

DOE Issues Proposed Guidelines for Enhanced Voluntary Reporting of Greenhouse Gas Emissions

December 10, 2003

On December 5, the Department of Energy (DOE) published a proposed rule in the *Federal Register* establishing general guidelines for voluntary reporting of greenhouse gas (GHG) emissions and sequestration. (68 *Fed. Reg.* 68203.) The rule is intended to revise the existing Voluntary Reporting of Greenhouse Gases (GHG) Reporting Program, which was established under 1605(b) of the Energy Policy Act of 1992 (the "1605(b) Program"). DOE also plans to issue a series of technical guidelines to supplement the general guidelines. Comments on the proposals are due February 3, 2004.

The proposed guidelines are an outgrowth of President Bush's February 14, 2002 announcement of a set of climate policy initiatives. A particular aim of the proposed guidelines is to enhance the accuracy and reliability of 1605(b) reports. As a result, the guidelines are somewhat more prescriptive than the original program guidelines, which allowed substantial reporting flexibility in order to encourage the broadest possible participation.

A Two-Tier Approach

The proposed guidelines establish a two-tier reporting system. Companies can continue to enjoy significant flexibility in determining how to report their GHG emissions, including reporting reductions from particular projects. However, companies seeking to "register" emission reductions or sequestration will have to meet more rigorous reporting requirements. In particular, the proposed rule requires companies with "substantial" emissions to inventory their emissions on an "entity-wide" basis in order to register reductions. The project-based reporting approach used by some companies under the existing 1605(b) Program would not be available to companies wishing to register reductions under the revised program.

Under the proposed rules, any company with cumulative average annual emissions exceeding 10,000 tons of carbon-dioxide-equivalent is deemed to have "substantial" emissions. Under this approach, a company can trigger the entity-wide reporting requirement if it: (1) operates a 5 MW coal-fired boiler at 25% capacity; (2) owns a fleet of 1750 cars; or (3) purchases roughly 14.5 million kWh of electricity annually (at the national average emissions rate of 1.38 lbs carbon dioxide/kWh).

What Entity-Wide Reports Must Cover

The entity-wide reporting provisions entail extensive information-gathering requirements for companies seeking to register reductions. An entity will have to inventory not only all of its emissions of carbon dioxide but also: (1) its emissions, if any, of five other GHGs, and (2) any emissions changes at its carbon "sinks." In addition, an entity will have to calculate and report its "indirect" emissions, defined as emissions resulting from purchases of electricity, steam, or hot/chilled water. The guidelines allow an entity to exclude *de minimis* emissions from its inventory, so long as those emissions do not exceed the lesser of 3% of the entity's total emissions or 10,000 tons carbon dioxide-equivalent. Independent verification of reports is strongly encouraged, but not required.

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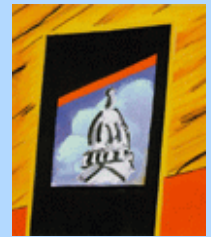
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“Registering” Reductions

Entities meeting these inventory requirements will be able to register their reductions in both direct and indirect emissions, as well as their avoided and sequestered emissions. The proposed guidelines strongly encourage firms to register reductions on an “intensity” basis, i.e., on the basis of emissions-per-unit-output, rather than on the basis of absolute reductions. In addition, only reductions occurring after 2002 may be registered. This approach corresponds with the President’s goal of reducing national GHG intensity 18% from 2002-2012. Methodologies for calculating baselines, intensity, and intensity reductions await the technical guidelines, which will be published in the near future.

The proposed guidelines also address the ability of entities to register offsets, – i.e., reductions generated by another entity. DOE is soliciting comments on an approach in which offsets could be registered only if the entity generating the offsets has met all the requirements to which it would be subject if it had registered the reductions itself, including the entity-wide reporting requirement. In addition, DOE is requesting comments as to whether and how the revised program should account for international emissions and emissions reductions.

The proposed rule does not spell out the legal or other significance of “registered” reductions. The preamble to the proposed rule suggests that DOE will afford registered reductions “special recognition.” In the Policy Book accompanying the President’s February 14, 2002 announcement, the President directed DOE: “to recommend reforms 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.” In written comments and workshops leading up to the proposal, the extent to which the 1605(b) Program could or should provide “transferable credits” or “baseline protection” was the subject of substantial debate. The proposed rule and its preamble are silent on these issues.

Interaction With State Reporting Programs and Implications

Publication of the revised 1605(b) guidelines comes at a time when at least a dozen states are in various stages of developing their own registries. It is likely that there will be some divergences between the 1605(b) Program and these state programs. California’s “Climate Action Registry,” for example, makes independent verification of all reports mandatory. Such differences might present complexities for companies that choose both to participate on an entity-wide basis in the 1605(b) Program and report facility emissions and reductions in individual state programs.

As seen from the above, the proposed revised guidelines raise many conceptual and technical issues that will have to be resolved in the course of the rulemaking, and the shape of the final rule likely will be much influenced by public comments. Such comments currently are due on February 3, 2004.

For Additional Information

Van Ness Feldman has been actively involved in the development of emissions reporting rules in the course of counseling clients on general corporate climate change strategies and emissions trading. This experience will allow Van Ness Feldman to help clients navigate the new requirements. If you have any questions about the issues raised in this alert, or if we can be of assistance as you consider submitting comments, please feel free to contact Bob Nordhaus, Stephen Fotis, Dick Penna, or Kyle Danish at (202) 298-1800.

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