, most visibly at the Department of Defense. At least in the U.S., EDI is based on standard formats and protocols developed and maintained under the auspices of the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12. Supporting these standards are a wide array of commercial software packages and communications networks, and a growing reservoir of industry EDI expertise available both to us and our regulated community.

The benefits of EDI include:

For EPA and Delegated States—

- dollars saved in data processing costs;
 - significant enhancement of data quality;
 - potential for dramatic improvements in speed/ease of data access; and
 - opportunities to change business practices (such as integrating data collections across programs, States, and agencies; automating routine program management functions);
- For our Industry Partners—
- dollars saved in reporting costs;
 - much greater control of data quality in submissions;
 - new opportunities to improve internal management of environmental data;
 - dramatic improvements in access to EPA and State environmental databases; and
 - productivity-enhancing possibilities (such as more uniform reporting requirements and procedures across States and programs; more streamlined data submissions reflecting the integration of reporting requirements);

For the Public—

- The availability of much more timely and accurate environmental

information, in support of the Agency's efforts to improve the public's access to data and information in the public domain.

In summary, EDI can both reduce the costs of reported data and information, and enhance its value. EPA expects many regulated entities will recognize the benefits of EDI and choose to implement it as their preferred method for electronic submission of environmental reports.

History of EPA's EDI Initiative

The EPA first endorsed EDI for electronic reporting of environmental data in its Policy on Electronic Reporting (Federal Register Notice No. FRL-3815-4, vol. 55, no. 146, July 30, 1990). This policy was intended to promote electronic reporting and a uniform Agency approach that would be compatible with current industry and federal government practices. The policy recommends a standards-based approach, and encourages the use of ANSI ASC X12 standards for EDI.

EPA's 1990 policy anticipated a broader federal policy establishing EDI as the uniform approach to electronic reporting for Federal agencies, published the following year as Federal Information Processing Standard (FIPS PUB) 161, effective September 30, 1991. The stated objectives of FIPS PUB 161 are: to have Federal agencies achieve the benefits of EDI; to minimize the cost of EDI implementation by preventing duplication of effort; and to ensure that electronic reporting is implemented in a manner consistent across Agencies and compatible with current practices in the regulated community.

Since 1990, EPA has been working to fulfill the goals of these two policy statements by demonstrating the technical feasibility of EDI for reporting environmental data, primarily through a series of pilot projects involving partnerships between EPA and the States, industry, and foreign governments. In keeping with the spirit of collaborative partnerships that EDI embodies, EPA has conducted these pilots: (1) working closely with our industry partners in the ASC X12 community, as a member of the appropriate committees and subcommittees; (2) seeking voluntary industry collaboration, whenever possible, working through such industry groups as the Chemical Industry Data Exchange (CIDX) and the Petroleum Industry Data Exchange (PIDX); (3) working with EDI software vendors to adapt their existing products to EPA applications—fostering a marketplace solution that will support the use of EDI for environmental data operations; and

(4) avoiding any proprietary formats and standards for electronic reporting.

Some of EPA's programs have now reached the stage where the technical issues surrounding implementation of EDI have largely been resolved. For such programs, the issues that stand between pilot and full EDI implementation center on the legal effects of using the electronic medium for regulatory and other environmental reporting. Hence EPA's need for the policy set out in today's notice that defines the functional requirements and specifications for legally admissible electronic submission of environmental reports. Our hope is that today's notice of policy will allow the Agency to go forward with the actual implementation of EDI.

EPA began work on this policy in April 1994, forming an Agency-wide workgroup, the Electronic Data Interchange Implementation Workgroup (EDIIW), which involved all interested EPA programs, including regional offices. EDIIW was formed to address issues in three areas: (1) Electronic signature/certification—determining which technologies will satisfy legal requirements for signature/certification under EPA's statutes and regulations; (2) terms and conditions of electronic submission—setting out the general requirements for admissible electronic submissions of environmental reports from the reporting community, and addressing such questions as determining time of submission, resolving disputes with the Submitter, assigning responsibility for errors, and so on; and (3) regulatory/statutory obstacles to electronic submissions—identifying provisions that, for example, refer directly or indirectly to paper, and taking steps to eliminate these to the greatest extent possible.

Consistent with the 1990 policy, EDIIW's goal has been to develop an implementation approach that is as uniform as possible across Agency programs and as consistent as possible with the practices of other Federal Agencies and the private sector. In developing this policy, EDIIW has drawn upon the Agency's government/industry collaborative pilot project experience, as well as the practical expertise of other government agencies and industry. To the extent possible, the workgroup has sought to confine the resulting policy to functional requirements so as not to tie Agency policy to particular hardware/software/network platforms or products. In addition, the effort has focused on assessing existing technologies and practices, and applying them as appropriate, rather than attempting to

develop approaches that are wholly new.

How the EPA EDI Reporting Program Will Work

Today's policy sets forth the basic approach for implementing EDI for environmental reporting. As EPA implements specific reporting initiatives (e.g. when a program is ready to move forward with actual EDI implementation for a particular report), a notice will be published in the Federal Register announcing the Agency's intent to accept a specific environmental report electronically. The program-specific notice will reference or incorporate today's notice, and outline the program-specific requirements for electronic filing of that report. Following publication of a program-specific notice, EPA will accept reports filed via EDI in lieu of paper reports so long as the electronic reports are consistent with the program-specific notice and the Submitter has signed a formal document that sets forth the "Terms and Conditions" for submitting reports via EDI and abides by the provisions set forth in that document.

The Agency Generic Terms and Conditions Agreement (TCA) Model, the text of which appears in Section II below, sets forth the basic responsibilities of the Submitters. A program-specific notice of intent to accept specific reports via EDI will specify a TCA that is correspondingly program-specific, following the approach of today's TCA Mode.

EPA will accept electronic reporting of environmental reports covered under today's notice *only if* the Submitter signs the applicable program-specific Terms and Conditions Agreement. EPA offices publishing program-specific TCAs will state their intent to be bound by the TCA once the Submitter signs the Terms and Conditions Memorandum and, where applicable, EPA issues a PIN. By signing the TCA, the reporting party will be subject to the procedural requirements discussed in this and subsequent program-specific Federal Register notices.

In addition, program-specific notices will incorporate by reference associated program-specific technical EDI Implementation Guidelines. The program-specific Implementation Guidelines will define the application of specific ANSI ASC X12 transaction sets for the individual environmental reports in question.

These Implementation Guidelines may also address other technical issues as dictated by the needs of the specific program and its Submitters. In any event, they shall be understood as

program-specific amendments to the generic EPA technical guidance document titled "EPA Electronic Data Interchange Implementation Guideline". This generic guideline sets forth EPA's general goals in using EDI and the related business issues; outlines the Agency's general approach to developing, maintaining, and using EDI standards; and discusses such issues as choice of systems architecture, value added network (VAN) and translator products. Copies of this document are currently available for the public's review. [Copies of both the generic and—as they become available—program-specific guidelines will be sent to Submitters and other interested parties, and may be obtained from a Bulletin Board System listed in **SUPPLEMENTARY INFORMATION** or by contacting the person(s) listed in **FOR FURTHER INFORMATION CONTACT**.

Finally, it is EPA's policy to promote public access to environmental data and information. Where a program is able to make a database available to the public online, electronic reporting to EPA via EDI will greatly enhance public access to submissions for the reasons already noted. In any case, programs implementing EDI under this policy must insure that the public has at least the same or better access to electronically submitted reports as they currently have to reports submitted on paper.

The Personal Identification Number (PIN) System

Where EPA requires certification to insure the integrity and authenticity of electronically submitted Documents, EPA will generally require the Submitter to use a personal identification number (PIN) assigned by EPA. The minimum requirement is a single PIN approach for each Submitter; however, specific program needs may require the use of an additional PIN. These PIN requirements are elaborated on in what follows as well as in the applicable TCAs.

Each PIN will consist of a sequence of alpha-numeric characters. The Submitter must ensure that this PIN is included in each Document that such party transmits to EPA.

When the PIN is received as part of an electronic message, the PIN will be deemed to indicate authenticity. Further, responsibility and accountability for the PIN is directly linked to the individual assigned that PIN. Regardless of how a corporation delegates authority, a PIN is assigned to an individual, and that individual within the scope of the agreement is responsible for the accuracy and

authenticity of the information electronically received by EPA.

Management of PINs. During this interim policy period, PIN's for program-specific reports will be assigned and managed by individual EPA Program Offices. While EPA recognizes the advantages of centralized management of electronic signature devices (PINs or other digital alternatives), we feel that it is impractical to provide for such a system at this time. The electronic commerce marketplace is still very much in transition, and the roles that other government agencies (both at the State and Federal levels), as well as third-party commercial service providers will play in electronic certification are yet to be fully determined. EPA will continue to monitor developments in the electronic commerce marketplace and requests comments from the public on management of electronic signature devices. The Final Policy Notice will address the Agency's streamlined management of electronic signature devices.

Assignment of PINs. In conjunction with the Terms and Condition Agreement, the responsible corporate officer of the Submitter must identify authorized representatives (i.e., corporate employees who are authorized to submit reports). EPA will then assign an individual PIN or dual PIN, depending on program-specific needs, to each authorized representative so identified, mailing the PINs directly to such representatives via U.S. Postal Service or recognized carrier.

Once PINs are assigned, EPA does not intend to routinely change them. However, the Agency will issue a new PIN at the written request, on company letterhead, of a responsible corporate officer of the Submitter.

In addition, EPA will change PINs where Submitters undergo personnel changes that affect the identity of their authorized representatives, or where there is evidence of compromise, as detailed in the following section, Security of PINs. In such cases, the Submitter is responsible for immediately notifying EPA (in writing and on company letterhead and signed by an authorized corporate officer) of termination of employment, or reassignment, of any authorized representative, and of any new or newly assigned employee(s) who will act as authorized representative(s). Depending on the reporting cycle, EPA will then cancel such authorized representative's individual PIN before the next reporting cycle to which the PIN applies, or no later than fourteen (14) business days of

receiving such notice, whichever comes first.

Security of PINs. The Submitters must institute and maintain security procedures to protect their PINs from unauthorized disclosure, and EPA will do the same within the context of Agency systems. The Submitter is responsible for notifying EPA immediately if it has reason to believe the security of any PIN(s) has been compromised and must revoke such PIN(s) and request a change. If EPA has reason to believe that PIN security has been compromised, the Agency will initiate PIN revocation and/or changes.

Record Retention Requirements

Certain records must be created and maintained for the specific purposes of transmitting reports to EPA via EDI. However, in addressing such records, this notice should not be understood to in any way affect any other record-keeping requirements in existing regulations, or to apply to the question of satisfying such requirements by maintaining electronic files in lieu of paper files for audit purposes.

Concerning EDI transmission of reports to EPA then, in general, Submitters must retain sufficient records to demonstrate the authenticity, completeness, accuracy, and integrity of those transmissions. It is EPA's view that this requirement is inherent in the standard business practices associated with EDI. That is, EPA considers, and the Submitter agrees in the TCA, that by electing to submit reports to EPA via EDI the Submitter commits to adopting business practices consistent with EDI, to include maintaining an auditable system of records associated with the creation and transmission of electronic files.

EPA considers auditability to be defined, at least conceptually, by the Data Interchange Standards Association's (DISA) 'Model EDI Audit Program', and expects Submitters to maintain records that conform to the substance of that model. Submitters should always bear in mind that the creation and management of adequate and proper documentation of all EDI transactions is essential to ensuring that they can serve as the official record of the reports submitted to EPA for administrative, programmatic, and legal purposes. For EPA reports covered under today's notice, the required records must be sufficient to serve as the official record of those reports.

Central to these required records is a Transmission Log, which must be retained by all parties using EDI for reporting purposes. The Transmission Log includes the date, time, destination

address and telephone number, and a copy of the file transmitted; it also documents who had access to the Submitter's system during the creation of the files and during their transmission. Following the guidance of the DISA Audit Model, EPA views these Transmission Log elements to constitute the minimum records required to provide an auditable system for creating and transmitting reports via EDI. Therefore, EPA expects each Submitter to create an official Transmission Log of all transactions and maintain it without any modification. Each Submitter shall designate one or more qualified individuals with appropriate authority to certify the accuracy and completeness of the Transmission Log and this designation shall be retained as part of the records. Each Submitter shall also maintain records concerning the assignment and revocation of PINs, as discussed elsewhere in this notice.

These two items (the Transmission Log and PIN records) constitute the minimum records required for EDI transactions under this notice. Submitters should determine what additional records to retain to ensure their record of EDI transmissions is adequate to resolve any discrepancies between the Submitter's record and EPA's record. Submitters must maintain such records, together with the Transmission Log and PIN records for the applicable retention period specified in the regulations. This period is frequently three (3) years or more, and should be specified in the program-specific notice, guidance, and/or TCA.

Correspondingly, at a minimum, EPA will maintain a secure copy of all EDI transmissions, both in-bound and out-bound, in addition to the Transmission Log and PIN assignment records. EPA will also maintain a record that documents our procedures and processes for managing EDI transmissions. EPA will maintain its documentation for the time period set by the Agency's records disposition schedules.

Individual EPA Program Offices may mandate additional recordkeeping requirements for Submitters or themselves based on their audit needs. Individual Program Offices will also determine whether and under what conditions the EDI transmission records can serve as the Submitter's auditable record. In addition, of course, the Submitter must maintain whatever other records the applicable statute or regulation require, including, e.g., the files, databases, laboratory reports, calculations, etc. that might be involved in preparing the document for submission. Submitters should refer to

the applicable statute or regulation, as well as to the program-specific notice, guidance, and/or TCA for recordkeeping requirements.

Paperwork Reduction Act

In general, while EPA information collection requirements are subject to approval by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, EPA considers the activities associated with accepting electronic filing of environmental reports via EDI, detailed in today's notice of policy, not subject to approval by OMB under the PRA. In addition, Electronic submission of reports in the manner of EDI do not require the inclusion of the OMB control number to satisfy PRA display requirements, provided that the public receives adequate notice of OMB clearance through other means. While the PRA requires display of OMB numbers on a legally valid form, in the case of EDI, adequate notice will be provided by including a citation of the OMB number in a PRA section of all program-specific Federal Register notices announcing the availability of EDI, and also including a citation in the program-specific Terms and Conditions Agreement.

Receipt of Documents

Date of Receipt. EPA will consider an electronically filed report received when it can be fully processed by the translator at the EPA's receipt computer, i.e. when the document is retrievable from the electronic mailbox by EPA and syntactically correct (to applicable EDI standards), able to be successfully translated by EPA. No document shall satisfy any reporting requirement until it is received. Upon receipt of any report, EPA will promptly send a functional acknowledgment in return within "X" business days.² A positive functional acknowledgment indicating no syntactical errors will constitute conclusive evidence that EPA has properly received a report and will establish the "Received Date".

Retransmission. If the Submitter does not receive this functional acknowledgment promptly³ after its transmission to the EPA, then the Submitter must re-send the document and follow any recovery procedures

² The number of business days shall depend on specific program needs and will be specified in the program-specific Notice or related documents (e.g., Implementation Guidelines, TCA).

³ "Promptly" shall be determined by each program-specific EDI application and defined in the program-specific notice or related documents (e.g., Implementation Guideline, TCA).

stated in the applicable EPA EDI Implementation Guidelines.

The Submitter must retransmit any document within "X" days⁴ of receiving a re-transmission request by EPA. Likewise, EPA will re-send any transmission originated by EPA at the Submitter's request.

Inability to Transmit. Circumstances, both foreseeable and unforeseeable, may prevent a reporting party from conducting EDI. Nevertheless, no Submitter will be excused from the requirement to file reports with the Agency by the appropriate regulatory deadline. If a party is unable to electronically file a required report by such deadline, it must submit a paper report on forms required by the applicable regulation.

Legal Status of Electronic Submissions

EPA regulatory programs will, where practicable and not in conflict with applicable law, initiate EDI for their reporting requirements by creating program-specific Implementation Guidelines, which—taken together with program-specific Federal Register notices (including Terms and Conditions Agreements) that are consistent with this Notice—will outline the specific procedures required for electronic submission. For such programs, EPA will consider the electronic reports that are filed in a manner consistent with the procedures thus outlined to fulfill the requirements of an equivalent paper submission as required under the applicable existing Agency regulations pertaining to form/format, submission procedure and signature requirements for reports.

Specifically, concerning the requirement that reports must be signed and certified as correct by the Submitter or its authorized representative, EPA will consider a properly filed electronic report—filed in a manner consistent with the procedures outlined in applicable program-specific Implementation Guidelines and Federal Register notices—to meet the legal signature/certification requirements of equivalent paper submissions. For practical purposes, EPA will consider the use of the PIN, which is required to be included in each and every submitted document, to constitute certification of correctness—by the owner or responsible corporate officer of the Submitter—within the meaning of signature/certification for that report.

EPA considers, and the Submitter agrees in the TCA, that use of the PIN(s)

is required on each and every report and that use of the PIN constitutes a certification, under penalty of perjury (or other program-specific requirement), that the information submitted is true and accurate. However, it should be stressed that the PIN will have this status only to the extent that the electronic filing satisfies all the requirement procedures.

As technology evolves, EPA may embrace other, or alternative, electronic manifestations of signature/certification. However, based on current technology, and considering issues of costs and the level of certainty required for authentication, PIN-based certification provides the most suitable approach available to EPA and our regulated community.

II. Text of EPA Generic Terms and Conditions Agreements Model

Scope

Use of this generic Terms and Conditions Agreement (TCA) model applies when EPA requires certification and/or authentication by the Submitter of a report. Where neither certification or authentication is required but use of a TCA is desired by EPA, the Agency may modify this TCA to eliminate unnecessary paragraphs. The model TCA is designed to promote consistency in implementing EDI by Program Offices within the Agency.

Model

EPA Generic Terms and Conditions Agreement (TCA) Model for Submission of Environmental Reports via Electronic Data Interchange (EDI)

THIS ELECTRONIC DATA INTERCHANGE TERMS AND CONDITIONS AGREEMENT (the "Agreement"), by and between the United States Environmental Protection Agency ("EPA"), 401 M St., SW, Washington, D.C., a federal governmental agency, and reporting party ("Submitter") who has signed and returned the Terms and Conditions Agreement (TCA) Memorandum, included in today's notice referenced above, is effective on the date on which EPA issues the initial PIN(s), in response to receipt and acceptance of Submitter's signed TCA Memorandum.⁵ (When a program is not using a PIN system, some other determinant for the effective date will be specified in the program-specific notice.)

1. *RECITALS.* The intent of this agreement is to create legally binding obligations upon the parties using EDI

and to ensure that (a) use of any electronic functional equivalent of documents referenced or exchanged under this agreement shall be deemed an acceptable practice in the ordinary course of Submitter-to-EPA environmental reporting and (b) such electronic records shall be admissible as evidence on the same basis as paper documents. The parties intend to be legally bound by them.

2. *VALIDITY AND ENFORCEABILITY*

2.1 This Agreement has been executed by the parties to evidence their mutual intent to create binding regulatory reporting documents using electronic transmission and receipt of such records.

2.2 Any records properly communicated pursuant to this Agreement shall be considered to be a "writing" or "in writing"; and any such records which contain or to which there is affixed, a Signature, as defined by para. 6 of this Agreement, ("Signed Documents") shall be deemed for all purposes (a) to have been "signed" and (b) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

2.3 The conduct of the parties pursuant to this Agreement, including the use of Signed Records properly communicated pursuant to the Agreement, shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the parties in furtherance of this Agreement.

2.4 The Submitter agrees 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 as 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 the Signed Documents under the Federal Rules of Evidence as inadmissible or in violation of either the business records exception of the rule on hearsay, or the best evidence rule, or on the basis that the Signed Documents were not originated or maintained in documentary (paper) form.

3. *RECEIPT.* A Document shall be deemed to have been properly received by EPA when it is accessible to EPA, can be fully processed by the translator at EPA's Receipt Computer, and is syntactically correct to applicable EDI

⁴ The number of days shall depend on specific program needs and will be specified in the Program-Specific Notice or related documents (e.g., Implementation Guideline, TCA).

⁵ Or, in the case where PIN is not required, as otherwise noted in the program-specific notice.

standards. No Document shall satisfy any reporting requirement or be of any legal effect until it is received.

4. **VERIFICATION.** Upon receipt of any Document, the receiving party shall promptly and properly transmit a functional acknowledgment in return within "x" business day of receipt to verify that the Document has been received.⁶ If a positive functional acknowledgment is not received in return for a Document, the party initially transmitting the Document shall be responsible for re-sending the Document.

5. **DATE OF RECEIPT.** EPA will consider an electronically filed report received when it can be fully processed by the translator at the EPA's receipt computer, i.e., when the document is retrievable from the electronic mailbox by EPA, syntactically conforms to applicable EDI standards, and is able to be successfully translated by EPA. A positive functional acknowledgment indicating no syntactical errors will constitute conclusive evidence that EPA has properly received a report and will establish the "Received Date".

6. **RE-TRANSMISSION.** If the Submitter does not receive a functional acknowledgment promptly⁷ after its transmission to the EPA, then the Submitter must re-send the document and follow any recovery procedures stated in the applicable EPA EDI Implementation Guidelines.

The Submitter must retransmit any document within "X" days⁸ of receiving a re-transmission request by EPA. Likewise, EPA will re-send any transmission originated by EPA at the Submitter's request.

7. **INABILITY TO TRANSMIT.** Circumstances, both foreseeable and unforeseeable, may prevent a reporting party from conducting EDI.

Nevertheless, no Submitter will be excused from the requirement to file reports with the Agency by the appropriate regulatory deadline. If a party is unable to electronically file a required report by such deadline, it must submit a paper report on forms required by the applicable regulation.

8. **SIGNATURE.** The Submitter shall adopt as its signature an electronic identification consisting of symbols (i.e.,

the Personal Identification Number [PIN] which is affixed to or contained in each Document transmitted by the Submitter ("Signature"). The Submitter agrees that any such Signature affixed to or contained in any transmitted Document shall be sufficient to verify such party originated and possessed the requisite authority both to originate the transaction and to verify the accuracy of the content of the document at the time of transmittal. Unless otherwise specified in the TCA, affixing the Personal Identification Number (PIN) issued to the Submitter by EPA to any transmitted Document constitutes a valid Signature. The Submitter expressly agrees that it will sign each and every report it submits by using its PIN(s) [or other electronic identification, if provided for in the TCA], and that the use of the PIN(s) [or other electronic identification, if provided for in the TCA] constitutes certification of the truth and accuracy, upon penalty of perjury (or other program specific requirement), of the information contained in each such report.

9. **DEFINITIONS.** Whenever used in this Agreement or any documents incorporated into this Agreement by reference, the following terms shall be defined as follows:

9.1 **Compromise.** When the PIN is intentionally or unintentionally disclosed to individuals and organizations who are not authorized to know or use the PIN.

9.2 **Data.** Facts or descriptions of facts.

9.3 **Document/Record.** Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

9.4 **Electronic Agent.** A computer program designed, selected or programmed by a party to initiate or respond to electronic messages or performances without review by an individual. An electronic agent acts within the scope of its agency if its performance is consistent with the functions intended by the party who utilizes the electronic agent.

9.5 **Electronic Message/Transaction.** A record generated or communicated by electronic, optical or other analogous means for transmission from one information system to another. The term includes electronic data interchange and electronic mail.

9.6 **Functional Acknowledgement.** Is the sending of a 997 transaction set (under ANSI ASC X12 Standards) indicating the results of the translator's syntactical analysis of the electronically submitted file. A positive acknowledgement indicates that the

syntax of the submitted file conforms to the standard and can be processed by the translator. A negative acknowledgement indicates nonconformance to the standards.

9.7 **Guidelines.** Federal Register Notice and EPA Implementation Guidelines.

9.8 **Message.** Data structured in accordance with the protocol specified in the Guidelines and transmitted electronically between the parties and relating to a Transaction.

9.9 **Personal Identification Number (PIN).** Assigned by EPA, each PIN will consist of a sequence of alpha-numeric characters.

9.10. **Receive/Receipt.** To take delivery of a record or information. An electronic record or information is received when it enters an information processing system in a form capable of being processed by that system if the recipient has designated that information system for the purpose of receiving such records or information.

9.11 **Date of Receipt.** EPA will consider an electronically filed report received when it is accessible to the receiver (i.e. EPA) at its receipt computer. Upon receipt of any report, EPA will promptly submit a functional acknowledgment in return. A positive functional acknowledgment indicating no syntactical errors will constitute conclusive evidence that EPA has properly received a report and will establish the "Received Date". No document shall satisfy any reporting requirement until it is received.

9.12 **Report.** The report required by _____ [Program-specific notice will insert applicable regulatory/statutory cite for program-specific report].

9.13 **Signed.** For the purposes of EDI, a transaction is "signed" if it includes a symbol and/or action that is adopted or performed by a party or its electronic agent with the present intent to authenticate or manifest assent to a record, a performance, or a message. Actions or symbols adopted or performed by an electronic agent serve to authenticate with present intent a record or message on behalf of a party if the party designed, programmed or selected the electronic agent with an intent that the agent produce the result and the electronic agent performs in a manner consistent with its intended programming. That a record or message is signed is conclusively presumed as a matter of law if the parties agreed to an authentication procedure and the symbol or action taken complies with that procedure. Otherwise, that a document is signed may be proved in any manner including by a showing that a procedure existed by which a party

⁶The number of days shall depend on specific program needs and will be specified in the Program-Specific Notice or related documents (e.g., Implementation Guideline, TCA).

⁷"Promptly" shall be determined by each program-specific EDI application and defined in the program-specific notice or related documents (e.g., Implementation Guideline, TCA).

⁸The number of days shall depend on specific program needs and will be specified in the Program-Specific Notice or related documents (e.g., Implementation Guideline, TCA).

must of necessity have taken an action or executed a symbol in order to have proceeded further in the use or processing of the information.

9.14 *Transaction*. Any communication made or transaction carried out and identified as the communication or transaction to which a Message refers including but not limited to the filing of a specific report.

9.15 *Transmission Log*. Must be retained by all parties using EDI for reporting purposes. The Transmission Log includes the date, time, destination address and telephone number, and a copy of the file transmitted; it also documents the persons who had access to the Submitter's system during the creation of the files and during their transmission. The Submitter shall create an official Transmission Log of all transactions and maintain it without any modification. Each Submitter shall designate one or more qualified individuals with appropriate authority to certify the accuracy and completeness of the Transmission Log and this designation shall be retained as part of the records. Each Submitter shall also maintain records concerning the assignment and revocation of PINs, as discussed elsewhere in this notice.

9.16 *Transaction set*. [Cite for specific program].

9.17 *User Manual*. [Cite, if any].

9.18 *Writing*. Any document properly transmitted pursuant to this Agreement shall be considered to be a "writing" or "in writing".⁹

9.19 *Other Definitions*. (As required, additional Definitions may be included in Program-specific TCAs.)

10. *EDI TRANSACTION PARAMETERS*. Each party may electronically transmit to or receive from the other party any of the transaction sets listed in the Appendix and transaction sets which by agreement are added to the Appendix (collectively referred to as "Documents" or "Reports"). All Documents/Reports

shall be transmitted in accordance with the standards set forth herein and in the Appendix. Appendix(es) are hereby incorporated herein by reference. Any transmission of data which is not a Document/Report (i.e., which is not one of the specified transaction sets) shall have no force or effect between the parties.

10.1 *Implementation Guidelines*. All Documents/Reports transmitted between the parties shall strictly adhere to published Accredited Standards Committee (ASC) X12 standards for Electronic Data Interchange (EDI) and shall comply with data conventions and implementation guidelines set forth in this Agreement and Federal Register notice ("Guidelines") and all modifications of the Guidelines.

10.2 *Modifications of Standards*. Whenever EPA intends to upgrade to a new version and release of the ASC X12 standard or modify the Guidelines, EPA shall give notice of its intent and shall establish a conversion date. The Submitter shall have a minimum of sixty (60) days from the conversion date to upgrade to the new standard.¹⁰ EPA can discontinue support of the previous standard no sooner than ninety (90) days after the conversion date.¹¹

11. *SYSTEM AND OPERATION EXPENSES*. Each party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Documents.

12. *SECURITY*. The parties shall take reasonable actions to implement and maintain security procedures necessary to ensure the protection of transmissions against the risk of unauthorized access, alteration, loss or destruction including, but not limited to those set forth [in Appendix A, in guidelines set forth in F.R., etc.].

12.1 *Creation of PIN*. Where EPA requires certification to insure the authenticity of electronically submitted documents, EPA will generally require the Submitter to use a PIN assigned by EPA. If EPA agrees to enter into a trading partner relationship with a Submitter, EPA will assign PIN(s) upon receipt and receipt by EPA of the Submitter's signed TCA. EPA will mail the PIN(s) directly to each authorized representative(s) identified in the PIN request. The Agency will issue a new PIN at the written request, on company letterhead, of a responsible corporate officer of the submitter. In addition,

¹⁰ These dates may vary with specific program requirements.

¹¹ These dates may vary with specific program requirements.

EPA will change PINs where Submitters undergo personnel changes that affect the identity of their authorized representatives, or where there is evidence of compromise. Depending on the reporting cycle, EPA will then cancel such authorized representative's individual PIN before the next reporting cycle to which the PIN applies, or no later than fourteen (14) business days of receiving such notice, whichever comes first.

12.2 *Protection of PIN*. Each party must protect the security of its PIN(s) from compromise and shall take all necessary steps to prevent its loss, disclosure, modification, or unauthorized use. The Submitter shall notify EPA immediately if it has reason to believe the security of any PIN(s) has been compromised and must request a change. If EPA has reason to believe that PIN security has been compromised, the Agency will consult with the Submitter and initiate PIN changes where necessary. Also, the Submitter is responsible for immediately notifying EPA (in writing and on company letterhead and signed by an authorized corporate officer) of termination of employment, or reassignment, of any authorized representative, and of any new or newly assigned employee(s) who will act as authorized representative(s).

12.3 *Access Control*. [If required, additional program-specific measures to control access to the transmitted files.]

12.4 *Confidentiality*. (If Applicable, program-specific clause.) The submitter may claim as confidential information submitted to EPA pursuant to this agreement. In order to assert a claim of confidentiality, the Submitter must mark the response **CONFIDENTIAL BUSINESS INFORMATION** or with a similar designation, and must clearly specify which information in the Document is so claimed. [The program may wish to insert here specific instructions for asserting confidentiality claims for electronic submissions.] Information so designated will be disclosed by EPA only to the extent allowed by, and by means of, the procedures set forth in, 40 CFR Part 2. If the Submitter fails to claim the information as confidential in accordance with the provisions of this paragraph, 10.4, the information may be available to the public without further notice.

12.5 *Other Specific Security Requirements*. [If required, other program-specific measures.]

13. *MISDIRECTED AND CORRUPTED TRANSMISSIONS*. If EPA has reason to believe that a Message is not intended for EPA or is corrupted, EPA shall notify the Submitter and shall delete from EPA's system the information contained

⁹ "For the purpose of interpreting federal statutes, "writing" is defined to include 'printing and typewriting and reproductions of visual symbols by photographing, multi graphing, mimeographing, manifold, or otherwise.' Although the terms of contracts formed using EDI are stored in a different manner than those of paper and ink contracts, they ultimately take the form of visual symbols. . . . it is sensible to interpret federal law in a manner to accommodate technological advancements. . . . It is evident that EDI technology had not been conceived nor, probably, was even anticipated at the times section 1501 and the statutory definition of "writing" were enacted. Nevertheless, we conclude that, given the legislative history of section 1501 and the expansive definition of writing, section 1501 and 1 U.S.C. Section 1 encompass EDI technology." U.S. Comptroller General decision, "Use of Electronic Data Interchange Technology to Create Valid Obligations," File: B-245714 (13 December 1991).

in such Message (where allowed by applicable law) but not the record of its receipt. Where there is evidence that a Message has been corrupted or if any Message is identified or capable of being identified as incorrect, EPA shall notify the Submitter and it shall be re-transmitted by the Submitter as soon as practicable with a clear indication that it is a corrected Message. [Dependent on circumstances, corresponding requirement may be needed if EPA will be sending messages.]

14. COMMUNICATIONS CONNECTIONS. Unless otherwise stipulated in program-specific notice, documents shall be transmitted electronically to each party through a third party service provider ("Provider"), designated in the program-specific Implementation Guidelines, who shall be considered the designated provider. The Submitter may transmit through EPA's designated Provider or through a third party service provider of their choice. In either case, the Submitter assumes all risks associated with their interaction with third party service providers. Upon written consent of EPA, at Submitter's own expense and at sender's own risk, documents may be electronically transmitted to EPA directly. EPA will specify procedures for doing so. Upon thirty days advance notice EPA may change its third party service providers.

14.1 Third-Party Service Provider Fees.¹² [Apportionment of the following fees: (could be incorporated by reference from guidelines, appendix etc.)]

14.2 Third-Party Service Provider Liability Apportionment. Each party shall be responsible for ensuring the correctness of its transmission except as otherwise provided in this Agreement.

14.3 Records Transmitted Through Provider. The parties agree that either of them may have access to Providers' copies of the records, at the expense of the requesting party.

15. RECORD RETENTION AND STORAGE.

15.1 Transmission Log. The Transmission Log shall be maintained by the Submitter without any modification for as long as required for the paper record [Specific program must insert applicable regulations]. The Submitter shall designate one or more individuals with appropriate authority to certify the accuracy and completeness of the Transmission Log.

15.2 Record Retention. Nothing herein is intended to release the Submitter

from or waive any requirement of law applicable to the Submitter pertaining to record or document retention, or to create new or additional requirements for retention of records or documents except as specifically noted herein or in the Appendix(es). Sender shall retain all records, regardless of the medium on which they are recorded, used in the derivation of the Documents/Reports or information therein transmitted pursuant to this Agreement for the period which would be required for functionally equivalent paper records.

16. CONFLICTING TERMS AND CONDITIONS. This Agreement and all appendices attached constitute the entire agreement between the parties. As the parties develop additional capabilities respecting EDI, additional addenda may be added to this Agreement. EPA will publish notice of new Addenda appending this Agreement and their effective date in the Federal Register. Upon the effective date, each Addendum shall be appended to this Agreement. If the Submitter does not agree to specified changes in the terms and conditions of this Agreement, as provided in the newly published Addenda, the Submitter must notify EPA in accordance with paragraph 15 below. In the absence of such notification, each addendum shall be appended to this Agreement and the date published in the Federal Register notice shall be the effective date.

17. TERMINATION. This Agreement shall remain in effect until terminated by either party with not less than 30 days prior written notice, which notice shall specify the effective date of termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Agreement prior to the effective date of termination. 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.

18. SURVIVABILITY. Notwithstanding termination for any reason, Clauses #2 (Validity and Enforceability), #10 (Security), #13 (Record Retention and Storage), #21 (Governing Law), #22 (Choice of Language), and #23 (Dispute Resolution) shall survive termination of this Agreement.

19. ASSIGNABILITY. This Agreement is for the benefit of, and shall be binding

upon, the Submitter and their respective successors and assigns.

20. SEVERABILITY. Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

21. NOTICE. All notices or other forms of notification, request or instruction required to be given by a party to any other party under paragraphs 10, 14, and 15 of this Agreement shall be delivered by hand, or sent by first class post or other recognized carrier to the address of the addressee as set out in this Agreement or to such other address as the addressee may from time to time have notified for the purpose of this clause, or sent by electronic means of message transmission producing hard copy read-out including telex and facsimile, or published in the Federal Register notice, and shall be deemed to have been received:

- if sent by electronic means: at the time of transmission if transmitted during business hours of the receiving instrument and if not during business hours, one hour after the commencement of the next working day following the day transmission;
- if sent by first-class post or recognized carrier: 3 business days after posting exclusive of the day of posting;
- if delivered by hand: on the day of delivery.

Notwithstanding the above, EPA may at its discretion provide notices under paragraphs 7.2, 13, and 17 of this Agreement via publication in the Federal Register. Notice shall be deemed to be received on the day of publication of the Federal Register notice.

Notice address for EPA follows: USEPA, _____.

22. INABILITY TO FILE REPORTS VIA EDI. No party shall be liable for any failure to perform its obligations in connection with any EDI Transaction or any EDI Document, where such failure results from any act or cause beyond such party's control which prevents such party from transmitting or receiving any Documents via EDI, except that the Submitter is nonetheless required to submit records or information required by law via other means, as provided by applicable law and within the time period provided by such law.

23. GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the Federal laws of the United States.

¹²EPA does not foresee clause 12.1 being included in its TCA during the Interim Policy Phase and is uncertain if such provisions will be included in future TCAs.

24. *CHOICE OF LANGUAGE.* (Optional Program-specific application clause) The parties have requested that this Agreement and all Documents and other communications transmitted via the EDI Network or otherwise delivered with respect to this Agreement be expressed in the English language. (Should include translation.)

25. *DISPUTE RESOLUTION.* All disputes, differences, disagreements, and/or claims between the parties arising under or relating to this agreement that are not resolved by negotiation and that the parties cannot agree to submit for arbitration or other procedure for the resolution of disputes, shall be subject to the jurisdiction of U.S. Courts.

26. *ENTIRE AGREEMENT.* This Agreement [and the Implementation Guide and Appendix] 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 Partners develop additional capabilities respecting EDI, additional Addenda may be added to this Agreement. EPA does not intend to change guidelines without just cause or without consulting industry, however, as a practical matter it is too cumbersome to obtain formal agreements from each Submitter when technical or procedural changes are required, particularly to the Implementation Guidelines. Therefore, EPA will publish notice of new Addenda appending this Agreement and their effective date in the Federal Register. Upon the effective date, each Addendum shall be appended to this Agreement.

This Agreement is for the benefit of, and shall be binding upon, the parties and their respective successors and assigns.

(To be signed by the Delegated Authority in specific EPA Office)

Dated: _____

Name of Delegated Authority

Title of Delegated Authority

III. Model of EPA Terms and Conditions Agreement Memorandum

Program-specific notices will contain the memorandum, similar to this model agreement memorandum, which the Submitter will sign and return to EPA. The program-specific TCA will stipulate what actions will constitute acceptance by EPA of a Submitter's signed and returned agreement memorandum and the effective date of the agreement.

BILLING CODE 6560-50-M

Model TCA Memorandum Agreement

(If report or information is subject to PRA, OMB# and Date are included.) OMB No. _____
Expiration Date _____

**NOTICE OF ADMINISTRATOR'S INTENT TO PERMIT FILING OF "ABC" REPORT
VIA ELECTRONIC DATA INTERCHANGE (EDI)**

TERMS AND CONDITIONS AGREEMENT MEMORANDUM:¹³

FROM: (Submitter's Address)

TO: (USEPA's Address)

The terms and conditions for submitting the "abc" report to EPA via Electronic Data Interchange (EDI) as set forth in the Terms and Conditions Agreement published in the Federal Register on _____ [page citation to Federal Register notice] are hereby accepted and agreed to by the Submitter. Upon receipt of this properly signed Terms and Conditions Memorandum and the list of reporting facilities and authorized representatives, EPA will issue PINs and accept electronic reports from the Submitter. The Submitter hereby expressly agrees that it will sign each and every report it submits by using its PIN(s) or other electronic identification and that use of the PIN(s) or other electronic identification constitutes certification of the truth and accuracy, upon penalty of perjury (or other program-specific requirement), of the information contained in each such report. The Submitter has caused this Agreement to be properly executed on its behalf as of the date first written below. The Submitter:

Signature of Submitter's Responsible Corporate Officer Date

Printed/Typed Name of Responsible Corporate Officer

Title of Responsible Corporate Officer

Submitter's Company Name

Submitter's Company Address

Submitter's Notice Address (In accordance with para. 19 of the TCA.)

ATTACHMENT: PIN REQUEST

¹³ Submission by potential trading partners of this memorandum does not necessarily constitute agreement by EPA of entering into an electronic trading partner agreement with a given Submitter. Receipt of the Submitter's TCA and entry into an Agreement by EPA will be confirmed by assignment of PIN(s). Date of PIN Issuance will constitute effective date of Agreement.

Dated: August 21, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96-22381 Filed 9-3-96; 8:45 am]

BILLING CODE 6560-50-C