

Enclosure

**EPICI Positions on Key Policy Issues in Revising EPAct  
Section 1605(b) DOE Guidelines and EIA Registry**

In his February 14, 2002, policy statement, the President called the registry a “tool for companies to publicly record their progress in reducing emissions, providing public recognition of a company’s accomplishments, and a record of mitigation efforts for future policy design.” He said that this “**tool goes hand-in-hand with voluntary business challenges**” (emphasis added), which he also discussed on February 14, “by providing a standardized, credible vehicle for reporting and recognizing progress.” He added that even though businesses can now register emissions reduced under section 1605(b) of EPAct, “participation has been limited.” Accordingly, he proposed “improvements” in the 1605(b) guidelines that “will enhance measurement accuracy, reliability and verifiability, working with and taking into account emerging domestic and international approaches.” As to an enhanced registry, he said it “will promote the identification and expansion of innovative and effective ways to reduce greenhouse gases” and it “will encourage participation.”<sup>1</sup>

When he issued his policy statement, the President was aware of the provisions of EPAct and section 1605(b) – a provision in title XVI, titled “Global Climate Change” – and saw the opportunity to relate it to his challenge to American businesses and industries to “reduce greenhouse gas emissions” through “broader agreements and greater reductions.”<sup>2</sup> In calling section 1605(b) a “tool” that “goes hand-in-hand” with his “voluntary businesses challenges,” the President clearly linked the two programs.

The Electric Power Industry Climate Initiative (EPICI) places great importance on the revised Energy Policy Act (EPAct) section 1605(b) guidelines and the improved Energy Information Administration (EIA) registry and revised reporting forms in facilitating the six climate action plans that our seven organizations have submitted to the government. For example, in its letter of January 17, 2003, to Department of Energy (DOE) Secretary Spencer Abraham, the Edison Electric Institute (EEI) stated (p. 2) that its voluntary numeric “goal will be achievable only if all EPICI trade groups and their members – **with government support and appropriate policies** – work together to implement robust supply- and demand-side actions as well as offset policies” (emphasis added). In addressing the “critical area of government policies,” EEI in Enclosure 1 to its letter added, “Reporting reforms under Energy Policy Act. . .section 1605(b) are critical to industry participation in voluntary programs.” More specifically, we address the following key policy issues:

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<sup>1</sup> “U.S. Climate Change Strategy, A New Approach,” Part 2, p. 9.

<sup>2</sup> *Id.* at Part 3, p. 14.

## 1. The need for a unitary federal reporting system for voluntary programs

EPICI does not believe that voluntary climate program would be well served by a federal reporting system fragmented into compartmentalized or non-complementary systems. Given President Bush's emphasis on a greenhouse gas (GHG) intensity metric that accommodates economic growth, the EPAAct section 1605(b) reporting system should not be divided into one registry that focuses on GHG/carbon intensity and another that focuses on absolute reductions. The fundamental problem with a reporting system that would feature a tier of absolute reductions (eligible for transferable credits) reported solely on an entity-wide basis is that it would be inconsistent with the President's climate policy, which emphasizes reducing GHG intensity, not achieving absolute GHG reductions.

Focusing exclusively on entity-wide reporting is objectionable for a number of reasons:

- The EPAAct section 1605(b) reporting system is aimed at encouraging and facilitating the voluntary reporting of "information" on GHG emissions and emission reductions, avoidances and sequestrations, whether obtained through projects or entities. This voluntary system is compatible with the President's national climate policy, which is focused on reducing GHG intensity and accommodating economic growth, not on achieving net reductions by entities. There are no treaty or statutory requirements applicable in the U.S. establishing a cap on GHG emissions that would warrant even consideration of entity-wide reporting.
- The four-agency letter of July 8, 2002, included with its recommendations encouragement of "corporate or entity-wide reporting," while being silent on the issue of whether that reporting should be limited to the U.S. However, that letter wisely recognized that "many important prospective actions . . . may be difficult to accommodate within the context of entity-wide emissions reporting." It added that while encouraging entity-wide reporting, the guidelines should also allow "opportunities to report by projects," acknowledging "the importance of recognizing a broad range of actions and facilitating cost effective ways to reduce direct and indirect emissions." Encouraging entity-wide reporting may be appropriate. However, establishing it as the exclusive or even predominant means of reporting would be inappropriate.
- Therefore, we are concerned about suggestions by some commenters at the DOE workshops that in revising the 1605(b) guidelines, DOE should narrow the existing reporting guidelines to provide for entity-wide reporting only and limit such reporting to the U.S. only. A narrowing of the section 1605(b) "tool" would discourage the "participation" that the President seeks, could seriously harm – if not break – the linkage that the President also spoke of between this "tool" and the voluntary Business Challenges, and would be inconsistent with EPAAct.

- Nowhere is this linkage more apparent than in the Business Challenge letter of January 17, 2003, from EEI to DOE Secretary Spencer Abraham, where EEI said that activities “pledged. . . will include individual company actions – whether undertaken by EEI, NEI [Nuclear Energy Institute], EPSA [Electric Power Supply Association] or any other group – and joint, industry-wide initiatives.” In support of the individual company actions, EEI pointed to the “Power Partners Resource Guide, which will set forth a panoply of supply- and demand-side options for companies to consider in order to reduce, avoid, and sequester GHGs.” These actions will include projects, both international and domestic. In addition, the EEI letter included in Enclosure 2 “Contributions from EEI and EPRI Industry-Wide Initiatives.”

Success of our “Power Partners” response to the President’s Business Challenge initiative would be severely jeopardized by an entity-wide reporting system and a reporting approach limited to reporting of activities that reduce, avoid and sequester GHGs in the U.S. only. As noted in Enclosure 1 to the EEI letter to the Secretary, reporting “reforms” under section 1605(b) “are critical to industry participation in voluntary programs.” That enclosure listed some of the reforms that we were aware of and view as critical. However, that list was not exhaustive. Clearly, so-called reform proposals, such as entity-wide reporting and limiting the reporting to the U.S., that attempt to reconstitute and constrict the existing guidelines are just as “critical to industry participation.”

- Moreover, such narrowing of the section 1605(b) guidelines would not be consistent with either title XVI of EPA Act generally – which, as noted above, is about “**Global** Climate Change,” not U.S. climate change – or with section 1605(b), which is a part of title XVI. **Section 1605(b) is not directed at the establishment of an inventory through entity-wide reporting.** That is a role that EIA plays under EPA Act section 1605(a), which directs the Secretary, through EIA, to “develop, based on data available to, and obtained by,” EIA, “an inventory of the national aggregate emissions” of GHGs for a baseline period of 1987-1990 and to “annually update and analyze such inventory using available data.” EIA has issued the report – Emissions of Greenhouse Gases in the United States – every year since 1993.

The last sentence of section 1605(a) provides that the subsection “does not provide any new data collection authority.” Thus, in using that report EIA must use available data, and its inventory is based on **estimates**, not collected emissions. Indeed, the preface to the most recent EIA report for GHG emissions for 2001, dated December 2002, stated:

This report – the tenth annual report, as required by law – presents the Energy Information Administration’s latest **estimates** of emissions for carbon dioxide, methane, nitrous oxides, and other greenhouse gases. These **estimates** are based on activity data and applied emissions

factors and **not** on **measured or metered emissions monitoring.**"

P. iii (emphases added).<sup>3</sup>

<sup>3</sup> Although styled as an "Inventory of U.S. Greenhouse Gas Emissions and Sinks," the annual report of the U.S. submitted pursuant to Decision 3/CP.1 of the Conference of the Parties to the United Nations Framework Convention on Climate Change (FCCC), is also an estimate of emissions and not truly an inventory (see FCCC/CP/1995/7/Add.1). Decision 3/CP.1, in requesting Annex I Parties to submit to the FCCC Secretariat national "inventory data on emissions," recognized "that for some greenhouse gases and sectors or activities annual data may be less readily available or less relevant . . ." The report was previously submitted by the State Department, but is now prepared by the Environmental Protection Agency (EPA).

According to the EPA letter of June 25, 1998, to the House Committee on Science, the U.S. annual report of April 2002 was prepared pursuant to section 1103 of the Global Climate Protection Act of 1987 (15 U.S.C. § 2901) and sections 103(b)(6) and (c)(2) of the Clean Air Act (42 U.S.C. §§ 7403(b)(6), (c)(2)). The Executive Summary stated (p. ES-1) that "the U.S. emissions inventory is comparable to those of other UNFCCC signatory countries" and the "**estimates** presented here were calculated using methodologies consistent with those recommended" (emphasis added) by the Intergovernmental Panel on Climate Change. It added, "For most source categories, the IPCC default methodologies were expanded, resulting in a more comprehensive and detailed **estimate** of emissions" (emphasis added). The EPA also told the House Science Committee that "numerous statistical and informational databases compiled by all levels of government, trade and research associations, and other public and private institutions provide the raw data inputs required to **estimate** the emissions by sources and removals by sinks of greenhouse gases" (emphasis added). The letter also said:

In 1994, the Energy Information Administration (EIA) and the EPA entered into a memorandum of understanding to coordinate our respective emission inventory activities. The EIA gathers and compiles detailed information on energy production and consumption, which forms the foundation for the energy-related greenhouse gas **estimates**. The EIA also reports on the carbon content of fossil fuels consumed in the U.S., developing emission factors that relate carbon emissions to fuel quantity burned.

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Uncertainties in our national emission **estimates** stem from our inability to actually measure emissions from each source; instead we collect data and measurements from a limited set of statistically representative sources and extrapolate the results to obtain national **estimates**.

In the case of section 1605(b), the Secretary is to issue, pursuant to subsection 1605(b)(1), guidelines establishing “procedures” for the “voluntary reporting of information” on GHG emissions; reductions “achieved through any measures” annually, “including” forest management practices, tree planting and energy efficiency; reductions “achieved” as a result of plant or facility closings” and “State or Federal requirements”; and “an aggregate calculation” of GHG emissions “by each reporting entity.” Subsection 1605(b)(2) provides that EIA will issue forms to “entities that wish to report such information” and that “[p]ersons reporting under this subsection shall certify the accuracy of the information reported.”

- The term “information” is all-encompassing. It certainly allows for entity-wide reporting, but it is not limited to such reporting, nor is it limited to reporting solely on the domestic level.

The reference to “any measures,” coupled with the word “including,” is equally broad and not limiting. Similarly, there is a reference to plants and facilities, and the voluntary reporters can be an entity or persons. Finally, the “database” or registry is to be “comprised of information voluntarily reported” by such entities or persons, which, as noted, can be emissions, reductions or an “aggregate calculation” of GHG emissions.

- Participation in voluntary programs and projects would suffer if reporting under EPA section 1605(b) were restricted exclusively to entities. As indicated in the annual EIA report discussed in section 4 below, a substantial amount of the reported emissions reductions, avoidances and sequestrations is project-based. (Further policy reasons supporting project-based reporting are discussed in section 5 below.)

It is in this broad context that EEI and its partners have submitted their letters to DOE under the Business Challenge program. We expect that in improving the guidelines, as called for by the President, to “enhance measurement accuracy, reliability and verifiability” the section 1605(b) “tool” will continue to meet our understanding and expectations, encourage participation, and not limit or narrow the current guidelines.

We continue to believe that the enhancement of the data base/registry and improvement of the guidelines merit maximum flexibility and accommodation of different reporting purposes. The modified reporting system should encourage participation to the maximum extent possible, consistent with the need to develop provisions on transferable credit, baseline protection and credit for past actions. DOE and EIA should remember that they are refining an existing, workable national and federal registry, and that this effort should not be governed by, or overly concerned with, any single need or purpose.

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(Emphases added.)

## 2. **Robust reporting vs. tiering**

We also draw your attention to an overall design concept, “**robust reporting**,” that would enhance the reliability and transparency of the data base. Under this concept, reporters have broad flexibility to develop the numbers or other information in the manner that they deem most appropriate, but the guidelines’ “procedures” would specify in-depth details on how the reported numbers were developed.

Under this concept, reporting entities would provide greater details on baseline emissions, project descriptions, and estimates of GHG reductions, avoidances and sequestrations. In addition, the extent of the details to be reported would be expanded from the current EPC Act section 1605(b) guidelines. Although the current guidelines describe a broad scope of reporting, the number of required elements in the reports is limited. This lack of full reporting may affect the reliability and transparency of some information in the current data base.

However, the critical difference between this concept and the tiered approach advocated by some lies in the extent of the provisions for how the reported information is developed. The distinction between **what information is reported** and prescriptive requirements as to **how the reported information is developed** is important.

- With the “robust reporting” concept, reporting entities would have flexibility on the choice of baselines and methodologies for estimating the emissions reductions, and may elect either to self-certify or to validate the report through other means. However, in all cases, the reporting would be focused on “full disclosure,” *i.e.*, providing detailed documentation to support the information reported in the registry. Under this concept, the minimum reporting criteria would be expanded beyond those in the existing guidelines.
- With a tiering approach, the government could prescriptively specify the baseline assumptions, the methodologies for estimating emissions reductions, and the procedures for monitoring and verification for each “level” of reporting. Entities would have to follow all requirements in reporting to the registry. Such prescription and requirements are inconsistent with the concept of guidelines embodied in section 1605(b).

We believe that the flexibility offered by robust reporting is more consistent with the concept of guidance and the voluntary nature of the system under EPC Act section 1605(b), and is the best way to accommodate the full range of purposes of reporting and types of information to be reported. Such flexibility would also be beneficial to the potentially broad range of uses for the information reported. Providing greater details improves transparency, thus enabling markets to work and informing public debate and decision-making. In particular, robust reporting is advantageous because it:

- Is consistent with the broad, voluntary nature of the registry as characterized in the original legislation. Incorporating a more stringent, tiered set of specific quantification and reporting requirements would inject significant rigidity into the system and would discourage participation.
- Would continue to allow reporters the flexibility to develop their data in a way that is appropriate for their purposes, which could include sharing information on their activities, highlighting contributions to the Administration's GHG intensity goal, transferable credits<sup>4</sup> and baseline protection.
- Encourages the innovation needed to learn about how to address issues associated with quantification, which include practical determination of baselines, setting appropriate project boundaries and accounting for leakage. This is particularly important for fostering learning about quantification of reductions for activities and sectors where there may be little or no experience to date, and for enabling the registry to serve as the reporting vehicle for "Climate VISION" as well as other voluntary initiatives.<sup>5</sup>
- Does not inhibit the market for transferring GHG reductions, avoidances and sequestrations, because this market already is evolving without the existence of uniform requirements for credits. Issues related to the degree of rigor in determining the reported emissions reductions, including leakage and verification, are being addressed through the operation of market forces in the process of valuation of the credit (*i.e.*, credits with less rigorous quantification and verification procedures have a lower market value).
- Allows the U.S. to gain the additional experience with GHG credits that is still needed before any more formal, future policy may be established. There is no consensus as to the best way to do this technically. Even in countries where mandatory requirements are in place or under development, approaches vary widely and inconsistencies across systems abound.

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<sup>4</sup> Those that wish to acquire transferable credits do so for a variety of reasons, which may include public relations benefits; hedging against some potential, future climate policy; and enhancing a plan to contribute to the Administration's GHG intensity reduction goal.

<sup>5</sup> Initially, 88 percent of the reporters under EPAAct section 1605(b) were electric utilities. While reporting by others has increased in recent years, electric generators still comprise nearly half of the reporters. Thus, much of the experience and public debate to date has focused largely on the electric generating sector. However, it should be kept in mind that the registry is national in scope and needs to accommodate reporting by **all** industries and economic sectors.

- Allows reporters to provide a wide-range of “information,” not just numbers.

Expanded discussion of robust reporting may be found in the EPICI paper, “1605(b) Reporting Concept,” filed on June 5, 2002.

On the other hand, the revised guidelines under EPart section 1605(b) should not include a tiered structure because:

- Setting tiered requirements would inject significant rigidity into a system that needs to maintain maximum flexibility in order to accommodate the myriad of reasons for reporting.
- Tiering is tantamount to prejudging future climate policy.
- Tiering would create an environment for confusing the quality of the **measurement and reporting** with the credibility and quality of the **actions**.
- Tiering would set up a dynamic that encourages simplistic generalizations (*i.e.*, if an entity is in the top tier, it is “good”; if it is in any other tier, it is inadequate), rather than one that encourages knowledge and understanding.
- Tiering would create a strong disincentive to report for entities that do not meet the criteria for the highest tier. There is no reason to report to a lower tier, only to be judged inadequate.
- Tiering would narrow incentives for entities to improve their reporting and measurement. If an entity is currently reporting to a lower tier, and cannot meet all of the criteria for moving up to the next higher tier, there is no incentive to improve along any dimension (since the entity would still remain in the current tier).
- Section 1605(b) applies to “persons” as well as entities. Such persons should be encouraged to report and not be burdened by provisions that would apply to entities.

In summary, we believe that introducing a tiered structure into the EPart section 1605(b) reporting system would be counterproductive to the goals of the Climate VISION program, while adopting a “robust reporting” approach would support the programs goals while improving the transparency of the data base.

### **3. Recognition of transferable credits and baseline protection**

Transferable credits and baseline protection should be recognized as valid but separate concepts.

- The Administration's February 14, 2002, policy statement clearly stated (Part 2, p. 9) that the "President directed the Secretary of Energy to recommend reforms" of the EAct section 1605(b) guidelines and national data base/registry "to ensure that businesses and individuals that register reductions are not penalized under a future climate policy, and to give transferable credits to companies that can show real emissions reductions." This directive was reiterated by DOE official Margot Anderson in her opening remarks at the DOE workshop last November: "Our new charge is going to require us to take a look at the guidelines to make sure that they meet the directives of the President." (Transcript Day 1, p. 13.) We surely agree.
  - There is adequate legal authority to support formation of an improved national registry and revised guidelines that take each of these concepts into account by providing such acknowledgement and recognition. See EPICI supplemental comments to DOE of September 25, 2002, and Attachment 1 to this enclosure.
  - These concepts are distinguishable, and there are substantial reasons for treating them separately in the improved registry and revised guidelines. Yet they are also complementary. One provides reasons to encourage reductions and reporting and is pro-active. The other provides reasonable assurance for volunteers and is defensive. In a voluntary program, neither offers guarantees, but both offer opportunities.
- ***Transferable credits:*** In this concept, the reductions reported to the improved national registry can be viewed as the equivalent of credits in a "bank" that the reporting entity can add to or draw out from time to time. These credits can be bought and sold through private sector markets, with their value being determined solely by the market place. Such transactions have already occurred, and others may be anticipated both domestically and internationally. Internationally, countries that are FCCC Parties may establish trading programs and registries in which entities with multinational interests who report to the EAct section 1605(b) registry may want to participate through the use of reported reductions that can be treated as transferable credits.

Some argue that such credits cannot obtain their full market value until an emission target or "cap" is legislated, while others believe the real issue is giving such recognition to reported reductions would hasten the passage of a cap-related bill. However, it is our understanding that the President does not support passage of such a bill by the Congress, and thus he surely did not issue his February 2002 directive for transferable credits with a mandatory cap in mind. While we cannot predict the future, in a voluntary reporting program such unfettered speculation should not become a policy roadblock to a credit concept that is market-based and legally authorized under EAct and other law.

- ***Baseline protection:*** Baseline protection is needed by electric generators and others in order to avoid penalizing themselves (*i.e.*, by reducing their own baselines by acting now) in the event of future climate policy. This concept should be supported because without it, such generators and other entities – including those participating in Business Challenges – easily could become reticent to make voluntary reductions. Once they volunteer, they become vulnerable to sudden and unforeseen changes in governmental policy in future months and years and the nuances of those changes, all of which can have significant adverse economic and other consequences for them. This is particularly true in the case of climate change because the benefits of GHG reductions, avoidances and sequestrations are not necessarily local, regional or even continental, but are global in nature. As the February 14, 2002, presidential policy statement observes, knowing that they have the opportunity to be protected by their government for acting as volunteers, businesses and individuals will be encouraged to “pursue innovative strategies to reduce or sequester greenhouse gas emissions, without the risk that future climate policy will disadvantage them.”

This issue is analogous to the “Class of 1985” problem under the Clean Air Amendments (CAAA) of 1990, where early volunteers who had reduced their air emissions prior to the effective date of the CAAA sought not to be penalized by the legislation for their early action.

- These reporting reforms are critical if power companies and other voluntary actors are going to fully engage in reducing, avoiding and sequestering GHGs to help fulfill the President’s goal of reducing national GHG intensity. This is a crucial area in which government policies will make a huge difference in what power companies and others do and how well they are able to perform in pursuing sector goals.

#### 4. **Continued recognition and credit for reported prior actions**

The revised guidelines and the national registry should not abandon or discount the effort of public and private stakeholders to report since October 19, 1994.

- We appreciate the recognition given to the issue of credit for reported prior actions in the four-agency letter to the President of July 8, 2002.

According to the EIA February 2002 publication Voluntary Reporting of Greenhouse Gases 2000, the number of entities reporting for 2000 under EPA Act section 1605(b) increased 7 percent from 1999, more than double since 1994. In addition, 65 of the reporters for 2000 “recorded commitments to take action to reduce emissions in future years, mostly during the 2000-2005 timeframe.” The EIA added (p. x):

Of the 100 organizations reporting at the entity level, 96 calculated their 2000 entity-wide greenhouse gas emissions. These entities reported direct greenhouse gas emissions of 1,036 million metric tons carbon dioxide equivalent, equal to about 15 percent of total greenhouse gas emissions in 2000.

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Ninety-two entity-level reporters also reported emission reductions, including 164.1 million metric tons carbon dioxide equivalent of direct emission reductions, 27.8 million metric tons carbon equivalent of indirect emission reductions, and 7.5 million metric tons carbon dioxide equivalent of emission reductions resulting from carbon sequestration projects.

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The electric power sector (including independent power producers) accounted for 1,287 (68 percent) of the projects reported.<sup>6</sup>

- The projects and entity-level reductions, avoidances and sequestrations reported by these entities were all reported in accordance with EPAct section 1605(b) and the existing guidelines. They are a part of the current registry. Their continued recognition under the revised guidelines and in the improved registry must be addressed without limitation. Such recognition is a powerful incentive for power companies and others in the private sector to continue to engage in voluntary actions to reduce, avoid and sequester GHGs and to fully participate in Power Partners activities. Conversely, elimination or discounting of credit for these previously reported actions would be an enormous disincentive to further engage voluntarily in such activities.

##### **5. Continued recognition of project-based reporting**

The revised guidelines and registry must continue to recognize project-based reporting, regardless of whether they are on-system or off-system.

- The current guidelines recognize project-based reporting. They state that volunteers “may report under this program” if the volunteer initiates, controls or “in some other way” participates in “activities” that “result in reducing” GHGs or “sequester carbon” and that:

The activities may be part of your regular operations, pilot studies, prototype projects, or demonstration projects. They may take place in your community, in your

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<sup>6</sup> The power sector constituted about 70 percent of the total reductions, avoidances and sequestrations reported in 2000.

workplace, at a location controlled by a third-party, or at a foreign location.

Indeed, much of the current guidelines provides guidance on reporting projects.

- For many power companies, the most cost-effective and plentiful options to reduce, avoid and sequester GHGs are projects. These include traditional offset activities such as methane, forestry and international projects, as well as demand-side management (DSM) or end-use efficiency improvements, adoption of electrotechnologies, and product substitution (as in reuse of fly ash).
- The importance of recognizing off-system activities and offsets is illustrated in Attachment 2. A limitation of the carbon intensity metric for an entity is that emissions – the numerator in the formula – do not take into account off-system activities and offsets. Yet these activities are extremely important to electric generators in reducing, avoiding, sequestering or offsetting their emissions. In other words, such generators must be allowed to subtract the second list of activities in Attachment 2 from their emissions because such adjustments will help to reduce overall carbon intensity
- ***International projects*** are no different from domestic projects in this calculus. As noted, DOE and EIA have recognized the reporting of international projects since the inception of the EPCRA section 1605(b) guidelines in 1994 and the accompanying EIA reporting forms, respectively. We understand that the primary focus of the President’s climate plan is on the reduction of U.S. GHG intensity. However, GHGs know no geographical boundary, and thus reducing, avoiding or sequestering GHGs overseas is effectively the same as doing so in the U.S. Section 1605(b) is part of title XVI of EPCRA, which, as we noted above, is entitled “Global Climate Change.” In enacting this title, Congress did not intend to limit its provisions to the U.S. (except when specified).

Some other compelling reasons for power companies and others to engage in international projects are:

- The U.S. is bound by the FCCA, with its provisions for activities implemented jointly (AIJ) under the U.S. Initiative for Joint Implementation. It would be inconceivable that AIJ activities could not be counted under the revised guidelines merely because they occurred outside the U.S.
- In the same week as the President’s February 14 climate policy statement, the White House recognized the importance of international projects in reducing, avoiding and sequestering GHGs when the President’s Council of Economic Advisors said, “Project-based measurement. . . is important internationally if the U.S. wants to encourage domestic firms to seek out meaningful reductions in developing countries where fully

market-based programs are unlikely to be implemented.”<sup>7</sup>

- The same reasons that support the President’s policy statement on transferable credits also apply to international projects, namely that 1) recognition of transferable credits for international projects provides additional incentive for entities to undertake these actions, resulting in additional reductions, and 2) conversely, lack of recognition would create uncertainty regarding the acceptability of these actions, and thus hinder participation in them. The inclusion of international projects will result in a net increase in reductions, a supplementation of -- not a substitution for -- domestic actions.
- International projects are consistent with sustainable development programs that the U.S. is undertaking in the wake of the World Summit on Sustainable Development (2002) and the Delhi Declaration on Climate Change and Sustainable Development (eighth meeting of the FCCC Conference of the Parties, 2002).
- The revised guidelines should treat reductions -- whether based on projects, domestic or international, or on entity accounting -- in the same or comparable manner and to the same extent in reporting so that one is not favored or disadvantaged over the other.

#### **6. Direct emissions and direct emission reductions v. indirect emissions and indirect emission reductions**

The existing DOE guidelines make it clear that reporters may “report both direct and indirect emissions.” Presumably this guidance applies to direct and indirect emission reductions, although the guidelines are silent on such reductions.

Consistent with DOE views, *avoidances* are a form of direct emission reductions. The emission reductions of avoidances are from a projected baseline rather than a historical baseline.

With regard to *direct emissions*, we note two additional points:

- For electric generators, it should be acceptable to include only direct CO<sub>2</sub> emissions from generation in the U.S. in their reported entity-wide emissions. Quantification and reporting of companies’ other direct emissions should remain optional.
- Electric generators should be urged (but not required) to report other categories of direct emissions if they believe that the emissions from any of the other categories (e.g., fleet vehicles, transmission and distribution, methane, nitrous oxide, sulfur hexafluoride) are greater than a *de minimis* amount. However, such generators

<sup>7</sup> Council of Economic Advisors, Economic Report of the President 2002 at 248 (Feb. 2002).

should not be required to quantify or otherwise demonstrate that the direct emissions from these other categories are in fact *de minimis* if they are not included in the report.

***Indirect emissions and indirect emission reductions*** should continue to be eligible for reporting but should remain as a separate, optional category. Reporting of indirect emissions should not be required in order to have an EPart 1605(b) report accepted. Clearly, they should not be identified or highlighted to be included in all or even most 1605(b) reports by persons or entities.

Specific problems or issues associated with accounting for indirect emissions and indirect emission reductions include:

- Reported values for direct emissions are usually either measurements or relatively accurate calculations of an entity's actual emissions, whereas indirect emissions are always estimates of changes in another entity's emissions.
- Indirect emissions are more complicated to quantify.
  - In a wholesale power market, marginal GHG emission rates vary by time of use, both daily and seasonally, as well as by region. These rates cover a broad range. For example, they could range from .5 tons per megawatt-hour for a gas unit to 1.2 tons per megawatt-hour for a coal unit.
  - In deregulated markets, there is no single utility that serves all load. Instead there is a *mélange* of retail providers, wholesale suppliers, and transmission and distribution companies that makes the calculation of indirect emissions and indirect emission reductions even more complex.
- Accounting for indirect emissions will always result in double-counting of direct emissions.

Electric generators should not have to assign or allocate specific units of output (and associated emissions) to particular customers or customer groups that want to quantify indirect emissions, either at the wholesale or retail level, but should have the option to do so.

If an electric generator *opts* to assign a portion of the direct emissions from generators to purchasers, it should also report the portion so assigned as indirect emissions in order to account for all emissions from its generating units. Any reporting in this manner should be additional to the reporting of all emissions of CO<sub>2</sub> from generation as direct emissions.

## 7. **Third-party verification**

Third-party verification should continue to be an option that is available to all who volunteer to report under EPart section 1605(b), but should not be required in order for persons or entities to report.

- EPart subsection 1605(b)(2) calls for self-certification.<sup>8</sup> The current guidelines

expand on how this self-certification should be done.<sup>9</sup>

- Given the express mandatory provision of EAct subsection 1605(b)(2) on self-certification, it is at least highly questionable whether DOE could revise the guidelines effectively to mandate third-party verification of reported information or even set criteria or standards for third-party verifiers to follow.
- EIA is already performing a four-step process to check the information reported.<sup>10</sup>

<sup>8</sup> EAct provides in subsection 1605(b)(2) that the EIA “shall develop forms for voluntary reporting . . . and shall make such forms available to entities wishing to report” information. It also provides that “Persons reporting under this subsection shall certify the accuracy of the information reported.”

<sup>9</sup> The current guidelines provide that if a “person” or “entity” chooses to report, they must “certify” (through the use of a “signature”) such accuracy. The guidelines add, “Therefore, the person who signs the report must be authorized to act as a representative of the reporting entity for these purposes. No independent certification is required . . .” However, the reporter “may wish to indicate” if the “data has been verified by a third-party.” The filing of the reported information on such forms and with such signature is subject to 18 U.S.C. § 1001, which makes it a crime to file false information knowingly and willfully.

<sup>10</sup> At the November workshop, EIA noted that while it “does not do verification,” there are “checks and balances.” EIA said that “there are several steps we go through. And we just don’t take the data and put a big rubber stamp on it and through it in the database and say we’re done.” Indeed, the EIA explained (Transcript Day 2, pp. 34-35):

. . . [I]t’s quite a labor-intensive process, actually. And we’ll outline the four steps for you that we do.

Number one, when we get the report in, we do what’s called an analyst review. That’s where the report is checked for internal consistency, accuracy of calculation, and comparability with other sources.

After we go through that process, built into the reporting software, and about three-quarters of our reports, maybe 70 – maybe up to 80 percent report electronically. So they send us a file using the reporting software. And built into the software is an edit subsystem to check for inconsistencies in the numbers that are entered.

And the analyst will go through those edit checks to see which ones are valid, which ones may not be as – as the next step in the review to find out any inconsistencies in the report.

So . . . that’s what we call the methodological edit check,

- As in the present guidelines, the reporting entity or person should continue to have the option to utilize third parties for verification purposes, taking into consideration the value to the reporting person or entity, the costs, the need and other relevant factors. As the EIA pointed out at the November workshop in the case of trades, it is up to “the company to decide whether or not they will get involved in a trade” and to “get it certified themselves.”<sup>11</sup>
- Of particular concern is the enormous transaction costs associated with third-party verification. For example, the cost of third-party validation for clean development mechanism projects under the Kyoto Protocol – including baseline studies, validation of project methodologies and verification of performance – can result in one-time costs on the order of \$100,000, with recurring costs of \$10,000-15,000 annually.<sup>12</sup>
- We are not aware of any legal basis under EPAAct section 1605(b) for either DOE or EIA to be involved in setting criteria or standards for third-party verifiers, for certifying them, for establishing and maintaining lists of such approved verifiers, or for enforcing such requirements.

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where the – after running the edit subsystem, the analyst goes through and checks the . . . edit subsystem, would turn to that system.

And lastly, if we find inconsistencies in that process, we’re going to call the reporter back and have a follow-up discussion to determine how to settle those differences or errors or miscalculations in the form.

(footnote continues)

And only after we go through all of that process and we’re in agreement is the . . . report formally accepted into the database.

<sup>11</sup> EIA added (Transcript Day 1, p. 61):

The U.S. government has nothing to do with that. It’s a company decision and company action, and in essence when a company submits its information, following its guidelines to the DOE, the DOE can say that this company has followed the guidelines and period, that’s it. It’s up to the company, if they want to trade, to get it certified and verified, and they can take those tons to New York City, sell them to Amsterdam, sell them to any country. It takes the government out of the area of do they have authority or not.

<sup>12</sup> This information is based on private communications with participating entities regarding energy and forestry projects.

Attachments (2)