

AUDIT
REPORT

THE
U.S. DEPARTMENT OF ENERGY'S
GLOBAL CLIMATE
CHANGE ACTIVITIES



APRIL 2000

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES

April 6, 2000

MEMORANDUM FOR THE SECRETARY

FROM: Gregory H. Friedman (Signed)
Inspector General

SUBJECT: INFORMATION: Audit Report on "The U.S. Department of Energy's Global Climate Change Activities"

BACKGROUND

The President's Climate Change Proposal of October 1997 and the United Nation's *Framework Convention on Climate Change* (FCCC), were intended to identify methods of reducing greenhouse gas emissions. The FCCC was ratified by the U.S. Senate in 1992 and put into force in July 1994. The purpose of the Kyoto Protocol (Protocol), a proposed amendment to the FCCC, is to reduce net emissions of certain greenhouse gases (primarily CO₂) by setting binding limitations on the emissions of developed countries throughout the world. The Protocol was negotiated by more than 160 nations in December 1997, in Kyoto, Japan, pursuant to the objectives of the FCCC. It mandates targets to limit or reduce greenhouse gas emissions for developed countries, including the U.S., but not for developing countries. The Protocol has not been forwarded to the Senate for ratification.

In the Fiscal Year 2000 appropriations laws applicable to the Department of Energy, the Congress included language prohibiting the expenditure of funds to propose or issue rules, regulations, decrees, or orders for the purpose of implementation, or in preparation for implementation, of the Protocol.

The objective of our audit was to determine whether funds were expended to implement the Kyoto Protocol, or to prepare for its implementation. The audit was initiated pursuant to a congressional request.

RESULTS OF AUDIT

We found no evidence that funds were expended to issue specific policies to implement the Protocol. However, the Department is involved in conferences and activities aimed at developing necessary procedures and mechanisms in preparation for implementing the Protocol, if ratified. Department representatives have attended a number of conferences related to global climate change, including some where the Protocol was the primary topic. The Department also participates in international negotiations aimed at elaborating on the Kyoto mechanisms to further define the Protocol, reducing the cost of its implementation, and encouraging participation by other countries.

Most Department officials involved in climate change activities had not reviewed the specific appropriations language, but were aware that it existed. They also had varying interpretations of its meaning relative to day-to-day activities. Program officials drew a distinction between setting specific implementation policies, which they acknowledged would be prohibited, and conducting general program activities and research related to climate change, which they regarded as being consistent with the Department's mission. Policy officials viewed negotiations regarding the Protocol as necessary and legitimate because considerable clarification was needed before the Protocol could be credibly presented to the Senate for ratification. None of the officials we spoke to had asked for or had been provided interpretive guidance on the restrictions on Protocol activities in the appropriations acts.

The Office of Inspector General is aware that the restrictive appropriations language is a matter of some debate within the Congress and the Administration. In the course of our audit we reviewed statements by Representative Knollenberg, who is a sponsor of the restrictive language. We also reviewed a statement by Representatives Waxman and Pallone. In their statement, Congressmen Waxman and Pallone argue that neither the appropriations language nor its congressional intent prohibits discussions, workshops, seminars, policy development, or other non-regulatory activity. Additionally, we considered the President's statement made upon signing the Fiscal Year 2000 Consolidated Appropriations Act. In that statement, the President noted that "...to the extent these provisions could be read to prevent the United States from negotiating with foreign governments about climate change, it would be inconsistent with my constitutional authority. Accordingly, I will construe this provision as not detracting from my authority to engage in the many activities, both formal and informal, that constitute negotiations relating to climate change."

In light of the varying interpretations of the appropriations language and the controversy that language has engendered, the Office of Inspector General recommends that the Department provide to its employees a formal interpretation on the appropriateness of activities in relation to the statutory prohibition. Once provided, the guidance should be adopted by all Departmental offices having an interest in climate change and related activities. We were informed by the Offices of Inspector General at the Department of State and the Environmental Protection Agency that those agencies have issued such guidance to assist employees in determining the appropriateness of program activities.

MANAGEMENT REACTION

The Director, Office of Policy agreed to develop appropriate guidance, in cooperation with affected program offices and the General Counsel.

Attachment

cc: Deputy Secretary
Under Secretary for Energy, Science and Environment

THE U.S. DEPARTMENT OF ENERGY'S GLOBAL CLIMATE CHANGE ACTIVITIES

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Overview

INTRODUCTION AND OBJECTIVE

The United States and other countries have entered into international negotiations and agreements to address the potential consequences of climate change. In 1992, the United States ratified the United Nations *Framework Convention on Climate Change* (FCCC), which contained a voluntary goal for the United States of reducing greenhouse gas net emissions to their 1990 level by 2000.

The FCCC also established a Conference of the Parties (COP) as the supreme body of the Convention and required ordinary sessions of the COP to be held each year. In December 1997, more than 160 nations met in Kyoto, Japan, for the third COP. The purpose of this conference was to negotiate a protocol creating quantified limitations or reductions objectives on the emissions of greenhouse gases. The Kyoto Protocol (Protocol) set the limitations on the emissions of the developed nations and introduced the use of "flexibility mechanisms" to minimize the costs of cutting emissions both in the United States and globally.

The Protocol mandates commitments to limit or reduce greenhouse gas emissions for developed countries but not for developing countries. Fiscal Year 2000 appropriations laws applicable to the Department of Energy contain language prohibiting the expenditure of funds "...to propose or issue rules, regulations, decrees, or orders for the purpose of implementation, or in preparation for implementation, of the Kyoto Protocol."

The Department is engaged in the conduct of research and the development of technologies that are intended to increase energy efficiency and reduce harmful emissions. It is also the Department's responsibility to propose and discuss policies to achieve these outcomes. These mission requirements overlap, to a significant extent, the Protocol's intended outcomes. As a consequence, the restrictive language in the appropriations poses a dilemma to Department managers: how best to meet statutory mission requirements without violating the appropriations prohibition.

Pursuant to a congressional request, the objective of our audit was to determine whether funds were expended to implement the Kyoto Protocol, or to prepare for its implementation.

**CONCLUSIONS AND
OBSERVATIONS**

We found no evidence that funds were expended to issue specific policies to implement the Protocol. However, the Department is involved in conferences and activities aimed at developing necessary procedures and mechanisms in preparation for implementing the Protocol, if ratified. Department representatives attended a number of conferences related to global climate change, including some where the Protocol was discussed. The Department also participated in international negotiations aimed at establishing mechanisms to further define the Protocol, reducing the cost of its implementation, and encouraging participation by other countries. As noted above, these activities may well have been consistent with recognized Department of Energy missions.

Responsible Department officials had varying interpretations of the restrictive appropriations language and none had asked for or been provided with guidance on the appropriations restriction. The Department's representation at certain meetings and its participation in international negotiations could be interpreted as "preparing" for the implementation of the Protocol. During our review we also noted that the interpretation of the restrictive appropriations language as it affects the day-to-day operations of the Department is a matter of some debate within the Congress. The Office of Inspector General therefore recommends that the Department obtain a General Counsel interpretation on the appropriateness of activities in relation to the prohibition in the appropriations language.

We discussed the issues in this report with the Offices of Science, Energy Efficiency and Renewable Energy, Fossil Energy, and Policy in March 2000.

(Signed)
Office of Inspector General

The Department's Global Climate Change Activities

The Department's Fiscal Year 2000 budget allocated almost \$1.7 billion for programs to address climate change. The overall goal of these programs is to provide a comprehensive approach to better understanding and addressing global climate change. We discussed the funded research and technologies with the Offices of Energy Efficiency and Renewable Energy, Fossil Energy, and Science.¹ We found no indication that funds expended by these offices were used to issue policies implementing the Protocol.² However, the Department is involved in conferences and program activities aimed at developing necessary procedures and mechanisms in preparation for implementing the Protocol, if ratified.

Attendance at Climate Change Conferences

The Department spent approximately \$2,900 in travel and salary costs to send one representative to the two-day "Sustainable Climate Protection Policies" workshop in Berlin, Germany in February 2000. The purpose of this conference, according to the goals listed on the agenda, were:

1) To convene from both public and private sectors authorities on climate protection for a candid discussion of how best to complete the Kyoto Protocol in terms of economic, social, cultural, and political considerations, and 2) To discuss on a national basis current best practices and related challenges with respect to climate protection policies and measures assessing the potential role of economic costs and benefits, new technologies, social issues and commercial options in achieving longer term climate protection goals.

Department of Energy representatives have also been sent to a number of other conferences related to global climate change, including the annual FCCC Conference of the Parties (COP) meetings. For example, employees from the Offices of Policy and Energy Efficiency and Renewable Energy regularly attend the COP meetings and the Office of Policy has sent individuals to at least three other workshops relating to the negotiation of Protocol mechanisms. Travel costs associated with these three meetings totaled about \$8,700.

¹ A brief discussion of the Department's major climate change activities is included in Appendix 1.

² For reporting purposes the phrase "issue policies" is synonymous with "issue rules, regulations, decrees, or orders" as referred to in the appropriations language.

Active Negotiations to Clarify the Protocol

The Office of Policy contributes directly to U.S. participation in international negotiations under the FCCC, including negotiations that focus primarily on the development of the Protocol's flexibility mechanisms – emissions trading, the Clean Development Mechanism, and Joint Implementation. The flexibility mechanisms involve a system of trading allowances and a system for generating credits from projects in developing countries. The allowances and the credits can be used to meet developed countries' emission limitation obligations.

Policy officials told us that because emissions trading and the other flexibility mechanisms are new concepts to most other countries, considerable effort is required to help these countries understand how such mechanisms would work in practice. Full use of the flexibility mechanisms outlined in the Protocol are viewed as essential to minimize the costs of cutting greenhouse gas emissions both in the United States and globally. These mechanisms also can provide a strong economic incentive for all countries, including developing countries, to make meaningful commitments to cut greenhouse gas emissions. Some countries have proposed restricting the use of the mechanisms set forth in the Protocol. The U.S. strongly opposes such restrictions. Therefore, obtaining support of other countries, both developed and developing, for the full use of the mechanisms is a key U.S. objective.

In addition to efforts to support the further development and acceptance of the flexibility mechanisms, the Department is assisting developing countries interested in limiting their greenhouse gas emissions. We were informed that Department efforts in this regard are meant to assist developing countries in understanding their own emissions of greenhouse gases and the technologies and public policies that might be used to limit these emissions. The interagency efforts are designed to help achieve global participation in efforts to cut greenhouse gas emissions.

Fiscal Year 2000 Appropriations Language

Relative to climate change, for Fiscal Year 2000, the Department received its funding under the Energy and Water Development Appropriations Act (P.L. 106-60) and the Interior and Related Agencies Appropriations Act (P.L. 106-113).³ Each of these appropriations acts contained the restriction that, "[n]one of the funds appropriated by

³ During the course of our review, we identified another provision regarding Kyoto-related expenditures in the Interior and Related Agencies Appropriations Act, at section 568. As appropriate, the Department should also consider this language as it develops interpretive guidance.

[these Acts] shall be used to propose or issue rules, regulations, decrees or orders for the purpose of implementation, or in preparation for implementation, of the Kyoto protocol...."

**Department's Interpretation
of the Appropriations
Restriction**

We found that guidance was needed to ensure that the Department does not expend funds – or appear to spend funds – in violation of the appropriations language and to ensure a consistent application of the Protocol restriction. Most Department officials involved in climate change activities had not reviewed the specific appropriations language, but were aware that it existed. They also had varying interpretations of its meaning relative to day-to-day activities. In interviews with program office officials, a distinction was drawn between setting specific policies, which they viewed as prohibited, and conducting program activities and research related to climate change, which is within the Department's statutory mission. With respect to specific meetings and conferences where the Protocol is discussed, different opinions were presented on the types of such events that Department employees would be permitted to attend. The decision as to whether attending such meetings would violate the appropriations seemed to be largely a matter of individual discretion. Regarding international negotiations, Policy officials believed that such negotiations were necessary and legitimate because the Protocol needed considerable clarification before it could be credibly presented to the Senate for ratification.

We queried each responsible program office, the Office of Policy, the Office of Chief Financial Officer, and the Office of General Counsel to determine whether corporate guidance about the restrictive appropriations language existed. No such guidance had been issued. In contrast, we were informed by the Offices of Inspector General at the Department of State and the Environmental Protection Agency, each of which has identical restrictive language in its appropriations, that these agencies have issued guidance on the Protocol to their employees.

Presidential Signing Statement

We noted that the President, in signing into law the Consolidated Appropriations Act for Fiscal Year 2000, addressed the Protocol restriction. The President stated:

I continue to believe that various provisions prohibiting implementation of the Kyoto Protocol in this bill are unnecessary, as my Administration has no intent of implementing the Protocol prior to ratification. Furthermore, I will consider activities that meet our

responsibilities under the ratified U.N. Framework Convention on Climate Change to be consistent with this provision. Finally, to the extent these provisions could be read to prevent the United States from negotiating with foreign governments about climate change, it would be inconsistent with my constitutional authority. Accordingly, I will construe this provision as not detracting from my authority to engage in the many activities, both formal and informal, that constitute negotiations relating to climate change.

Continuing Participation in Global Climate Change

The signing statement, when contrasted with the language in the statute, suggests policy interpretation issues which, in our judgment, require clarification and guidance.

The Department's representation at certain meetings and its participation in international negotiations could be interpreted as "preparing" for the implementation of the Protocol. We concluded that formal guidance is needed so that program officials have a more precise and uniform understanding of which activities are consistent with the statutory requirements.

RECOMMENDATION

We recommend that the Director, Office of Policy, in coordination with affected program offices and with the advice of the Office of General Counsel, issue guidance interpreting the appropriations language regarding the Kyoto Protocol. The guidance should specifically address:

- Department interpretation of the appropriations language within the context of DOE's climate change mission;
- attendance by Department employees and contractors at meetings and conferences associated with climate change; and
- negotiations regarding climate change.

MANAGEMENT REACTION

In his response to our draft report, the Director, Office of Policy stated that the report provided a good overview of the Department's climate change responsibilities. He also agreed to work with the Office of General Counsel and the affected program offices to more formally interpret the appropriations language and issue specific guidance to staff about what activities are prohibited by the amendment.

The Director noted that some guidance already existed. His comments indicated that the Department was a part of an interagency process that discussed the appropriations language and culminated in the President's signing statement.

The Director disagreed with the statement made in the report that ongoing activities could be interpreted as "preparing" to implement the Protocol. He maintained that such activities are consistent with the Department's mission and his interpretation of the language.

**AUDITOR
COMMENTS**

The Director's comments are responsive to our recommendation. The Office of Policy should establish an action plan for prompt issuance of the proposed guidance.

We agree that the President's signing statement (quoted on page 5), provides some guidance to the affected agencies. We found, however, that most officials we spoke to during the audit were not aware of the statement or its applicability to their activities. Consequently, we concluded that guidance specifically addressing Department activities is necessary to clarify conflicting interpretations of the appropriations language.

As noted in the report, we recognize that interpretations differ as to the meaning of the appropriations language relative to the Department's mission.

APPENDIX 1

THE DEPARTMENT'S MAJOR CLIMATE CHANGE ACTIVITIES

The Fiscal Year 2000 budget for the Department included almost \$1.7 billion for spending programs to address climate change. This funding generally falls into three major program areas. The *Climate Change Technology Initiative* and the *U.S. Global Change Research Program* are the largest of the climate change programs. The third area, Other Climate-Related Programs, is made up of five smaller initiatives. Collectively these program areas provide a comprehensive approach to better understanding and addressing the challenge of global climate change.

Climate Change Technology Initiative

The Climate Change Technology Initiative (CCTI) is the cornerstone of the President's efforts to stimulate the development and use of sustainable and renewable domestic energy technologies and energy efficient products that will help reduce greenhouse gas emissions. This portfolio will help reduce U.S. greenhouse gas emissions while cost effectively addressing national priorities – improving energy security, improving local air quality and increasing energy savings. Funding for the CCTI covers the four major carbon emitting sectors of the economy – buildings, transportation, industry, and electricity – as well as carbon sequestration.

The Department's Office of Energy Efficiency and Renewable Energy (EE) is primarily responsible for the CCTI and controls approximately 96% of the Department's total budget for CCTI. The Offices of Fossil Energy (FE) and Science also receive funding for climate change activities through the CCTI.

U.S. Global Change Research Program

The Department's research activities under the U.S. Global Change Research Program are administered by the Department's Office of Science. DOE research seeks to provide a sound scientific understanding of both the human and natural forces that influence the Earth's climate system. The information produced by the program's scientists is used by national and international policy makers to make informed decisions on global change issues.

Other Climate-Related Programs

Several other programs in the climate change budget exist primarily for other purposes, but contribute to improving energy efficiency and reducing greenhouse gas emissions. The programs in this category include Weatherization and State Energy Grants, programs that increase the efficiency of coal and natural gas combustion and utilization, and nuclear energy research and development.

APPENDIX 2

SCOPE

The audit was performed between February 2000 and April 2000. We performed audit work at Headquarters offices in Washington, DC and Germantown, Maryland.

METHODOLOGY

To accomplish the audit objective, we:

- Obtained and reviewed applicable regulations, other agency guidance, and appropriations related to the Department of Energy and climate change activities;
- Reviewed related GAO reports and testimony;
- Reviewed the primary goals and objectives of the Framework Convention on Climate Change and the Kyoto Protocol;
- Coordinated with Office of Inspector General counterparts in the Department of State and the Environmental Protection Agency (EPA) to identify their position on the climate change activities in their agencies;
- Interviewed Departmental officials working in the climate change arena, including individuals in the Offices of Policy, Science, Energy Efficiency and Renewable Energy, and Fossil Energy;
- Evaluated the Department's climate change activities against the appropriations prohibition and Anti-Deficiency Act regulations; and
- Reviewed the Department's draft *Strategic Plan*, prepared in conformance with the Government Performance and Results Act, to understand relevant performance measures.

The audit was performed in accordance with generally accepted Government auditing standards for performance audits and included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. We did not rely on computer-processed data to accomplish our audit objective.

An exit conference was held with the Offices of Policy, Science, Energy Efficiency and Renewable Energy, and Fossil Energy on April 4, 2000.

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