

*Joint DOE/USDA Workshop*

DOE and USDA invite persons interested in the draft Technical Guidelines for Agriculture and Forestry and related revised General Guidelines to participate in this workshop. The workshop will provide an overview of the draft technical guidelines for agriculture and forestry sources and sinks, opportunities to ask questions about the proposed methods, and opportunities to discuss specific issues. Persons interested in registering for the meetings or in obtaining more information about USDA's efforts to develop accounting rules and guidelines for forestry and agriculture should visit the following Web site: <http://www.usda.gov/agency/oce/gcpo/greenhousegasreporting.htm>.

The Web site will also be used to make available draft and final meeting agendas, information on lodging, or other information made available before the meetings. Inquiries regarding the logistics for this meeting may be e-mailed to [sharon\\_barcellos@grad.usda.gov](mailto:sharon_barcellos@grad.usda.gov).

**IV. Forms**

EIA, which is responsible for the operation of the 1605(b) program, is preparing a set of draft forms for reporting under the revised guidelines. Pursuant to the Paperwork Reduction Act of 1995, EIA plans to issue a **Federal Register** notice soliciting public comment on these draft forms as soon as practicable and to complete the comment review, and revisions resulting from that review, before the effective date of the guidelines.

Issued in Washington, DC, on March 16, 2005.

**Karen A. Harbert,**

*Assistant Secretary for Policy and International Affairs.*

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**DEPARTMENT OF ENERGY****10 CFR Part 300**

**RIN 1901-AB11**

**Guidelines for Voluntary Greenhouse Gas Reporting**

**AGENCY:** Office of Policy and International Affairs, U.S. Department of Energy.

**ACTION:** Interim final rule and opportunity for public comment; revised general guidelines.

**SUMMARY:** Section 1605(b) of the Energy Policy Act of 1992 directed the

Department of Energy (Department or DOE) to issue guidelines establishing a voluntary greenhouse gas reporting program. On February 14, 2002, the President directed DOE, together with other involved Federal agencies, to recommend reforms to enhance the Voluntary Reporting of Greenhouse Gases Program established by DOE in 1994. DOE is today issuing interim final General Guidelines that incorporate the key elements of revised General Guidelines proposed by DOE on December 5, 2003. DOE also is publishing in the "Rules and Regulations" section of today's issue of the **Federal Register** a notice of availability inviting public comment on draft Technical Guidelines that will, combined with these General Guidelines, fully implement the revised Voluntary Reporting of Greenhouse Gases Program.

**DATES:** The interim final rule will be effective September 20, 2005. The incorporation by reference of the Draft Technical Guidelines is approved by the Director of the Federal Register as of September 20, 2005. Written comments should be submitted on or before May 23, 2005.

**ADDRESSES:** You may submit comment, identified by RIN Number 1901-AB11, by any of the following methods:

- E-mail: [1605bguidelines.comments@hq.doe.gov](mailto:1605bguidelines.comments@hq.doe.gov).
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow instructions for submitting comments.
- Mail: Mark Friedrichs, PI-40; Office of Policy and International Affairs; U.S. Department of Energy; 1000 Independence Ave., SW., Washington, DC 20585.

Interested persons also may present oral views and data at public workshops DOE will hold for discussing both these interim final General Guidelines and the draft Technical Guidelines that DOE is making available today. The locations, times, and other details of the public workshops are set forth in the Notice of Availability for the draft Technical Guidelines published in the "Rules and Regulations" section of today's issue of the **Federal Register**.

You may obtain electronic copies of this notice, the draft Technical Guidelines and other related documents, find additional information about the planned workshops, and review comments received by DOE and the workshop transcripts at the following Web site: <http://www.pi.energy.gov/enhancingGHGregistry/>. Those without internet access may access this information by visiting the DOE

Freedom of Information Reading Room, Rm. 1E-190, 1000 Independence Avenue, SW., Washington, DC, 202-586-3142, between the hours of 9 a.m. and 4 p.m., Monday to Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Mark Friedrichs, PI-40, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or e-mail: [1605bguidelines.comments@hq.doe.gov](mailto:1605bguidelines.comments@hq.doe.gov).

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## I. Introduction

### A. Background

Section 1605(b) of the Energy Policy Act of 1992 (EPACT) directs the Department of Energy, with the Energy Information Administration (EIA), to establish a voluntary reporting program and database on emissions of greenhouse gases, reductions of these gases, and carbon sequestration activities (42 U.S.C. 13385(b)). Section 1605(b) requires that DOE's Guidelines provide for the "accurate" and "voluntary" reporting of information on: (1) Greenhouse gas emission levels for a baseline period (1987–1990) and thereafter, annually; (2) greenhouse gas emission reductions and carbon sequestration, regardless of the specific method used to achieve them; (3) greenhouse gas emission reductions achieved because of voluntary efforts, plant closings, or state or federal requirements; and (4) the aggregate calculation of greenhouse gas emissions by each reporting entity (42 U.S.C. 13385(b)(1)(A)–(D)). Section 1605(b) contemplates a program whereby voluntary efforts to reduce greenhouse gas emissions can be recorded, with the specific purpose that this record can be used "by the reporting entity to demonstrate achieved reductions of greenhouse gases" (42 U.S.C. 13385(b)(4)).

In 1994, after notice and public comment, DOE issued General Guidelines and sector-specific guidelines that established the Voluntary Reporting of Greenhouse Gases Program for recording voluntarily submitted data and information on greenhouse gas emissions and the results of actions to reduce, avoid or sequester greenhouse gas emissions. The 1994 General Guidelines and supporting documents may be accessed at <http://www.eia.doe.gov/oiaf/1605/guidelns.html>. The Guidelines were intentionally flexible to encourage the broadest possible participation. They permit participants to decide which greenhouse gases to report, and allow for a range of reporting options, including reporting of total emissions or emissions reductions or reporting of just a single activity undertaken to reduce part of their emissions. From its establishment in 1995 through the 2002 reporting year, 381 entities, including utilities, manufacturers, coal mine

operators, landfill operators and others, have reported their greenhouse gas emissions and/or their emission reductions to EIA.

On February 14, 2002, the President directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements to the current section 1605(b) Voluntary Reporting of Greenhouse Gases Program. These improvements are to enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches.

On May 6, 2002, DOE published a Notice of Inquiry soliciting public comments on how best to improve the Voluntary Reporting of Greenhouse Gases Program (67 FR 30370). Written comments were received from electric utilities, representatives of energy, manufacturing and agricultural sectors, Federal and State legislators, State agencies, waste management companies, and environmental and other non-profit research and advocacy organizations.

DOE held public workshops in Washington, DC, Chicago, San Francisco and Houston during November and December of 2002 to receive oral views and information from interested persons. In addition, the U.S. Department of Agriculture sponsored two workshops in January 2003 to solicit input on the accounting rules and guidelines for reporting greenhouse gas emissions in the forestry and agriculture sectors. These workshops explored in greater depth many of the issues raised in the Notice of Inquiry and addressed in the written comments. The public comments covered a broad range of issues and views diverged widely on some key issues. Generally, there was substantial support for revising the current General Guidelines to enhance their utility and to accomplish the President's climate change goals.

On December 5, 2003, DOE proposed revised General Guidelines (68 FR 68204). A public workshop was held on January 12, 2004, to discuss that proposal and to receive public comment. Approximately 200 persons attended the workshop. In addition, over 300 written comments were received by the close of the public comment period on February 17, 2004.

DOE is today issuing interim final revised General Guidelines and, in a notice of availability published elsewhere in this issue of the **Federal Register**, makes available for public comment the draft Technical Guidelines necessary to fully implement the

revisions to the Voluntary Program. Together, the General and Technical Guidelines will, when effective, replace the guidelines for the Voluntary Reporting of Greenhouse Gases issued by DOE in October 1994.

DOE previously indicated its intent to provide for further public comment on the General Guidelines, as revised after a round of public comments on the notice of proposed rulemaking published on December 5, 2003, through a supplemental notice of proposed rulemaking. However, DOE subsequently decided to provide for further comment through the device of a notice of interim final rulemaking rather than a supplemental notice of proposed rulemaking. DOE opted for an interim final rule because, after considering the public comments, the main revisions to the initially proposed General Guidelines were relatively few, involved issues within the scope of the initial proposal, and were not significant enough to warrant a re-proposal as another notice of proposed rulemaking. DOE also took account of the unusually varied and robust opportunities for written and oral comment both before and after publication of the proposed General Guidelines. These opportunities for public comment make it less likely that members of the public will have substantially new or different comments or information to offer in a further round of public comments on the revised General Guidelines. DOE recognizes that there is a possibility that public review of the draft Technical Guidelines may suggest the need for further changes to the General Guidelines. By publishing the General Guidelines as an interim final rule with a 180-day effective date, DOE has provided for making such changes and finalizing the draft Technical Guidelines before the end of the 180-day period.

The Secretary of Energy has approved issuance of this interim final rule.

### B. Process for Finalizing and Implementing Guidelines

After full consideration of the public comments received, DOE will finalize the General and Technical Guidelines. DOE has allowed 180 days after publication of the interim final General Guidelines so that there is sufficient time to consider and respond to all comments received. DOE will further delay the effective date of the revised General Guidelines if the 180-day period proves to be insufficient for considering public comments and finalizing the General and Technical Guidelines.

Before the General and Technical Guidelines become effective, EIA will, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), solicit public comment on the reporting elements to be contained in the reporting forms to be used under the revised program Guidelines. With respect to the existing 1994 General Guidelines, DOE intends to publish a **Federal Register** notice of termination that will take effect and terminate the existing Guidelines immediately prior to the revised General and Technical Guidelines taking effect.

## II. Discussion of Revised General Guidelines

The following section summarizes changes made to the revised General Guidelines and responds to public comments on the December 5, 2003 proposal.

### A. Overview and Purpose

The revised General Guidelines included in this interim final rule are designed to enhance the measurement accuracy, reliability and verifiability of information reported under the 1605(b) program and to contribute to the President's climate change goals. The key elements of the revised General Guidelines do the following:

- Enable larger emitters to register reductions if they provide entity-wide emissions data and can demonstrate they achieved entity-wide emission reductions after 2002 that contribute to the President's goal of reducing the greenhouse gas emissions of the U.S. economy.
- Provide for simplified procedures for small emitters to report and to register reductions.
- Provide for simplified reports from entities that do not want to register their reductions.
- Encourage companies and other reporting entities to report at the highest level.
- Require participants to ensure the accuracy and completeness of their reports, and encourage independent verification.
- Allow participants to report and register reductions achieved internationally.

These key elements of the revised Guidelines, except for the last, were included in the December 2003 proposal and, after careful consideration by the Department of the public comments received, have been retained in the revised General Guidelines contained in this notice.

The President specifically requested that DOE "enhance measurement accuracy, reliability, and verifiability."

DOE believes that today's interim final revised General Guidelines enhance:

- Measurement accuracy by creating a ranking system for methods to calculate emissions, incorporating the best available inventory methods, and enabling more sources to be covered;
- Reliability by creating a more systematic approach to reporting, stressing inventories and entity-wide reporting; and
- Verifiability by creating a more transparent reporting system for emissions and reductions, requiring recordkeeping and encouraging independent verification.

The revised General Guidelines establish the basic requirements for the enhanced reporting and registration program. The draft Technical Guidelines, which are referred to in this preamble and in the text of the General Guidelines, when final, will provide the specificity necessary to fully implement the emissions inventory and emissions reduction guidelines set forth in section 300.6 and section 300.8 of the revised General Guidelines. As explained in the notice of availability published in the "Rules and Regulations" section of today's **Federal Register**, the draft Technical Guidelines have two major parts:

- Emissions Inventory Guidelines (Chapter 1), which includes detailed guidance on how to measure or estimate greenhouse gas emissions; and
- Emission Reductions Guidelines (Chapter 2), which includes guidance on the selection and application of methods used to calculate emission reductions, including the establishment and modifications of base periods and base values.

After consideration of the hundreds of public comments received on the December 2003 proposal, DOE retained the key elements of the previously proposed General Guidelines, as described above. However, DOE has made a number of important changes, including the addition of guidelines to allow reporting and registration of international emissions and emission reductions, refinements in the procedures governing the definition of "reporting entity," increased specificity regarding the requirements for registration, and a modification of the *de minimis* provision to permit the exclusion from emissions inventories of up to 3 percent of total emissions, with no quantitative maximum.

In addition to the changes described above, DOE has made changes to reflect or incorporate the further guidance included in the draft Technical Guidelines. A few sections of today's revised General Guidelines, such as

those on entity statements, recordkeeping and independent verification, have been expanded to provide additional guidance to reporters. In a few instances, the December 5, 2003 proposed General Guidelines have been modified to reflect changes in the requirements for emissions inventories and emission reductions that are set forth in the draft Technical Guidelines.

Once the revised General and Technical Guidelines take effect, the 1605(b) program will serve as the primary public emission and emission reduction reporting mechanism for participants in EPA's Climate Leaders program and in DOE's Climate VISION program. The establishment of consistent reporting rules for all Federal greenhouse gas reporting programs was supported by many of the comments received by DOE. While the specific requirements of these other programs for reporting emissions and emission reductions may be more prescriptive in some areas than the requirements of the revised 1605(b) guidelines, these differences should not prevent the use of the 1605(b) program as the means by which participating entities publicly report on their emissions and emission reduction achievements under the Climate Leaders and Climate VISION programs. To support distinct program elements, each of these programs is likely, however, to have other additional reporting requirements.

Most of the basic requirements in the December 5, 2003 proposed General Guidelines have not changed. To register emission reductions, reporting entities with substantial emissions (average annual emissions of 10,000 or more tons of carbon dioxide (CO<sub>2</sub>) equivalent) must provide an inventory of their total emissions and calculate the net reductions associated with entity-wide efforts to reduce emissions or sequester carbon. Entities with average annual emissions of less than 10,000 tons of CO<sub>2</sub> equivalent (small emitters) are eligible, under certain conditions, to register emission reductions associated with specific activities without completing an entity-wide inventory or entity-wide reduction assessment. DOE believes that these registered emission reductions represent the types of "real reductions" for which the President indicated there should be special recognition.

The revised General Guidelines enable entities to report (but not register) emission reductions achieved prior to 2003 as well as report emission reductions achieved during or after 2003 that do not qualify for registration. They also permit entities to report (but not

necessarily register) emission reductions associated with specific actions or with specific parts of the entity, even if these

reports are not accompanied by entity-wide emissions and reductions reports. For convenience, the basic elements of the revised General Guidelines being

issued today are graphically represented in Figure 1.

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**FIGURE 1: CHECK LIST FOR REGISTERING EMISSIONS REDUCTIONS**

**All Reporters**

1. Entity Statement (§ 300.5) fully documenting:
  - Legal basis for entity, scope of defined entity and appropriate entity name (§ 300.3)
  - Organizational boundaries, determined by financial control or other basis (§ 300.4)
  - Leased and partially owned facilities (§ 300.5);
  - Statement of changes to the entity statement for each reporting year (§ 300.5)
2. Certification statement (§ 300.10) indicating:
  - Report is accurate and complete, and consistent with prior year reports;
  - Emission reductions were calculated using methods described in the revised Guidelines; and
  - Report was/was not independently verified.

**Large Emitters**  
(Avg. annual emissions  $\geq$  10,000 tons CO<sub>2</sub>e)

- Provide entity-wide emissions inventory (§ 300.6);
- Describe de minimis emissions excluded inventories (§ 300.6)
- Meet minimum data quality standards for emissions and removals (§ 300.6)
- Calculate net entity-wide reductions using methods provided; define subentities if using more than one method (§ 300.7)
- Demonstrate reductions and removals occurred after December 31, 2002 (§ 300.7)
- Maintain verifiable records for a minimum of 3 years (§ 300.7)

**Small Emitters**  
(Avg. annual emissions  $\leq$  10,000 tons CO<sub>2</sub>e)

- Provide a complete assessment of annual emissions and sequestration for activity (ies) being reported (§ 300.7);
- Meet minimum data quality standards for emissions and removals (§ 300.6);
- Determine the associated reductions using methods provided (§ 300.7);
- Demonstrate reductions and removals occurred after December 31, 2002 (§ 300.7);
- Certify the reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the entity (§ 300.7)

**Aggregators**  
**(Reporting on Behalf of 3rd Party Emitters)**

- Provide Entity Statement and Certification Statement for each 3<sup>rd</sup> party;
- Complete assessment of annual emissions and sequestration activity(ies) being reported (§ 300.7);
- Meet minimum data quality standards for emissions and removals (§ 300.7);
- Determine the associated reductions using methods provided (§ 300.7);
- Certify that reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the 3<sup>rd</sup> party (§ 300.7).

EIA accepts the report and registers the eligible emission reductions.

### B. Crosscutting Issues and Revisions

Many of the comments received on the December 5, 2003 proposed General Guidelines were directed at crosscutting issues that affect a number of different provisions. A discussion of these issues and DOE's response to major comments regarding these issues follows.

#### 1. Whether To Provide for Reporting on International Emissions and Reductions

In the December 5, 2003 proposed General Guidelines, DOE did not propose provisions for the reporting or registration of emissions and emission reductions occurring outside the United States, but it solicited public comment on whether entities should be permitted to report and/or register non-U.S. emissions and reductions. DOE also solicited comments on other, more specific issues related to the inclusion of non-U.S. activities. A large number of commenters responded to this request, both at the public workshop and in written comments. The vast majority of comments favored the inclusion of international emissions and reductions, both for reporting and registration. Some comments, however, raised concern about the reliability of reports on non-U.S. emissions and reductions, and the potential for double-counting reductions that are also recognized or credited by other countries.

DOE has responded to the comments by allowing entities to both report and register emissions and emission reductions occurring outside the United States, subject to certain requirements. To register such international emission reductions, entities must first report on their domestic U.S. operations and meet all requirements for registration. Entities intending to register emission reductions derived from non-U.S. operations or offsets must meet all of the requirements for registering reductions from U.S. operations. For example, a large emitter will have to submit an emissions inventory for all non-U.S. operations covered by the entity's report. Registered emission reductions must reflect net reductions, based on an entity-wide assessment of changes in all emissions, including changes in sequestration and avoided emissions. A person or organization without domestic U.S. operations is not allowed to report or register international emissions and emission reductions, although that person or organization's non-U.S. emission reductions may be reported as an offset reduction by an entity participating in the 1605(b) program. Emissions reductions credited or required under the greenhouse gas programs of other countries must be

specifically identified as such. Because of the need for this disclosure and other national differences, all reports on international emissions and emission reductions must be compiled and reported on a country-specific basis.

An entity that chooses to report on some portion of its non-U.S. operations must do so in a manner that is consistent with the definition of the entity, as set forth in its entity statement (see § 300.5). In this regard, the entity's coverage of non-U.S. operations must be done in way that is fully consistent with its management structure. For example, if an entity chooses to report on multiple elements of its North American operations, including some elements outside the U.S., then all such operations must be included. An entity may register emissions reductions in a portion of the countries in which it has operations only if the decision to include or exclude countries follows the entity's organizational structure. This approach is consistent with how the revised General Guidelines treat all parent or holding company relationships with subsidiaries.

#### 2. Whether To Provide for Registered Emissions Reductions

In the December 5, 2003 proposed General Guidelines, DOE proposed to allow reporters to "register" reductions if they met specific, more stringent, reporting requirements designed to increase the credibility of reported emissions and emission reductions. DOE explained that allowing the option of registration would provide special recognition to those entities that were willing to meet additional requirements, while ensuring that all of the program elements set forth in section 1605(b) of EPACT would remain available to participants that did not choose to register their reductions.

Public comment on the registration option was mixed. There was some support for allowing an option to provide more comprehensive data to DOE, but other comments expressed concern that a system that differentiated between entities simply reporting and those registering would automatically devalue all reductions not registered. Many supported only one type of recognition, either reporting alone or registration alone, but not two classes of reporting. After considering the comments, DOE nevertheless has retained the distinction between reporting and registering in the revised General Guidelines. DOE continues to believe this is the most effective method for improving the program, including improving the accuracy of the reports, as directed by the President, while

continuing to cover all of the program elements required by the statute. The main distinction between registering and reporting under the revised guidelines concerns the degree to which individual reports cover all of the entity's emissions and emission reductions. Under the revised guidelines, large emitters interested in "registering" reductions must submit entity-wide emission inventories and will be recognized only for net reductions in their entity-wide emissions. DOE believes that data that reflects entity-wide emissions and reductions are better indicators of the entity's overall contribution to greenhouse gas reductions and should, therefore, be clearly distinguished from reports that are not entity-wide. DOE believes this characteristic, together with the other additional requirements specified in the guidelines, are sufficiently significant to warrant a unique designation. Comments on the issue of registration were often linked to the issue of transferable credits, which is addressed below (II.B.4).

#### 3. Whether To Modify the Proposed Basic Requirements for Registration

In addition to the general comments received on the desirability of allowing reductions to be "registered," a number of more specific comments addressed two of the key requirements for registration: (1) The requirement for entity-wide reports by large emitters, and (2) the limiting of registered emission reductions to only those that were achieved after 2002.

a. *Requiring large emitters to report entity-wide emissions and reductions.* As a prerequisite for registration, DOE proposed to require large emitters to submit an inventory of their total emissions and to complete an entity-wide assessment of emission reductions. Many comments opposed one or both of these requirements. In particular, many commenters advocated a change to permit the registration of emission reductions resulting from individual projects (or actions), rather than reserving registration for those entities that could demonstrate net, entity-wide emission reductions.

Most of the emission reductions that have been reported under the existing program are based on identifiable "projects" or actions. Over 3,000 distinct projects have been reported to DOE since the inception of the program. The actions to reduce emissions vary widely and include recovery of landfill methane, improved energy efficiency, recycling, switching from coal or oil to natural gas, and the generation of electricity from nuclear power or

renewable energy, and many others. Because most large companies and institutions regularly take actions that have as one of their effects the reduction of greenhouse gas emissions, there are always many candidates for project-based emission reductions. But the net effect of such project-based reductions on an entity's total emissions is often questioned, because large entities may be taking actions that reduce certain emissions, while simultaneously taking other actions that increase other emissions. Furthermore, it is impossible to evaluate the significance of a particular entity's actions to reduce emissions unless the total emissions of that entity are known. For these reasons, a number of commenters favored retaining the entity-wide focus of the proposed revisions to the General Guidelines. DOE continues to find these arguments persuasive, and therefore has retained the provision requiring large emitters who register to complete an entity-wide inventory of emissions and to calculate emission reductions on the basis of an entity-assessment of changes in emissions.

The focus on entity-wide emission reductions does not, however, preclude entities from including in their entity-wide assessment the effects of "projects," whether they are captured indirectly in measures of changes in greenhouse gas emissions intensity or their total emissions, or directly through the calculation of increased carbon storage resulting from tree plantings, increased avoided emissions from nuclear power and renewable energy generation, or reductions calculated using various action-specific methods, such as the recovery of landfill methane, that are specified in the draft Technical Guidelines.

*b. Limiting registration to post-2002 reductions.*

In the December 5, 2003 proposed General Guidelines, DOE proposed to permit the registration of only those emission reductions achieved after 2002. Most public comments opposed restricting registration to post-2002 reductions. Most argued that the revised guidelines should provide full recognition to any reduction achieved after the statutory base year of 1990, as long as the entity complied with the requirements of the revised guidelines. DOE has retained this restriction, however, because it believes the arguments against such restriction are contrary to the intended focus of the revised Guidelines. The restriction is intended to focus the program on recent and future efforts to reduce greenhouse gas emissions, rather than on actions taken many years ago. Limiting

registered reductions to those achieved after 2002 will also provide an indication of reporting entities' contributions to the President's goal of reducing the greenhouse gas emissions intensity of the U.S. economy by 18 percent between 2002 and 2012. In addition, this forward-looking focus helps enhance the transparency and verifiability of the reported data. Even if the guidelines permitted entities to register reductions achieved prior to 2003, DOE believes it is unlikely that most entities would be technically capable of meeting all of the requirements of the revised guidelines for earlier years, unless they already had extensive emission measurement and recordkeeping processes in place. The revised General Guidelines still permit reporting of historical activity, however, and therefore fully comply with the statutory requirements of section 1605(b).

**4. How To Assign Responsibility for Reporting Emissions and Emission Reductions**

In the December 5, 2003 proposed General Guidelines, DOE proposed that: emission inventories cover all emissions from stationary or mobile sources within the organizational boundaries of the entity (proposed section 300.6(b)); and the entity responsible for emission reductions, avoided emissions or sequestered carbon would be the legal owner of the facility, land or vehicle which generated the affected emission, generated the energy that was sold so as to avoid other emissions, or was the place where the sequestration action occurred (proposed section 300.8(e)).

Few comments were received on these proposals and the revised General Guidelines contain provisions that closely parallel those included in the December 5 proposal (see sections 300.6(d) and 300.8(k)).

The draft Technical Guidelines further amplify the revised General Guidelines provisions and, in some cases, identify exceptions to these general rules. The relevant technical guidance falls into the following categories: indirect emissions, biogenic (or natural) emissions, avoided emissions, emissions from manufactured products and transfers of greenhouse gases to other entities.

*Indirect Emissions:* The draft Technical Guidelines specify that both the users and generators of electricity, steam and hot/chilled water report the emissions associated with these forms of distributed energy, and that each report a portion of the associated reductions. The guidelines recognize that the emission inventories associated with

indirect emissions will overlap with those associated with the generation of electricity and other forms of distributed energy. This overlap is explicit and will be clearly identified in EIA's database of entity reports. With respect to emission reductions, the draft Technical Guidelines specify methods that will attribute reductions associated with the declines in the emissions intensity of generation to the owners of the energy generating facilities that resulted in these declines. Emission reductions associated with reductions in the use of electricity or other forms energy would be attributed to the end users.

*Biogenic (or natural) Emissions:* Emissions associated with the combustion or decay of biomass is another area where the draft Technical Guidelines would establish some special rules. Most of the carbon sequestered in growing trees is eventually reemitted after the trees have been harvested. These emissions occur at many sites: on the land where the trees grew, at lumber mills and other wood processing facilities, at landfills, and some in waste-to-energy plants or in plants burning methane recovered from landfills. Since entities that grow trees would report the reductions associated with sequestration but most of such sequestered carbon eventually would be reemitted if the trees were harvested, the guidelines would assign most of the responsibility for such emissions to the tree growers, rather than to the users or disposers of wood products. The guidelines would require most users and disposers of wood products to treat any resulting carbon emissions as biogenic. For example, any entity that directly combusted wood or wood products would treat the resulting emissions of carbon dioxide as biogenic. However, there is a further exception to this rule. The guidelines specify that increased production and distribution of methane recovered from landfills should be presumed to substitute for natural gas, based on its heat content. Note that methane emissions from landfills would be considered anthropogenic, while the carbon dioxide produced by the flaring of such methane would be considered biogenic.

*Avoided Emissions:* "Changes in avoided emissions" is one of the five methods of calculating emission reductions. While avoided emissions are not included in emission inventories, the draft Technical Guidelines would enable entities that increase the generation of electricity or other forms of distributed energy to account for the effects of this increased generation on the emissions of other generators. For example, the owner of the wind farm or

nuclear power plant may qualify to register the avoided emissions associated with these facilities, while the competing generator (that reduces its total generation and emissions directly), the utility that distributes the renewable or nuclear power to users, and the ultimate user may not register reductions resulting from the actions of the wind farm or nuclear power plant owner.

*Emissions from Manufactured Products:* A number of manufactured products or materials contain anthropogenic greenhouse gases that are emitted to the atmosphere during their normal life cycle. In general, the draft Technical Guidelines require the owner, rather than the manufacturer, of the product or material to report as part of its emissions inventory these emissions at the time the emissions occur.

*Transfers of Greenhouse Gases to Other Entities:* Entities that capture greenhouse gases and sell or otherwise transfer them to another entity usually would have to report such transactions, but their total emissions inventory would reflect only those gases actually released by the reporting entity, not those quantities transferred. Entities that purchase or otherwise receive greenhouse gases from other entities would also have to report such transactions, but should also include in their emissions inventory only those quantities of gases actually released. The receiving entity should also record the amount of transferred gas either destroyed or permanently sequestered. To qualify for a registered emission reduction in such cases, an entity would have to increase the net quantity of emissions destroyed or permanently sequestered relative to its base period. The entity responsible for the destruction or sequestration may report or register such reductions, or may assign the reporting rights for such reductions to other entities, such as the entity that initially captured the gas.

##### 5. "Transferable Credits"

DOE received many public comments on whether the December 5, 2003 proposed General Guidelines would faithfully carry out the President's February 14, 2002 statement that the Government would give "transferable credits" to entities that can show real reductions of greenhouse gas emissions. Although there appears to be a deeply felt disagreement on this question, the disagreement seems to be completely over form, and not substance. There is substantial if not complete agreement among the commenters on the permissible reach of the Guidelines, on what the President intended the

Guidelines to accomplish, and on the extent of and limitations on the Guidelines' ability to provide protection to reporting entities in some future potential greenhouse gas legal or regulatory regime.

No commenter on the December 5, 2003 proposal argued that DOE has the legal authority to give emissions reductions that are reported or registered in the 1605(b) program a regulatory or financial value under some future climate policy. For example, the Edison Electric Institute (EEI), which has argued that DOE's Guidelines should do something more to award "transferable credits" (and "baseline protection") to entities reporting or registering reductions in the 1605(b) program, has also stated that the 1605(b) program can only provide "a nonbinding hedge against current and future climate regulatory policy." (EEI, Feb. 17, 2004). EEI incorporated earlier written comments of the Electric Power Industry Climate Initiative (EPICI) that also reflected the view that DOE may not issue "transferable credits" guaranteed to have value under a future climate policy:

[W]e know of no plans by the President, in calling for these distinctly different reforms [transferable credits and baseline protection], to attempt by guidelines to bind a future President or Congress, and we are not suggesting that he attempt to do so. A recognition or certification by DOE of reductions reported accurately pursuant to revised 1605 guidelines could not be said to have such a binding effect.

EPICI, Sept. 25, 2002, at 16. Similarly, the Competitive Enterprise Institute (CEI), the Natural Resources Defense Council (NRDC), and several other commenters who urged that the Guidelines either could not or should not do anything further with respect to "transferable credits" also conclude that DOE lacks the authority to provide credits that would have a regulatory or financial value under a future climate policy. CEI, Jan. 9, 2004; NRDC, Feb. 17, 2004; NESCAUM, Feb. 16, 2004; Pew Center, Feb. 11, 2004; and State of New Jersey, Feb. 17, 2004.

DOE has carefully considered all of these comments and has decided that its revised General Guidelines and draft Technical Guidelines appropriately meet the objectives the President sought to accomplish on this point. In particular, the Guidelines provide more detail on the criteria by which reporting entities can be credited with "registered reductions". DOE believes that its substantial revisions to the 1605(b) General Guidelines, accompanied by the detailed Technical Guidelines, including the provisions regarding

registered reductions, fully carry out the President's objectives for improvements to the program.

As stated by the Chairman of the Council on Environmental Quality in his opening remarks at the Washington workshop on the Notice of Inquiry in this proceeding, the revised 1605(b) Guidelines can "create a building block of recognition that \* \* \* will be acknowledged and recognized with respect to any future climate policy" (Transcript 3-4, November 18, 2002). By establishing a more credible database of emission inventories and net, entity-wide emission reductions, the reductions that may be registered under the revised General Guidelines and draft Technical Guidelines appropriately carry out the policy objectives set forth by the President's statement. It is important to note that under both current law and the President's policy, the decisions to make and report emission reductions remain voluntary.

##### 6. Whether To Include the General Guidelines in the Code of Federal Regulations

Some commenters argued that it is unlawful or inappropriate for DOE to issue the revised General Guidelines as a proposed rule and, when final, place them in the *Code of Federal Regulations*. One commenter wrote to the Director of the Federal Register, who oversees the publication of both the **Federal Register** and the *Code of Federal Regulations*, asserting that it is unlawful and inappropriate to codify the General Guidelines. The Director responded in a letter that has been added to the other public comments filed in this proceeding (*see* Letter, Raymond A. Mosley, Director of the Federal Register, to William L. Fang, January 23, 2004).

DOE has considered these comments, but continues to believe it is both lawful and desirable that the revised General Guidelines be included in the *Code of Federal Regulations*. The revised General Guidelines clearly are a "rule" within the meaning of that term in the Administrative Procedure Act (5 U.S.C. 551(4)), and they were properly classified as a "rule document" by the Office of the Federal Register. The Director of the Federal Register also concluded that it is proper under the Federal Register Act (44 U.S.C. 1501-1511) for DOE to include the revised General Guidelines in the *Code of Federal Regulations*. The revised General Guidelines will be more accessible to the public if they are preserved in the *Code of Federal Regulations*. Placing the General Guidelines in the *Code of Federal*



*Regulations* also will not affect the rights of reporting entities because codification of rule documents does not affect their nature as substantive or procedural or legally-binding or non-binding. Lastly, codification is handled by the Office of the Federal Register, and it will not add any time to the notice and comment process required by section 1605(b).

### C. Section by-Section Discussion of the General Guidelines

#### 1. General (§ 300.1)

A new paragraph (f) has been added to this section to indicate that DOE intends to periodically review and update the General Guidelines and the Technical Guidelines. These periodic reviews would consider possible additions to the list of covered greenhouse gases, changes to the minimum, quantity-weighted quality rating for emission inventories, modifications to the benchmarks specified by DOE, changes to the minimum requirements for registered emission reductions, and other possible changes to the General and Technical Guidelines. DOE intends to coordinate any changes to the Guidelines in order to minimize the number of times such changes are made and to ensure that such changes are made only after a thorough, public review by DOE and interested stakeholders.

#### 2. Definitions (§ 300.2)

The Definitions section of the revised General Guidelines defines the key terms used in the General Guidelines. The draft Technical Guidelines contain a Glossary that references all of the terms defined in the General Guidelines and contains additional terms used only in the draft Technical Guidelines. Although comparatively few changes

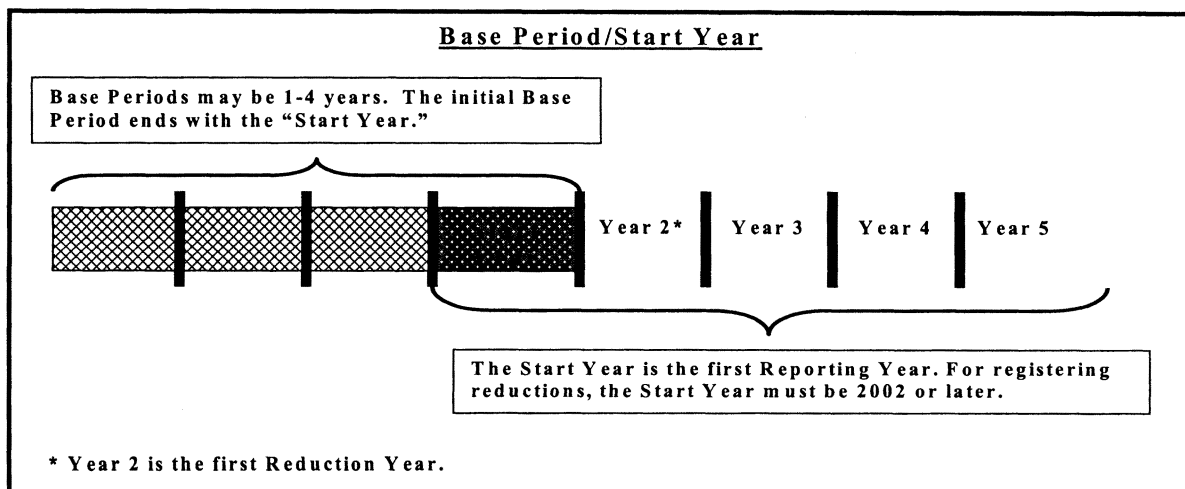
have been made to the definitions contained in the proposed General Guidelines published on December 5, 2003 a few new terms have been added in response to public comments on the proposal and the completion of the draft Technical Guidelines. The new terms defined in today's revised General Guidelines are: "aggregator," "start year," "base period," and "base value." The definitions of other terms have been modified to improve their clarity.

**Aggregator.** Under the existing program, a number of organizations have aggregated the emission reductions of many small entities and submitted a single report to EIA. Some comments suggested that a role for such aggregators be more clearly defined under the revised General Guidelines. In response to these comments, DOE has defined and used the term "aggregator" in the revised General Guidelines. As defined, an aggregator might be any trade association, company or organization that collects or compiles information and reports to EIA on behalf of businesses, organizations, households or other entities that could report directly, but have chosen not to do so. Because the aggregator would be the entity reporting to EIA, EIA would recognize the aggregator as the entity responsible for any registered emission reductions. An aggregator may be a small or a large emitter and must report on its own emissions in accordance with whatever rules are applicable to its entity type, except that an aggregator that is a small emitter may choose not to report on any of its own emissions. In reporting on behalf of third-party businesses, organizations, or households, the aggregator must follow the reporting rules that would apply to those entities if they had themselves reported. DOE encourages trade associations and other organizations to

serve as aggregators or to assist third parties to report directly.

**Start year.** "Start year" is a new term introduced to identify when an entity begins to report under the revised guidelines and to establish more clearly the first year for which an entity reports an emissions inventory. The start year is the last year of the base period(s) initially established by an entity and the year immediately preceding the first year for which an entity reports emissions reductions. For a particular entity, the start year remains fixed, even if changes in the entity require adjustments in base periods or base values.

**Base period and Base value.** In the December 5, 2003 proposed General Guidelines, the terms "base year" and "base period" were used, but definitions for those terms were not included in section 300.2. "Base year" was a single year upon which emission reduction calculations were often based. "Base period" was a period of 2–4 years that might also be the basis for emission reduction calculations. In today's revised General Guidelines, the term "base year" has been dropped and the term "base period" has been modified to include time periods of 1–4 years. Consequently, the term "base period" now encompasses the meanings originally given to both terms. DOE also has included a definition for the term "base value," which is used to specify the quantitative value (e.g., emissions, emissions intensity, megawatt hours (MWhs), carbon stock) used to calculate reductions. This value is usually derived from emissions and/or performance of an entity (or subentity) during the base period. The following graphic depicts the relationships between a start year, base period, first reduction year and reporting years.



*De minimis emissions.* The revised General Guidelines include a *de minimis* provision that allows reporters to omit emissions from their inventories that are, in total, less than 3 percent of the entity's emissions. This provision spares reporters the sometimes disproportionate cost of accounting for small emission quantities whose contribution to total emissions is small. The definition has been changed from the initial proposal as a result of public comment. Public comments supported a variety of modifications to the earlier proposal to allow exclusion of 3 percent or 10,000 tons, whichever is less. Some favored expanding the *de minimis* level to 5 percent of total emissions, although some also endorsed the 3 percent *de minimis* level, with no physical maximum, and a few opposed any *de minimis* exclusion. The revised General Guidelines retain the 3 percent level, but eliminate the 10,000-ton maximum exclusion. The 3 percent level appears to be the minimum level considered practical by many potential reporters. Given the inherent uncertainty of some of the measurement and estimation methods specified in the guidelines, emissions representing less than 3 percent of an entity's total could be considered immaterial. This approach ensures that all reporters may exclude the same percentage share of their total emissions. The revised General Guidelines also make clear that a large emitter, when starting to report, must provide an estimate of the emissions that are being excluded, and that *de minimis* emissions must be periodically re-estimated, at least every five years, to ensure that they do not exceed the 3 percent maximum. The *de minimis* exemption would not be applicable to small emitters that choose to report on the emissions of specific activities, rather than on their total, entity-wide emissions.

*Greenhouse gases.* This definition has been slightly modified from the proposal to indicate that entities may report on other gases or particles that have been demonstrated to have significant, quantifiable climate forcing effects when released to the atmosphere in significant quantities only if DOE has established or approved methods for estimating the emissions and emission reductions associated with such greenhouse gases. DOE will consider public recommendations on appropriate methods for estimating the emissions and emission reductions associated with any gases that have significant, quantifiable climate forcing effects. Once DOE has concluded that an anthropogenic emission meets the

definition of greenhouse gases specified in the guidelines and has modified the Technical Guidelines to establish methods for accurately quantifying such emissions, DOE will begin accepting reports on such emissions and will initiate the interagency and public review process necessary to add the new emission to the list of gases in section 300.5 of the General Guidelines. Only after DOE has formally added the identified emission to the list of greenhouse gases specifically identified in the General Guidelines would entities be permitted to register reductions associated with such emissions.

### 3. Guidance for Defining and Naming the Reporting Entity (§ 300.3)

Public comments on this section of the revised General Guidelines varied widely. Some advocated that DOE require entities to report only at the highest meaningful level of aggregation, while others recommended that entities be given more flexibility in determining how best to define themselves. As revised, this section of the General Guidelines now addresses three distinct issues: (1) The basis for defining entities; (2) the level of aggregation; and (3) the choice of an entity name. This section also has been modified from the December 5, 2003 proposal to accommodate entities with non-U.S. operations that report reductions from those operations.

With respect to the basis for defining entities, public comments have suggested that DOE consider a variety of different bases, both more general and more specific than the "legal basis" originally proposed and now included in the definition of "entity" in section 300.2. DOE has made no change in this section because it continues to believe that the basis for defining a reporting entity should be found in existing Federal, State, or local law. DOE believes it is reasonable to define entities according to their legal status because that status provides a definable, identifiable basis for determining reporting parameters.

A variety of comments were also submitted on DOE's guidance regarding the appropriate level of aggregation of entities. DOE had proposed to encourage entities to report at the highest meaningful level of aggregation, but to provide entities with the flexibility to choose an appropriate level of aggregation. Some comments supported requiring that entities report at the highest level of aggregation, such as parent or holding company, while others wanted the flexibility to define their entity at the subsidiary or plant level. DOE is allowing reporting entities

to decide on the level of aggregation, subject to the condition that they report at the next higher level of aggregation any time they choose to report on two or more subsidiaries of that level. For example, an entity may be the aggregation of three subsidiary entities: A, B, and C. If A and B want to report together, then they must also include C. DOE chose this approach because it permits entities some flexibility in determining how to define themselves, while at the same time it discourages entities from reporting only on those subsidiaries that had achieved significant reductions in emissions.

Finally, this section now includes guidance on the selection of a name for reporting entities, which previously appeared in the requirements for the Entity Statement.

### 4. Selecting Organizational Boundaries (§ 300.4)

Because many entities are involved in joint or shared financial and/or managerial operations, such as joint ventures, partnerships, leases, and parent/subsidiary relationships, guidelines are needed for defining entity boundaries. DOE has considered several options, including operational control; financial control; and equity share, as these terms are used in the Greenhouse Gas Protocol developed by the World Business Council for Sustainable Development/World Resources Institute (WBCSD/WRI). Public comments voiced support for all the options, though the comments provided little input on ways to preserve flexibility in the establishment of boundaries while also preventing or further discouraging the shifting of emissions to non-reporting parts of the entity in order to create the appearance of net emission reductions. Some comments argued in favor of fixed rules for deciding whether to include leased and partially owned operations, while others argued that the choice should be left to the discretion of the reporting entity. Commenters also raised concerns regarding the differences between the terminology used in DOE's proposed General Guidelines and the terms used in the WBCSD/WRI Protocol.

A number of changes have been made to respond to these comments. The term "operational" used in the DOE's original proposal has been changed to "organizational" in the revised General Guidelines. The section now indicates that the primary basis for defining organizational boundaries should be financial control, although entities retain the flexibility to use other approaches, such as equity share or operational control if necessary. DOE believes that financial control should be

used where feasible because it is the best indicator of which entity is most likely to control both the operational and investment decisions necessary to affect greenhouse gas emissions. The use of a single method, financial control, also minimizes potential conflicts between different entities that share ownership of a facility. In such situations, the use of different methods for determining organization boundaries might lead to conflicting claims regarding reported emission reductions.

#### 5. Submission of an Entity Statement (§ 300.5)

A range of comments touched on DOE's proposed requirements for the entity statement, including some that advocated differentiating among large emitters intent on registering emissions reductions, small emitters intent on registration, and entities that do not intend to register emission reductions. In response to these comments and in an effort to more clearly define the early steps in the reporting process, DOE has made a number of changes to this section.

Two new sub-sections, "Choosing a start year" and "Determining the type of reporting entity," have been added to more clearly define the first steps in the reporting process, and the requirements for entity statements have been differentiated for each of the three major categories of reporters.

DOE solicited comments concerning whether, and at what cutoff level, small emitters should be allowed to report emissions and register emissions reductions without having to meet all of the requirements for large emitters. Little feedback was received. DOE has retained the simplified reporting requirements for small emitters in the revised General Guidelines. EIA will provide a method that entities can use to quickly and inexpensively estimate their emissions to determine whether they qualify as small emitters. This method, the Simplified Emissions Inventory Tool (SEIT), will enable entities to prepare a rough estimate of their emissions inventory based on readily available quantities of fuel use, land type, livestock, or type and size of building(s) owned, although such rough estimates would not meet the minimum requirements for an emissions inventory. The SEIT is defined and referenced in the revised General Guidelines and discussed in Chapter 1 of the draft Technical Guidelines.

#### 6. Emissions Inventories (§ 300.6)

A number of comments were received on this section of the proposed General Guidelines. Some opposed the

requirement for entity-wide inventories as a precondition to the registration of emission reductions, while many others favored some type of inventory requirement. Because emission inventories provide a comprehensive assessment of an entity's total emissions in a given year, DOE is proposing to retain the requirement that large emitters complete an emissions inventory if they intend to register emission reductions. The major changes to section 300.6 involve the emissions estimation method rating system.

DOE has modified this section of the revised General Guidelines to reflect the quality rating system incorporated into Greenhouse Gas Emissions Inventory Guidelines (Chapter 1 of the draft Technical Guidelines). The emissions rating system is designed to: (1) Help achieve the President's stated objective of improving the "accuracy, reliability, and verifiability" of reported emissions; (2) ensure that the bulk of reported emissions that meet this standard are as accurate as available estimation methods permit; (3) create an incentive for reporters to use more accurate methods over time; and (4) be cost-effective and practical to implement.

The rating system is based on DOE rankings of available emissions and sequestration estimation methods by considering accuracy, reliability, verifiability, and practical application. Using these criteria, the best available methods are usually rated "A," and given a value of 4 points. The next best methods are usually rated "B" and given a value of 3 points; the next best rated "C" and given a value of 2 points; and the least desirable methods rated "D" and given a value of 1 point. The revised General Guidelines require the weighted average rating of all reported emissions and sequestration to be 3.0 or higher to qualify for registration. This provision reflects DOE's belief that methods given an A or B rating are sufficiently accurate to serve as the basis for entity-wide reporting, while methods given a C or D rating should be used only for those gases or sources that represent a small share of the reporting entity's total emissions.

The emissions rating system is an *ordinal* rating system in the sense that while an A rating is considered better than a B rating, and B is better than C, the rating system doesn't specify how much better A is than B. Similarly, two "A" rated methods for different sources may not be of comparable quality. Both will be the best method available for a given source, but they may vary in degree of accuracy, reliability, verifiability or cost.

Paragraph (c) of section 300.6 permits and describes how reporters may obtain approval for the use of estimation methods not included in the Technical Guidelines. DOE encourages reporters to improve their emissions inventory methods over time, and DOE will periodically consider the desirability of raising the minimum acceptable weighted average.

#### 7. Net Entity-Wide Emission Reductions (§ 300.7)

A number of comments addressed entity-wide reductions, including the requirement for entity-wide assessments of emission reductions by large emitters, the simplified requirements proposed for small emitters, the procedures for third party emission reductions (offsets), and adjusting for year-to-year increases in net emissions. After full consideration of these comments, DOE has made changes to its original proposal.

DOE proposed to allow the reporting of third party emissions reductions, referred to as offsets, because it would encourage large emitters to actively support emission reductions by non-reporting entities, especially small emitters. Comments were received both in support of and in opposition to DOE's proposal. Some advocated that DOE permit reporting entities to register the "project-based" emission reductions achieved by third parties, without requiring those third parties to meet the requirements of reporting directly to the program. Others felt that offset reductions, especially if based on individual projects, should meet "additionality" tests, to try to ensure that the reductions would not have occurred anyway, or at least that there be some assurance that the third party did not have net increasing emissions.

DOE has retained the provision allowing reporters to register the emission reductions achieved by third parties, as long as those third parties meet the requirements of reporting directly to the program. DOE believes that this provision will provide an incentive for emitters with limited options for reducing their own emissions to support other efforts to reduce or sequester greenhouse gas emissions. The revised General Guidelines state that the third party achieving the offset reductions cannot also report directly to the program, at least not in the same year as the offset reductions are reported (see related discussion on Aggregators in II.B.4 of this preamble).

The provision that requires entities to adjust for year-to-year increases in net

emissions has been modified and expanded to improve its clarity.

#### 8. Calculating Emission Reductions (§ 300.8)

A number of comments were received on this section. In response to these comments and its own further analysis, DOE has significantly expanded this section in order to more clearly define the necessary steps in the process of calculating emission reductions. It now begins with guidance on the selection of the appropriate calculation methods and the establishment of subentities for the purpose of calculating reductions.

The revised General Guidelines are now clearer about how subentities are defined and used in the calculation of emissions reductions. An entity is required to define a subentity, which is a discrete component of the reporting entity with clearly defined emissions and reductions, if the entity must use more than one emissions reduction calculation method. This approach provides the flexibility needed by many entities whose reductions cannot be comprehensively estimated with a single calculation method, while at the same time creating a transparent way to track multiple types of reductions. Reporting entities have considerable flexibility in defining such subentities, but they must ensure that they are not overlapping and that the sum of the emissions of all subentities equals the total emissions reported by the entity.

Changes have been made to the descriptions of the five calculation methods identified in the proposal. Because of the important interactions between the emission intensity and avoided emissions methods in the energy distribution sector, the revised General Guidelines provide, in section 300.8(h)(4), that this interaction must be accounted for by using the special calculation methods described in Chapter 2 of the draft Technical Guidelines, which provides detailed guidance on the selection and application of calculation methods. This technical guidance and some of the issues upon which DOE hopes to focus public comment are described in the separate Notice of Availability published in today's **Federal Register**.

The name for the fifth calculation method has been changed to Action-Specific Method. DOE hopes that this term will help minimize some of the confusion that seems to accompany the use of the term "project".

#### 9. Reporting and Recordkeeping Requirements (§ 300.9)

DOE received comparatively few comments on this section of the

proposed guidelines, but DOE has included additional guidance in the revised General Guidelines to clarify the intent of these requirements, especially with respect to the types of records that must be maintained. Because the purpose of the 3-year record maintenance requirement is to permit verification of entity reports, DOE applies this requirement only to entities intent on registering their emission reductions.

Some comments noted the absence from the proposed General Guidelines of any provision on protection of confidential business information that may be included in an entity's section 1605(b) report. Section 1605(b)(3) of the Energy Policy Act of 1992 provides that any trade secret or commercial or financial information in 1605(b) reports shall be protected as provided in 5 U.S.C. 552(b)(4), one of the exemptions from mandatory disclosure set forth in the Freedom of Information Act (*see* 42 U.S.C. 13385(b)(3)). DOE, therefore, has added section 300.9(e) to the revised General Guidelines to address the protection of confidential information submitted in entity reports. The new paragraph references the statute and DOE's procedures for making determinations about information claimed by submitters to be entitled to exemption from public disclosure. If an entity requests confidentiality for information in its report, and DOE determines that the information falls within 5 U.S.C. 552(b)(4), then EIA will not make the information publicly available in its database. Because the primary purpose of the 1605(b) voluntary reporting program is to enable reporting entities to demonstrate achieved reductions of greenhouse gases, DOE believes few reporters will request confidentiality. This has been the experience under the current guidelines.

#### 10. Certification of Reports (§ 300.10)

Public comments encouraged DOE to not require CEO certification of 1605(b) reports, but instead to require an entity officer or manager with signing authority for the entity and responsibility for ensuring environmental compliance to provide entity certification. One reason given for this suggested change was the burden it would place on a CEO and other senior managers. Some also indicated that the CEO may not be the most knowledgeable officer of the organization with respect to greenhouse gas emissions and reductions. In response to these comments, which DOE finds persuasive, DOE has modified the certification requirement

to provide that the certifying official may be the officer or employee of the company or organization who is responsible for reporting the entity's compliance with environmental regulations.

A second concern voiced in the public comments was that reporting entities might not be able to certify that no double-reporting (double-counting or duplicate reporting) occurred because events may transpire beyond the reporting entity's knowledge and boundaries. DOE has retained the proposed requirement that entities take reasonable steps to assure that no double-reporting has occurred. For example, communicating with other companies or organizations that share financial or operational control of the facilities covered by an entity's report regarding the need to avoid double-reporting would be considered a reasonable step.

DOE has revised section 300.10 to include more detailed certification requirements for entities that request to have their emissions reductions registered. DOE believes the more specific certification statement requirements will enhance the reliability of reported reductions.

#### 11. Independent Verification (§ 300.11)

Public comments generally supported DOE's proposal of optional, rather than mandatory, independent verification. In response to these comments and as a result of DOE's further consideration of this issue, DOE has substantially revised and expanded the guidance on independent verification to ensure that the revised General Guidelines contain sufficient guidance for full implementation of these requirements by EIA. Because of the terminology used by national standards organizations, DOE has revised the verification text to clarify that the independent verifier would "attest" to the accuracy and reliability of reports as established by professional standards. DOE also recognizes that independent "verifiers" cannot ensure a priori that reporting entities will keep verifiable records for at least three years. They can only attest to whether the current records, if kept for three years, would allow for verification. The reporting entity must certify it will keep verifiable records for at least three years.

#### 12. Acceptance of Reports and Registration of Entity Emission Reductions (§ 300.12)

DOE received few substantive comments on this section of the proposed General Guidelines, but DOE has made some changes to more clearly

specify the procedures EIA should follow in reviewing and accepting or rejecting reports.

### 13. Incorporation by Reference (§ 300.13)

Although the rules of the Director of the Federal Register require incorporation by reference of the draft Technical Guidelines in these interim final General Guidelines, DOE plans to issue final General Guidelines that incorporate the final Technical Guidelines before the effective date of the interim final General Guidelines. If necessary, DOE will amend the effective date of the interim final General Guidelines in order to provide adequate time to fully consider all comments and issue final General and Technical Guidelines.

## III. Regulatory Review and Procedural Requirements

### A. Review Under Executive Order 12866

Today's action has been determined to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Because of new requirements associated with the revised General Guidelines and the Technical Guidelines, it is anticipated that the costs for participants to report and register reductions are likely to increase. The anticipated benefits of the new requirements include enhanced data quality associated with reported and registered reductions. The magnitude of these effects has not been assessed.

### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the

Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed today's revised General Guidelines for the Voluntary Greenhouse Gas Reporting Program under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The Guidelines establish procedures and guidance for the accurate voluntary reporting of information on greenhouse gas emissions and reductions. The Guidelines are voluntary, and the Agency anticipates that the small entities will weigh the benefits and costs when deciding to participate. On the basis of the foregoing, DOE certifies that these Guidelines will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

### C. Review Under the Paperwork Reduction Act

EIA previously obtained Paperwork Reduction Act clearance by the Office of Management and Budget (OMB) for forms used in the current Voluntary Reporting of Greenhouse Gases program (OMB Control No. 1905-0194). EIA is preparing new forms and associated instructions to implement the revised guidelines for the program, and it will publish a separate notice in the **Federal Register** requesting public comment on the proposed collection of information in accordance with 44 U.S.C. 3506 (c)(2)(A). After considering the public comments, EIA will submit the new forms, instructions, and related guidelines to OMB for approval pursuant to 44 U.S.C. 3507 (a)(1).

### D. Review Under the National Environmental Policy Act

DOE has concluded that these revised General Guidelines fall into a class of actions that will not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). This action deals with the procedures and guidance for entities that wish to voluntarily report their greenhouse gas emissions and their reduction and sequestration of such emissions to EIA. Because the Guidelines relate to agency procedures, the Guidelines are covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### E. Review Under Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's action and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### F. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

### G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of

Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these revised General Guidelines meet the relevant standards of Executive Order 12988.

#### *H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of a Federal regulatory action on state, local, and tribal governments, and the private sector. The Department has determined that today's action does not impose a Federal mandate on state, local or tribal governments or on the private sector.

#### *I. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. These revised General Guidelines would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *J. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to

promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### *K. Congressional Review*

As required by 5 U.S.C. 801, DOE will report to Congress the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 10 CFR Part 300**

Administrative practice and procedure, Energy, Gases, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on March 16, 2005.

**Karen A. Harbert,**

*Assistant Secretary for Policy and International Affairs.*

■ For the reasons set forth in the preamble, DOE amends Chapter II of Title 10 of the Code of Federal Regulations by adding a new Subchapter B consisting of part 300 to read as follows:

#### **Subchapter B—Climate Change**

#### **PART 300—VOLUNTARY GREENHOUSE GAS REPORTING PROGRAM: GENERAL GUIDELINES**

Sec.

- 300.1 General.
- 300.2 Definitions.
- 300.3 Guidance for defining and naming the reporting entity.
- 300.4 Selecting organizational boundaries for registering.
- 300.5 Submission of an entity statement.
- 300.6 Emissions inventories.
- 300.7 Net emission reductions.
- 300.8 Calculating emission reductions.
- 300.9 Reporting and recordkeeping requirements.
- 300.10 Certification of reports.
- 300.11 Independent verification.

300.12 Acceptance of reports and registration of entity emission reductions.

300.13 Incorporation by reference.

**Authority:** 42 U.S.C. 7101, *et seq.*, and 42 U.S.C. 13385(b).

#### **§ 300.1 General.**

(a) *Purpose.* This part and the Technical Guidelines referenced in paragraph (c) of this section govern the Voluntary Reporting of Greenhouse Gases Program authorized by section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)). The purpose of the Guidelines is to establish the procedures and requirements for filing voluntary reports, and to encourage corporations, government agencies, non-profit organizations, households and other private and public entities to submit annual reports of their greenhouse gas emissions, emission reductions, and sequestration activities that are complete, reliable and consistent. Over time, it is anticipated that these reports will provide a reliable record of the contributions reporting entities have made toward reducing their greenhouse gas emissions.

(b) *Registration option.* An entity may request to have its emission reductions registered under § 300.12(b) of this part if it complies with all of the requirements of this part, including the entity-wide reporting standards set forth in §§ 300.6 and 300.7. The requirements for registration, as distinguished from other reporting, are clearly stated in the provisions of these General Guidelines.

(c) *Technical Guidelines.* Further guidance on the interpretation and application of these General Guidelines is provided in the Draft Technical Guidelines for the Voluntary Reporting of Greenhouse Gases Program (hereafter "Draft Technical Guidelines" (incorporated by reference, see § 300.13).

(d) *Forms.* Annual reports of greenhouse gas emissions, emission reductions, and sequestration must be made on forms or software that are available from the Energy Information Administration of the Department of Energy (EIA).

(e) *Status of reports under previous Guidelines.* EIA continues to maintain in its Voluntary Reporting of Greenhouse Gases database all reports received pursuant to DOE's October 1994 Guidelines. Those Guidelines are available from the EIA at <http://www.eia.doe.gov/oiaf/1605/guidelns.html>.

(f) *Periodic review and updating of General and Technical Guidelines.* DOE intends periodically to review the General Guidelines and the Technical

Guidelines to determine whether any changes are warranted; DOE anticipates these reviews will occur approximately once every three years. These reviews will consider any new developments in climate science or policy, the participation rates of large and small emitters in the 1605(b) program, the general quality of the data submitted by different participants, and any changes to other emissions reporting protocols. Possible changes could include, but are not limited to:

(1) The addition of greenhouse gases that have been demonstrated to have significant, quantifiable climate forcing effects when released to the atmosphere in significant quantities;

(2) Changes to the minimum, quantity-weighted quality rating for emission inventories;

(3) Modifications to the benchmarks or emission conversion factors used to calculate avoided and indirect emissions; and

(4) Changes in the minimum requirements for registered emission reductions.

### § 300.2 Definitions.

This section provides definitions for commonly used terms in this part.

*Activity* means any single category of economic production or consumption that produces measurable emissions of greenhouse gases or sequestration, the annual changes of which can be assessed generally by using a single calculation method.

*Aggregator* means an entity that reports to the 1605(b) program on behalf of non-reporting third parties, usually small emitters.

*Avoided emissions* means the emissions displaced by increases in the generation and sale of electricity, steam, hot water or chilled water produced from energy sources that emit fewer greenhouse gases per unit than other competing sources of these forms of distributed energy.

*Base period* means a period of 1–4 years used to derive the average annual base emissions, emissions intensity or other values from which emission reductions are calculated.

*Base value* means the value from which emission reductions are calculated for an entity or subentity. The value may be annual emissions, emissions intensity, kilowatt-hours generated, or other value specified in the 1605(b) guidelines. It is usually derived from actual emissions and/or activity data derived from the Base Period.

*Biogenic emissions* mean emissions that are naturally occurring and are not

significantly affected by human actions or activity.

*Carbon stocks* are the quantity of carbon stored in biological and physical systems including: trees, plants, wood products and other terrestrial biosphere sinks, soils, oceans, sedimentary and geological sinks, and the atmosphere.

*De minimis emissions* means emissions from one or more sources and of one or more greenhouse gases that, in aggregate, are less than or equal to 3 percent of the total annual carbon dioxide (CO<sub>2</sub>) equivalent emissions of a reporting entity.

*Department or DOE* means the U. S. Department of Energy.

*Direct emissions* means greenhouse gas emissions resulting from stationary or mobile sources within the organizational boundary of an entity, including but not limited to emissions resulting from combustion of fuels, process emissions, and fugitive emissions.

*EIA* means the Energy Information Administration within the U.S. Department of Energy.

*Emissions* mean direct release of greenhouse gases to the atmosphere from any anthropogenic (human induced) source and certain indirect emissions (releases) specified in this part.

*Emissions intensity* means emissions per unit of output, where output is defined as the quantity of physical output, or a non-physical indicator of an entity's or subentity's productive activity.

*Entity or reporting entity* means the whole or part of any business, institution, organization or household that:

(1) Is recognized as an entity under any U.S. Federal, State or local law that applies to it;

(2) Is located, at least in part, in the United States; and

(3) Whose operations affect U.S. emissions of greenhouse gases.

*First reduction year* means the first year for which an entity intends to register emission reductions; it is the year that immediately follows the start year.

*Fugitive emissions* means uncontrolled releases to the atmosphere of greenhouse gases from the processing, transmission, and/or transportation of fossil fuels or other materials, such as HFC leaks from refrigeration, SF<sub>6</sub> from electrical power distributors, and methane from solid waste landfills, among others, that are not emitted via an exhaust pipe(s) or stack(s).

*Greenhouse gases* means:

(1) Carbon dioxide (CO<sub>2</sub>)

(2) Methane (CH<sub>4</sub>)

(3) Nitrous oxide (N<sub>2</sub>O)

(4) Hydrofluorocarbons (HFCs)

(5) Perfluorocarbons (PFCs)

(6) Sulfur Hexafluoride (SF<sub>6</sub>)

(7) Other gases or particles that have been demonstrated to have significant, quantifiable climate forcing effects when released to the atmosphere in significant quantities and for which DOE has established or approved methods for estimating emissions and reductions (§ 300.1(f)) describes plans for periodically considering the addition of other gases or particles to this list).

*Indirect emissions* means greenhouse gas emissions from stationary or mobile sources outside the organizational boundary of an entity, including but not limited to the generation of electricity, steam and hot/chilled water that are the result of an entity's energy use or other activities.

*Net emission reductions* means the sum of all annual changes in emissions, avoided emissions and sequestration of the greenhouse gases specifically identified in § 300.6(f), and determined to be in conformance with §§ 300.7 and 300.8 of this part.

*Offset* means an emission reduction that meets the requirements of this part, but is achieved by a party other than the reporting entity and has not otherwise been reported under this program.

*Reporting Year* means the year that is the subject of a report to DOE.

*Sequestration* means the removal of atmospheric CO<sub>2</sub> (carbon dioxide), either through biologic processes or physical processes, including capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere, such as through cropping practices, forest and forest products management or injection into an underground reservoir.

*Simplified Emission Inventory Tool (SEIT)* is a computer-based method, to be developed and made readily accessible by EIA, for translating common physical indicators into an estimate of greenhouse gas emissions.

*Sink* means an identifiable discrete location, set of locations, or area in which carbon dioxide (CO<sub>2</sub>) or some other greenhouse gas is sequestered.

*Source* means any process or activity that releases a greenhouse gas.

*Start year* means the year upon which the initial entity statement is based. For large emitters, it is the first year for which the entity submits a complete emissions inventory under this part. For all entities, it is the year immediately preceding the first year for which the entity intends to register reductions and the last year of the initial base period(s).

*Subentity* means a component of any entity, such as a discrete business line,

facility, plant, vehicle fleet, or energy using system, which has associated with it emissions of greenhouse gases that can be distinguished from the emissions of all other components of the same entity; and, when summed with the emissions of all other subentities, equal the entity's total emissions.

*Total emissions* means the total annual contribution of the greenhouse gases specifically identified in § 300.6(f) to the atmosphere by an entity, including both direct and indirect entity-wide emissions.

*United States or U.S.* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and any other territory of the United States.

**§ 300.3 Guidance for defining and naming the reporting entity.**

(a) A reporting entity must be composed of one or more legally distinct businesses, institutions, organizations or households that are located, at least in part, in the United States and whose operations affect U.S. emissions of greenhouse gases. For the purposes of this program, a legally distinct entity is any holding company, corporation, subsidiary, partnership, joint venture, business, operating entity, government, government agency, institution, organization or household that is treated as a distinct entity under an existing U.S. Federal, state or local law. Businesses may be defined by a certificate of incorporation or corporate charters, Federal tax identification numbers, or other level of organization recognized by specific laws. Similarly, public or private institutions and organizations can define their scope by referencing their charter, tax identification, or other legal basis.

(b) Entities that intend to register reductions are strongly encouraged to define themselves at the highest level of aggregation. To achieve this objective, DOE suggests the use of a corporate-level definition of the entity, based on filings with the Securities and Exchange Commission, or comparable institutional charters. While reporting at the highest level of aggregation is encouraged, it is recognized that certain businesses and institutions may conclude that reporting at some lower level is desirable. However, once an entity has determined the level of corporate or institutional management at which it will report (*e.g.*, the holding company, subsidiary, regulated stationary source, state government, agency, etc.), the entity must include all elements of the organization encompassed by that management level

and exclude any organizations that are managed separately. For example, if two subsidiaries of a parent company are to be covered by a single report, then all subsidiaries of that parent company must also be included. Similarly, if a company decides to report on the U.S. and Canadian subsidiaries of its North American operations unit, it must also report on any other subsidiaries of its North American unit, such as a Mexican subsidiary.

(c) A name for the defined entity must be specified. For entities that intend to register reductions, this should be the name commonly used to represent the activities being reported, as long as it is not also used to refer to substantial activities not covered by the entity's reports. While DOE believes entities should be given considerable flexibility in defining themselves at an appropriate level of aggregation, it is essential that the name assigned to the reporting entity correspond closely to the scope of the operations and emissions covered by its report. If, for example, an individual plant or operating unit is reporting as an entity, it should be given a name that corresponds to the specific plant or unit, and not to the responsible subsidiary or corporate entity. In order to distinguish parent company from its subsidiaries, the name of the parent company generally should not be incorporated into the name of the reporting subsidiary, but if it is, the name of the parent company usually should be secondary.

(d) An entity that does not intend to register reductions must report the legal basis for their entity and must specify a name for reporting purposes.

**§ 300.4 Selecting organizational boundaries for registering.**

(a) An entity that intends to register its entity-wide emissions reductions must determine, document, and maintain its organizational boundary for accounting and reporting purposes.

(b) Each such entity must disclose in its entity statement the approach used to establish its organizational boundaries, which should be consistent with the following guidelines:

(1) In general, entities should use financial control as the primary basis for determining their organizational boundaries, with financial control meaning the ability to direct the financial and operating policies of the entity with a view to gaining economic or other benefits from its activities. This approach should ensure that all sources, including subsidiaries, that are wholly or largely owned by the entity are covered by its reports.

(2) Entities may establish organizational boundaries using approaches other than financial control, such as equity share or operational control, but must disclose how the use of these other approaches result in organizational boundaries that differ from those resulting from using the financial control approach.

(3) Emissions from facilities or vehicles that are partially owned or leased, or not directly controlled or managed by the entity, may be included at the entity's discretion, provided that the entity has taken reasonable steps to assure that doing so does not result in the double counting of emissions, sequestration or emission reductions.

(4) If the scope of a defined entity extends beyond the United States, the reporting entity should use the same approach to determining its organizational boundaries in the U.S. and outside the U.S.

**§ 300.5 Submission of an entity statement.**

(a) *Determining the type of reporting entity.* The entity statement requirements vary by type of entity. For the purposes of these guidelines, there are three types of entities:

(1) Large emitters that intend to register emission reductions;

(2) Small emitters that intend to register emission reductions; and

(3) Emitters that intend to report, but not register emission reductions.

(b) *Choosing a start year.* Entities that intend to register reductions must first choose a start year. The first entity statement describes the make-up, operations and boundaries of the entity, as they existed in the start year. For a large emitter, the start year is the first year for which the entity submits a complete emissions inventory under this part. For all entities, it is the year immediately preceding the first year for which the entity intends to register emission reductions and the last year of the initial base period(s). The entity's emissions in its start year or its average annual emissions over a period of up to four years ending in the start year determine whether it qualifies to begin reporting as a small emitter. For entities intending to register emission reductions, the start year may be no earlier than 2002. For entities not intending to register reductions, the start year may be no earlier than 1990.

(c) *Determining and maintaining large or small emitter reporting status.* (1) Any entity that intends to register emission reductions can choose to participate as a large emitter, but only entities that have demonstrated that their annual emissions are less than or equal to 10,000 metric tons of CO<sub>2</sub>



equivalent may participate as small emitters. To demonstrate that its annual emissions are less than or equal to 10,000 metric tons of CO<sub>2</sub> equivalent, an entity must submit either an estimate of its emissions during its chosen start year or an estimate of its average annual emissions over a continuous period not to exceed four years of time ending in its chosen start year, as long as the operations and boundaries of the entity have not changed significantly during that period.

(2) An entity must estimate its total emissions using methods specified in Chapter 1 of the Draft Technical Guidelines (incorporated by reference, see § 300.13) or by using the Simplified Emission Inventory Tool (SEIT) provided by EIA and also discussed in Chapter 1. The results of this estimate must be reported to EIA. [Note that emission estimates developed using SEIT would have quality ratings of less than 3.0 and therefore would not meet the emissions inventory requirements of the revised Guidelines.]

(3) After starting to report, each small emitter must annually certify that the emissions-related operations and boundaries of the entity have not changed significantly since the previous report. A new estimate of total emissions must be submitted after any significant increase in emissions, any change in the operations or boundaries of the small emitter, or every five years, whichever occurs first. Small emitters with estimated annual emissions of over 9,000 metric tons of CO<sub>2</sub> equivalent should re-estimate and submit their emissions annually. If an entity determines that it must report as a large emitter, then it must continue to report as a large emitter in all future years in order to ensure a consistent time series of reports. Once a small emitter becomes a large emitter, it must begin reporting in conformity with the reporting requirements for large emitters.

(d) *Entity statements for large emitters intending to register reductions.* When a large emitter intending to register emission reductions first reports under these guidelines, it must provide the following information in its entity statement:

(1) The name to be used to identify the participating entity;

(2) The legal basis of the named reporting entity;

(3) The criteria used to determine:

(i) The organizational boundaries of the reporting entity, if other than financial control; and

(ii) The sources of emissions included or excluded from the entity's reports, such as sources excluded as *de minimis* emissions.

(4) The names of any parent or holding companies the activities of which will not be covered comprehensively by the entity's reports;

(5) The names of any large subsidiaries or organizational units covered comprehensively by the entity's reports. All subsidiaries of the reporting entity must be covered by the entity's reports, but only large subsidiaries must be specifically identified in the entity statement;

(6) A list of each country where operations occur, if the entity is including any non-U.S. operations in its report;

(7) A description of the entity and its primary U.S. economic activities, such as electricity generation, product manufacturing, service provider or freight transport; for each country listed under paragraph (d)(6) of this section, reporters should describe the economic activity in that country.

(8) A description of the types of emission sources or sinks to be covered in the entity's emission inventories, such as fossil fuel power plants, manufacturing facilities, commercial office buildings or heavy-duty vehicles;

(9) The names of other entities that substantially share the ownership or operational control of sources that represent a significant part of the reporting entity's emission inventories, and a certification that, to the best of the certifier's knowledge, the direct greenhouse gas emissions and sequestration in the entity's report are not included in reports filed by any of these other entities to the 1605(b) program; and

(10) Identification of the start year.

(e) *Entity statements for small emitters intending to register reductions.* When a small emitter intending to register emission reductions first reports under these guidelines, it must provide the following information in its entity statement:

(1) The name to be used to identify the participating entity;

(2) An identification or description of the legal basis of the named reporting entity;

(3) An identification of the entity's control over the activities covered by the entity's reports, if other than financial control;

(4) The names of any parent or holding companies the activities of which will not be covered comprehensively by the entity's reports;

(5) An identification or description of the primary economic activities of the entity, such as agricultural production, forest management or household operation; if any of the economic activities covered by the entity's reports

occur outside the U.S., a listing of each country in which such activities occur;

(6) An identification or description of the specific activity (or activities) and the emissions, avoided emissions or sequestration covered by the entity's report, such as landfill gas recovery or forest sequestration;

(7) A certification that, to the best of the certifier's knowledge, the direct greenhouse gas emissions and sequestration in the entity's report are not included in reports filed by any other entities reporting to the 1605(b) program; and

(8) Identification of the start year.

(f) *Entity statements for reporters not registering reductions.* When a participant not intending to register emission reductions first reports under this part, it must, at a minimum, provide the following information in its entity statement:

(1) The name to be used to identify the reporting entity;

(2) A description of the entity and its primary economic activities, such as electricity generation, product manufacturing, service provider, freight transport, agricultural production, forest management or household operation; if any of the economic activities covered by the entity's reports occur outside the United States, a listing of each country in which such activities occur; and

(3) A description of the types of emission sources or sinks, such as fossil fuel power plants, manufacturing facilities, commercial office buildings or heavy-duty vehicles, covered in the entity's reports of emissions or emission reductions.

(g) *Changing entity statements.* (1) Reporters are required to annually review and, if necessary, update their entity statements.

(2) From time to time, an entity may choose to change the scope of activities included within the entity's reports or the level at which the entity wishes to report. An entity may also choose to change its organizational boundaries, its base period, or other elements of its entity statement. For example, companies buy and sell business units, or equity share arrangements may change. In general, DOE encourages changes in the scope of reporting that expand the coverage of an entity's report and discourages changes that reduce the coverage of such reports unless they are caused by divestitures or plant closures. Any such changes should be reported in amendments to the entity statement, and major changes may warrant or require changes in the base values used to calculate emission reductions and, in some cases, the entity's base periods. However, in no case should there be an

interruption in the annual reports of entities registering emission reductions. Chapter 2 of the Draft Technical Guidelines (incorporated by reference, see § 300.13), the Emission Reduction Guidelines, provides more specific guidance on how such changes should be reflected in entity statements, reports, and emission reduction calculations.

(h) *Documenting changes in amended entity statements.* A reporter's entity statement in subsequent reports should focus primarily on changes since the previous report. Specifically, the subsequent entity statement should report the following information:

(1) For significant changes in the entity's scope or organizational boundaries, the entity should document:

(i) The acquisition or divestiture of discrete business units, subsidiaries, facilities, and plants;

(ii) The closure or opening of significant facilities;

(iii) The transfer of economic activity to or from specific operations covered by the entity's reports, such as the transfer of operations to non-U.S. subsidiaries;

(iv) Significant changes in land holdings (applies to entities reporting on greenhouse gas emissions or sequestration related to land use, land use change, or forestry);

(v) Whether the entity is reporting at a higher level of aggregation than it did in the previous report, and if so, a listing of the subsidiary entities that are now aggregated under a revised conglomerated entity, including a listing of any non-U.S. operations to be added and the specific countries in which these operations are located; and

(vi) Changes in its activities or operations (e.g., changes in output, contractual arrangements, equipment and processes, outsourcing or insourcing of significant activities) that are likely to have a significant effect on emissions, together with an explanation of how it believes the changes in economic activity influenced its reported emissions or sequestrations.

#### § 300.6 Emissions inventories.

(a) *General.* The objective of an emission inventory is to provide a full accounting of an entity's emissions for a particular year, including direct emissions of all six categories of greenhouse gases identified in § 300.2, indirect emissions specified in paragraph (e) of this section, and all sequestration or other changes in carbon stocks. An emission inventory must be prepared in accordance with Chapter 1 of the Draft Technical Guidelines (incorporated by reference, see

§ 300.13). An inventory does not include avoided emissions or any offset reductions, and is not subsequently adjusted to reflect future acquisitions, divestitures or other changes to the reporting entity. Entity-wide inventories are a prerequisite for the registration of emission reductions by entities with average annual emissions of more than 10,000 metric tons of CO<sub>2</sub> equivalent.

Entities that have average annual emissions of less than 10,000 metric tons of CO<sub>2</sub> equivalent are eligible to register emission reductions associated with specific activities without also reporting an inventory of the total emissions.

(b) *Quality requirements for emission inventories.* The Draft Technical Guidelines (incorporated by reference, see § 300.13) usually identify more than one acceptable method of measuring or estimating greenhouse gas emissions. Each acceptable method is rated A, B, C or D, with A methods usually corresponding to the highest quality method available and D methods representing the lowest quality method that may be used. Each letter is assigned a numerical rating reflecting its relative quality, 4 for A methods, 3 for B methods, 2 for C methods and 1 for D methods. Entities that intend to register emission reductions must use emission inventory methods that result in a quantity-weighted average data quality rating of at least 3.0. Each emission source or sink that uses a distinct emissions measurement or estimation method must be reported separately to permit independent calculation of the entity's quantity-weighted quality rating.

(c) *Using estimation methods not included in the Technical Guidelines.* A reporting entity may obtain DOE approval for the use of an estimation method not included in the Draft Technical Guidelines (incorporated by reference, see § 300.13) if the method covers sources not described in the Draft Technical Guidelines, or if the proposed method provides more accurate results for the entity's specific circumstances than the methods described in the Draft Technical Guidelines. If an entity wishes to propose the use of a method that is not described in the Draft Technical Guidelines, the entity must provide a written description of the method, an explanation of how the method is implemented (including data requirements), empirical evidence of the method's validity and accuracy, and a suggested rating for the method to DOE's Office of Policy and International Affairs (with a copy to EIA). DOE reserves the right to deny the request, or to assign its own rating to the method.

By submitting this information, the reporter grants permission to DOE to incorporate the method in a future revision of the Technical Guidelines.

(d) *Direct emissions inventories.* Direct greenhouse gas emissions that must be reported are the emissions resulting from stationary or mobile sources within the organizational boundaries of an entity, including but not limited to emissions resulting from combustion of fossil fuels, process emissions, and fugitive emissions. Process emissions (e.g., PFC emissions from aluminum production) must be reported along with fugitive emissions (e.g., leakage of greenhouse gases from equipment).

(e) *Inventories of indirect emissions associated with purchased energy.* (1) To provide a clear incentive for the users of electricity and other forms of purchased energy to reduce demand, the indirect emissions from the consumption of purchased electricity, steam, and hot or chilled water must be included in a reporting entity's inventory as indirect emissions. To avoid double counting among entities, the reporting entity must report all indirect emissions separately from its direct emissions. Reporting entities should use the methods for quantifying indirect emissions specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(2) Reporting entities may choose to report other forms of indirect emissions, such as emissions associated with employee commuting, materials consumed or products produced, although such other indirect emissions are not to be included in the entity's emission inventory and may not be the basis for registered emission reductions. All such reports of other forms of indirect emissions must be distinct from reports of indirect emissions associated with purchased energy and must be based on emission measurement or estimation methods identified in the Draft Technical Guidelines (incorporated by reference, see § 300.13) or approved by DOE.

(f) *Entity-level inventories of changes in terrestrial carbon stocks.* Annual changes in managed terrestrial carbon stocks should be comprehensively assessed and reported across the entity and the net emissions resulting from such changes included in the entity's emissions inventory. Entities should use the methods for estimating changes in managed terrestrial carbon stocks specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(g) *Treatment of de minimis emissions and sequestration.* (1) Although the goal

of the entity-wide reporting requirement is to provide an accurate and comprehensive estimate of total emissions, there may be small emissions from certain sources that are unduly costly or otherwise difficult to measure or reliably estimate annually. A reporting entity may exclude particular sources of emissions or sequestration if the total quantities excluded represent less than or equal to 3 percent of the total annual CO<sub>2</sub> equivalent emissions of the entity. The entity must identify the types of emissions excluded and provide an estimate of the annual quantity of such emissions using methods specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13) or by the Simplified Emissions Inventory Tool (SEIT). The results of this estimate of the entity's total annual emissions must be reported to DOE together with the entity's initial entity statement.

(2) After starting to report, each entity that excludes from its annual reports any *de minimis* emissions must re-estimate the quantity of excluded emissions after any significant increase in such emissions, or every five years, whichever occurs sooner.

(h) *Separate reporting of domestic and international emissions.* Any non-U.S. emissions included in an entity's emission inventory must be separately reported, by country of origin, and clearly distinguished from emissions originating in the U.S.

(i) *Covered gases.* Entity-wide emissions inventories must include all emissions of the named greenhouse gases listed in § 300.2 or subsequently included in this list through the process described in § 300.1(f). Entities may report other greenhouse gases, but such gases must be reported separately and emission reductions, if any, associated with such other gases are not eligible for registration.

(j) *Units for reporting.* Emissions and sequestration should be reported in terms of the mass (not volume) of each gas, using metric units (*e.g.*, metric tons of methane). Entity-wide and subentity summations of emissions and reductions from multiple sources must be converted into CO<sub>2</sub> equivalent units using the global warming potentials for each gas in the International Panel on Climate Change's Third Assessment (or most recent) Report, as specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13). Entities should specify the units used (*e.g.*, kilograms, or metric tons). Reporting entities may need to use the standard conversion factors specified in the Draft Technical Guidelines to convert existing data into

the common units required in the entity-level report. Emissions from the consumption of purchased electricity must be reported by region (from the list provided by DOE in the Draft Technical Guidelines) or country, if outside the United States. Consumption of purchased steam or chilled/hot water must be reported according to the type of system and fuel used to generate it (from the list provided by DOE in the Draft Technical Guidelines). Entities must convert purchased energy to CO<sub>2</sub> equivalents using the conversion factors in the Draft Technical Guidelines. Entities should also provide the physical quantities of each type of purchased energy covered by their reports.

#### § 300.7 Net emission reductions.

(a) Entities that intend to register emission reductions achieved after 2002 must comply with the requirements of this section. Entities may voluntarily follow these procedures if they want to demonstrate the achievement of net, entity-wide reductions prior to 2003. Only large emitters must follow the requirements of paragraph (b) of this section, but small emitters may do so voluntarily. Only entities that qualify as small emitters may use the special procedures in paragraph (c) of this section. Entities seeking to register emission reductions achieved by third parties (offsets) must certify that these emission reductions were calculated in a manner consistent with the requirements of paragraph (d) of this section and use the emission reduction calculation methods identified in § 300.8. All entities seeking to register emission reductions must comply with the requirements of paragraph (e) of this section. Only reductions in the emissions of the named greenhouse gases listed in § 300.2 are eligible for registration.

(b) *Assessing net emission reductions for large emitters.* (1) Entity-wide reporting is a prerequisite for registering emission reductions by entities with average annual emissions more than 10,000 metric tons of CO<sub>2</sub> equivalent. Net annual entity-wide emission reductions must be based, to the maximum extent practicable, on a full assessment and sum total of all changes in an entity's emissions, avoided emissions and sequestration relative to the entity's established base period(s). This assessment must include all entity emissions, including the emissions associated with any non-U.S. operations covered by the entity statement. It must include the annual changes in the total emissions of the entity or, alternatively, the total emissions of each of the

subentities identified in its entity statement. All changes in emissions, avoided emissions, and sequestration must be determined using methods that are consistent with the guidelines described in § 300.8.

(2) If it is not practicable to assess the changes in net emissions resulting from certain entity activities using at least one of the methods described in § 300.8, the reporting entity may exclude them from its estimate of net emission reductions. The reporting entity must identify as one or more distinct subentities the sources of emissions excluded for this reason and describe the reasons why it was not practicable to assess the changes that had occurred. DOE believes that few emission sources will be excluded for this reason, but has identified at least two situations where such an exclusion would be warranted. For example, it is likely to be impossible to assess the emission changes associated with a new manufacturing plant that produces a product for which the entity has no historical record of emissions or emissions intensity (emissions per unit of product output). However, once the new plant has been operational for a full year, a base period and base value(s) for the new plant could be established and its emission changes might be assessed in the following year. Until the emission changes of this new subentity could be assessed, it should be identified in the entity's report as a subentity for which no assessment of emission changes is practicable. The other example involves a subentity that has reduced its output below the levels of its base period. In such a case, the subentity could not use the absolute emissions method and may also be unable to identify an effective intensity metric or other method.

(3) A reporting entity should also exclude from the entity-wide assessment of changes in emissions, avoided emissions and sequestration any emissions or sequestration that have been excluded from the entity's inventory. All *de minimis* or biogenic emissions excluded from the entity's inventory of greenhouse gas emissions should also be excluded from its assessments of emission changes.

(c) *Assessing emission reductions for entities with small emissions.* (1) Entities with average annual emissions of less than or equal to 10,000 metric tons of CO<sub>2</sub> equivalent are not required to inventory their total emissions or assess all changes in their emissions, avoided emissions and sequestration to qualify for registered reductions. These entities may register emission reductions that have occurred since

2002 and that are associated with one or more specific activities, as long as they:

(i) Perform a complete assessment of the annual emissions and sequestration associated with each of the activities upon which they report, using methods that meet the same data quality requirements applicable to entity-wide emission inventories; and

(ii) Determine the changes in the emissions, avoided emissions or sequestration associated with each of these activities.

(2) An entity reporting as a small emitter must report on one or more specific activities and is encouraged, but not required to report on all activities occurring within the entity boundary. Examples of small emitter activities include: Vehicle operations; product manufacturing processes; building operations or a distinct part thereof, such as lighting; livestock operations; crop management; or power generation. For example, a farmer managing several woodlots and also producing a wheat crop may report emission reductions associated with managing an individual woodlot. However, the farmer must also assess and report the net sequestration resulting from managing all the woodlots within the entity's boundary. The small emitter is not required to report on emissions or reductions associated with growing the wheat crop.

(3) A small emitter must certify that the reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the entity's operations. This certification should be based on an assessment of the likely direct and indirect effects of the actions taken to reduce greenhouse gas emissions.

(d) *Net emission reductions achieved by third parties (offset reductions or emission reductions submitted by aggregators).* A reporting entity or aggregator under certain conditions may register net emission reductions achieved by third parties. A large emitter that is reporting on behalf of other entities must meet all of the requirements applicable to large emitters, including submission of an entity statement, an emissions inventory, and an entity-wide assessment of emission reductions. If an aggregator is a small emitter, it may choose to report only on the activities, emissions and emission reductions of the third parties on behalf of which it is reporting and not to report on any of its own activities or emission reductions. The reporting entity or aggregator must include in its report all of the information on the third party, including an entity statement, an emissions inventory (when required), an

assessment of emission reductions and appropriate certifications, that would be required if the third party were directly reporting to EIA. The report to DOE must also include a certification by the third party indicating that it has agreed that the reporting entity or aggregator should be recognized as the entity responsible for any registered reductions and that the third party does not intend to report directly to DOE. The net emissions reductions (or increases) of each third party will be evaluated separately by EIA to determine whether they are eligible for registration. The registered reductions for each third party will be included in EIA's summary of all registered reductions reported by the responsible entity. EIA will also include in the entity's summary report any emission increases by such a third party. If the agreement between the reporting entity and any third party is discontinued, for any reason, all emission reductions or emissions attributable to the third party would be removed by EIA from the records of the reporting entity.

(e) *Adjusting for year-to-year increases in net emissions.* (1) Normally, net annual emission reductions for an entity are calculated by summing the net annual changes in emissions, avoided emissions and sequestration, as determined using the calculation methods identified in § 300.8 and according to the procedures described in § 300.7 (b) for large emitters, § 300.7 (c) for small emitters, and § 300.7 (d) for offsets. However, if the entity experienced a net increase in emissions for one or more years, these increases must be reported and taken into account in calculating any future year reductions. If the entity subsequently achieves net annual emission reductions, the net increases experienced in the preceding year(s) must be more than offset by these reductions before the entity can once again register emission reductions. For example, if an entity achieved a net emission reduction of 5,000 metric tons of CO<sub>2</sub> equivalent in its first year, a net increase of 2,000 metric tons in its second year, and a net reduction of 3,000 metric tons in its third year, it would be able to register a 5,000 metric ton reduction in its first year, no reduction in its second year, and a 1,000 metric ton reduction in its third year (3,000–2,000). The entity must file full reports for each of these three years. Its report for the second year would indicate the net increase in emissions and this increase would be noted in EIA's summary of the entity's report for that year and for any future year, until

the emissions increase was entirely offset by subsequent emission reductions. If this same entity achieved a net reduction of only 1,000 metric tons in its third year, it would not be able to register additional reductions until it had, in some future year, offset more than its second year increase of 2,000 metric tons.

### § 300.8 Calculating emission reductions.

(a) *Choosing Appropriate Emission Reduction Calculation Methods.* (1) An entity must choose the method or methods it will use to calculate emission reductions from the list provided in paragraph (h) of this section. Each of the calculation methods has special characteristics that make it applicable to only certain types of emissions and activities. An entity should select the appropriate calculation method based on several factors, including: how the reporter's subentities are defined, how the reporter will gather and report emissions data; and the availability of other types of data that might be needed, such as production or output data.

(2) For some entities, a single calculation method will be sufficient, but many entities may need to apply more than one method because discrete components of the entity require different calculation methods. In such a case, the entity will need to select a method for each subentity (or discrete component of the entity with identifiable emission or reductions). The emissions and output measure (generally a physical measure) of each subentity must be clearly distinguished and reported separately. Guidance on the selection and specification of calculation methods is provided in Chapter 2 of the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(b) *Identifying subentities for calculating reductions.* If more than one calculation method is to be used, an entity must specify the portion of the entity (the subentity) to which each method will be applied. Each subentity must be clearly identified. From time to time, it may be necessary to modify existing or create new subentities. The entity must provide to DOE a full description of such changes, together with an explanation of why they were required.

(c) *Choosing a base period for calculating reductions.* In general, the base period used in calculating emission reductions is the single year or up to four-year period average immediately preceding the first year of calculated emission reductions.

(d) *Establishing base values.* To calculate emission reductions reporters must establish a base value against which to compare reporting year performance. The minimum requirements for base values for each type of calculation method are specified in Chapter 2 of the Draft Technical Guidelines (incorporated by reference, see § 300.13). In most cases, an historic base value, derived from emissions or other data gathered during the base period, is the minimum requirement specified.

(e) *Emission reduction and subentity statements.* For each emission reduction calculation method and subentity, an entity must submit to EIA the following information:

(1) An identification and description of the method used to calculate emission reductions, including:

- (i) The type of calculation method;
- (ii) The measure of output used (if any); and

(iii) The method-specific base period for which any required base value will be calculated.

(2) When starting to report, the base period used in calculating reductions must end in the start year. However, over time it may be necessary to revise or establish new base periods and base values in response to significant changes in processes or output of the subentity.

(3) A description of the subentity and its primary economic activity or activities, such as electricity generation, product manufacturing, service provider, freight transport, or household operation; and

(4) A description of the emission sources or sinks covered, such as fossil fuel power plants, manufacturing facilities, commercial office buildings or heavy-duty vehicles.

(f) *Changes in calculation methods, base periods and base values.* When significant changes occur in the composition or output of reporting entities, an entity may need to change previously specified calculation methods, base periods or base values. An entity should make such changes only if necessary and it should fully document the reasons for any changes. The Draft Technical Guidelines (incorporated by reference, see § 300.13) describe when such changes should be made and what information on such changes must be provided to DOE.

(g) *Continuous reporting.* To ensure that the summation of entity annual reports accurately represents net, multi-year emission reductions, an entity must submit a report every year, beginning with the first reduction year. An entity may use a specific base period to

determine emission reductions in a given future year only if the entity has submitted qualified reports for each intervening year. If an interruption occurs in the annual reports of an entity, the entity must subsequently report on all missing years prior to qualifying for the registration of additional emission reductions.

(h) *Calculation methods.* An entity must calculate any change in emissions, avoided emissions or sequestration using one or more of the methods described in this paragraph and in the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(1) *Changes in emissions intensity.* A reporting entity may use emissions intensity as a basis for determining emission reductions as long as the reporting entity selects a measure of output that is:

- (i) A reasonable indicator of the output produced by the reporting entity;
- (ii) A reliable indicator of changes in the reporting entity's activities;
- (iii) Related to emissions levels; and
- (iv) Any appropriate adjustments for acquisitions, divestitures, insourcing, outsourcing, or changes in products have been made, as described in the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(2) *Changes in absolute emissions.* A reporting entity may use changes in the absolute (actual) emissions (direct and/or indirect) as a basis for determining net emission reductions as long as the reporting entity makes only those adjustments required by the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(3) *Changes in carbon storage (for actions within entity boundaries).* A reporting entity may use changes in carbon storage as a basis for determining net emission reductions as long as the entity uses estimation and measurement methods that comply with the Draft Technical Guidelines (incorporated by reference, see § 300.13), and has included an assessment of the net changes in all sinks in its inventory.

(4) *Changes in avoided emissions (for actions within entity boundaries).* A reporting entity may use changes in the avoided emissions associated with the

sale of electricity, steam, hot water or chilled water generated from non-emitting or low-emitting sources as a basis for determining net emission reductions as long as:

(i) The measurement and calculation methods used comply with the Draft Technical Guidelines (incorporated by reference, see § 300.13);

(ii) The reporting entity certifies that any increased sales were not attributable to the acquisition of a generating facility that had been previously operated, unless the entity's base period includes generation values from the acquired facility's operation prior to its acquisition; and

(iii) Generators of distributed energy that have net emissions in their base period and intend to report reductions resulting from changes in avoided emissions, use a method specified in the Draft Technical Guidelines (incorporated by reference, see § 300.13) that integrates that calculation of reductions resulting from both changes in emissions intensity and changes in avoided emissions.

(5) *Action-specific emission reductions (for actions within entity boundaries).* An entity-wide reporter may use the action-specific approach only if it is not possible to measure accurately emission changes by using one of the methods identified in paragraphs (h)(1) through (h)(4) of this section. A reporting entity may determine emission reductions based on an estimate of the effects on emissions of a specific action, as long as the entity demonstrates that the estimate is based on analysis that:

(i) Uses output, utilization and other factors that are consistent, to the maximum extent practicable, with the action's actual performance in the year for which reductions are being reported;

(ii) Excludes any emission reductions that might have resulted from reduced output or were caused by actions likely to be associated with increases in emissions elsewhere within the entity's operations; and

(iii) Uses methods that are in compliance with the Draft Technical Guidelines (incorporated by reference, see § 300.13).

(i) *Summary description of actions taken to reduce emissions.* Each reported emission reduction must be accompanied by an identification of the types of actions that were the likely cause of the reductions achieved.

Entities are also encouraged to include in their reports information on the benefits and costs of the actions taken to reduce greenhouse gas emissions, such as the expected rates of return, life

cycle costs or benefit to cost ratios, using appropriate discount rates.

(j) *Emission reductions associated with plant closings, voluntary actions and government (including non-U.S. regulatory regimes) requirements.*

(1) Each report of emission reductions must indicate whether the reported emission reductions were the result, in whole or in part, of plant closings, voluntary actions, or government requirements. DOE will presume that reductions that were not the result of plant closings or government requirements are the result of voluntary actions.

(2) If emission reductions were, in whole or in part, the direct result of plant closings that caused a decline in output, the report must identify the reductions as such; these reductions do not qualify for registration. DOE presumes that reductions calculated using the emissions intensity method do not result from a decline in output.

(3) If the reductions were associated, in whole or part, with U.S. or non-U.S. government requirements, the report should identify the government requirement involved and the type of effect these requirements had on the reported emission reductions. If, as a result of the reduction, a non-U.S. government issued to the reporting entity a credit or other financial benefit or regulatory relief, the report should identify the government requirement involved and describe the specific form of benefit or relief provided.

(k) *Determining the entity responsible for emission reductions.* The entity that DOE will presume to be responsible for emission reduction, avoided emission or sequestered carbon is the entity with financial control of the facility, land or vehicle which generated the reported emissions, generated the energy that was sold so as to avoid other emissions, or was the place where the sequestration action occurred. If control is shared, reporting of the associated emission reductions should be determined by agreement between the entities involved so as to avoid double-counting; this agreement must be reflected in the entity statement and in any report of emission reductions. DOE will presume that an entity is not responsible for any emission reductions associated with a facility, property or vehicle excluded from its entity statement.

### **§ 300.9 Reporting and recordkeeping requirements.**

(a) *Starting to report under the Guidelines.* An entity may report emissions and sequestration on an annual basis beginning in any year, but no earlier than the base period of 1987–

1990 specified in the Energy Policy Act of 1992. To be recognized under these Guidelines, all reports must conform to the measurement methods established by the Draft Technical Guidelines (incorporated by reference, see § 300.13). This requirement applies to entities that report to the revised Voluntary Reporting of Greenhouse Gases Program registry for the first time as well as those entities that have previously submitted emissions reports pursuant to section 1605 (b) of the Energy Policy Act of 1992.

(b) *Revisions to reports submitted under the Guidelines.* (1) Once DOE has accepted a report under this part, it may be revised by the reporting entity only under certain conditions specified in this paragraph (b)(1) of this section and related provisions of the Draft Technical Guidelines (incorporated by reference, see § 300.13). In general:

(i) Revised reports may be submitted to correct errors that have a significant effect on previously estimated emissions or emission reductions; and

(ii) Emission inventories may be revised in order to create a consistent time series based on significant improvements in the emission estimation or measurement techniques used.

(2) Reporters must provide the corrected or improved data to DOE, together with an explanation of the significance of the change and its justification.

(3) If a change in calculation methods (for inventories or reductions) is made for a particular year, the entity must, if feasible, revise its base value to assure methodological consistency with the reporting year value.

(c) *Definition and deadline for annual reports.* Entities should, if practicable, report emissions on a calendar year basis, from January 1 to December 31. In all cases, the time period covered by annual reports should be specified and used consistently in all reports. To be included in the earliest possible DOE annual report of greenhouse gas emissions reported under this part, entity reports must be submitted to DOE no later than July 1 for emissions occurring during the previous calendar year.

(d) *Recordkeeping.* Entities intending to register reductions must maintain adequate supporting records for at least three years to enable verification of all information reported. The records should document the basis for the entity's report to DOE, including:

(1) The content of entity statements, including the identification of the specific facilities, buildings, land holding and other operations or

emission sources covered by the entity's reports and the legal, equity, operational and other bases for their inclusion;

(2) Information on the identification and assessment of changes in entity boundaries, processes or products that might have to be reported to DOE;

(3) Any agreements or relevant communications with other entities or third parties regarding the reporting of emissions or emission reductions associated with sources the ownership or operational control of which is shared;

(4) Information on the methods used to measure or estimate emissions, and the data collection and management systems used to gather and prepare this data for inclusion in reports;

(5) Information on the methods used to calculate emission reductions, including the basis for:

(i) The selection of the specific output measures used, and the data collection and management systems used to gather and prepare output data for use in the calculation of emission reductions;

(ii) The selection and modification of all base years, base periods and baselines used in the calculation of emission reductions;

(iii) Any baseline adjustments made to reflect acquisitions, divestitures or other changes;

(iv) Any models or other estimation methods used; and

(v) Any internal or independent verification procedures undertaken.

(e) *Confidentiality.* DOE will protect trade secret and commercial or financial information that is privileged or confidential as provided in 5 U.S.C. 552(b)(4). An entity must clearly indicate in its 1605(b) report the information for which it requests confidentiality. DOE will handle requests for confidentiality of information submitted in 1605(b) reports in accordance with the process established in the Department's Freedom of Information regulations at 10 CFR 1004.11.

### **§ 300.10 Certification of reports.**

(a) *General requirement and certifying official:* All reports submitted to EIA must include a certification statement, as provided in paragraph (b) of this section, signed by a certifying official of the reporting entity. A household report may be certified by one of its members. All other reports must be certified by the chief executive officer, agency head, or an officer or employee of the entity who is responsible for reporting the entity's compliance with environmental regulations.

(b) *Certification statement requirements.* All entities, whether

reporting or registering reductions, must certify the following:

(1) The information reported is accurate and complete;

(2) The information reported has been compiled in accordance with this part; and

(3) The information reported is consistent with information submitted in prior years, if any, or any inconsistencies with prior year's information are documented and explained in the entity statement.

(c) *Additional requirements for registering.* The certification statement of an entity registering reductions must also certify that:

(1) The reporting entity took reasonable steps to ensure that direct emissions, emission reductions, and/or sequestration reported are neither double counted nor reported by any other entity;

(2) Any emissions, emission reductions, or sequestration reported that were achieved by a third party are included in the report only if there exists a written agreement with each third party providing that the reporting entity is the entity entitled to report these emissions, emission reductions, or sequestration;

(3) None of the emissions, emission reductions, or sequestration reported are a product of shifting emissions to other entities or to non-reporting parts of the entity;

(4) None of any reported changes in avoided emissions associated with the sale of electricity, steam, hot or chilled water generated from non-emitting or low-emitting sources are attributable to the acquisition of a generating facility that has been previously operated, unless the entity's base period includes generation values from the acquiring facility's operation prior to its acquisition;

(5) The reporting entity maintains records documenting the analysis and calculations underpinning the data reported on this form for a period of not less than three years; and

(6) The reporting entity has, or has not, obtained independent verification of the report, as described in § 300.11.

### § 300.11 Independent verification.

(a) Reporting entities are encouraged to have their annual reports reviewed by independent and qualified auditors, as described in paragraphs (b), (c), and (f) or this section.

(b) *Qualifications of verifiers.* (1) DOE envisions that independent verification will be performed by professional verifiers (i.e. individuals or companies that provide verification or "attestation" services). EIA will consider a report to

the program to be independently verified if:

(i) The lead individual verifier and other members of the verification team are accredited by one or more independent and nationally-recognized accreditation programs, described in paragraph (c) of this section, for the types of professionals needed to determine compliance with DOE's 1605(b) Guidelines; and

(ii) All members of a verification team have education, training and/or professional experience that matches the tasks performed by the individual verifiers, as deemed necessary by the verifier accreditation program.

(2) As further guidance, individual verifiers should have a professional degree or accreditation in engineering (environmental, industrial, chemical), accounting, economics, or a related field, supplemented by specific training and/or experience in emissions reporting and accounting, and should have their qualifications and continuing education periodically reviewed by an accreditation program. The skills required for verification are often cross-disciplinary. For example, an individual verifier reviewing a coal electric utility should be knowledgeable about mass balance calculations, fuel purchasing accounting, flows and stocks of coals, coal-fired boiler operation, and issues of entity definition.

(3) Companies that provide verification services must use professionals that possess the necessary skills and proficiency levels for the types of entities they provide verification services to. Maintaining such skills and proficiency levels may require continuing training to ensure all individuals have up-to-date knowledge regarding the tasks they perform.

(c) *Qualifications of organizations accrediting verifiers.* Organizations that accredit individual verifiers must be nationally recognized certification programs. They may include, but are not limited to the: American Institute of Certified Public Accountants; American National Standards Institute's Registrar Accreditation Board program for Environmental Management System auditors (ANSI-RAB-EMS); Board of Environmental, Health and Safety Auditor Certification; California Climate Action Registry; Clean Development Mechanism Executive Board; and the United Kingdom Accreditation Scheme.

(d) *Scope of verification.* As part of any independent verification, qualified verifiers shall use their expertise and professional judgment to verify for accuracy, completeness and consistency with DOE's guidelines of:

(1) The content of entity statements, annual reports and the supporting records maintained by the reporter;

(2) The representation in entity statements (or lack thereof) of any significant changes in entity boundaries, products, or processes;

(3) The procedures and methods used to collect emissions and output data, and calculate emission reductions (for entities with widely dispersed operations, this process should include on-site reviews of a sample of the facilities);

(4) Relevant personnel training and management systems; and

(5) Relevant quality assurance/quality control procedures.

(e) *Verification statement:* Both the verifier and, if relevant, an officer of the company providing the verification service must sign the verification statement. The verification statement shall attest to the following:

(1) The verifier has examined all components listed in paragraph (d) of this section;

(2) The information reported in the verified entity report and this verification statement is accurate and complete;

(3) The information reported by the reporting entity has been compiled in accordance with this part;

(4) The information reported on the entity report is consistent with information submitted in prior years, if any, or any inconsistencies with prior year's information are documented and explained in the entity statement;

(5) The verifier used due diligence to assure that direct emissions, emission reductions, and/or sequestration reported are not double reported by any other entity;

(6) Any emissions, emission reductions, or sequestration that were achieved by a third party are included in this report, if and only if there exists a written agreement with each third party indicating that they have agreed that the reporting entity should be recognized as the entity entitled to report these emissions, emission reductions, or sequestration;

(7) None of the emissions, emission reductions, or sequestration reported is a product of shifting emissions to other entities or to non-reporting parts of the entity;

(8) No reported changes in avoided emissions associated with the sale of electricity, steam, hot or chilled water generated from non-emitting or low-emitting sources are attributable to the acquisition of a generating facility that has been previously operated, unless the base year generation values are derived

from records of the facility's operation prior to its acquisition;

(9) The verifying entity will maintain sufficient records to document the analysis and calculations underpinning this verification for a period of no less than three years; and

(10) The independent verifier is not owned in whole or part by the reporting entity, nor provides any ongoing operational or support services to the entity, except services consistent with independent financial accounting or independent certification of compliance with government or private standards.

(f) *Qualifying as an independent verifier.* An independent verifier may not be owned in whole or part by the reporting entity, nor may it provide any ongoing operational or support services to the entity, except services consistent with independent financial accounting or independent certification of compliance with government or private standards.

**§ 300.12 Acceptance of reports and registration of entity emission reductions.**

(a) *Acceptance of reports.* EIA will review all reports to ensure they are consistent with this part and with the Draft Technical Guidelines (incorporated by reference, see § 300.13). Subject to the availability of adequate resources, EIA intends to notify reporters of the acceptance or rejection of any report within six months of its receipt.

(b) *Registration of emission reductions.* EIA will review each accepted report to determine if emission reductions were calculated using the reporting entity's base period emissions (no earlier than 2002) or the average annual emissions of its base period (a period of up to four sequential years ending no earlier than 2002), and to confirm that the report complies with the other provisions of this part. EIA will also review its records to verify that the entity has submitted accepted annual reports for each year between the establishment of its base period and the year covered by the current report. DOE will notify the entity that reductions meeting these requirements have been credited to the entity as "registered reductions" which can be held by the reporting entity for use (including transfer to other entities) in the event a future program that recognizes such reductions is enacted into law.

(c) *Rejection of reports.* If EIA does not accept a report or if it determines that emission reductions intended for registration do not qualify, the report will be returned to the sender with an explanation of its inadequacies. The reporting entity may resubmit a modified report for further consideration at any time.

(d) *EIA database and summary reports.* The Administrator of EIA will establish a publicly accessible database composed of all reports that meet the

definitional, measurement, calculation, and certification requirements of these Guidelines. A portion of the database will provide summary information on the emissions and registered emission reductions of each reporting entity.

**§ 300.13 Incorporation by reference.**

The Draft Technical Guidelines for the Voluntary Reporting of Greenhouse Gases Program (August 5, 2004) referenced in § 300.1(c) and other sections of this part have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Draft Technical Guidelines from the Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or by visiting the following Web site: <http://www.policy.energy.gov/enhancingGHGregistry/drafttechnicalguidelines/>. The Draft Technical Guidelines also are available for inspection at the National Archives and Record Administration (NARA). For more information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

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