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Climate Change: What the Feds Are Doing

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Congress: Waxman-Markey



- Renewable Energy Standard (Title I, Subtitle A)
 - 6% in 2012 to 25% in 2025-39
- Carbon Capture/Sequestration (Subtitle B)
 - Regulations to limit release of CO₂ into atmosphere
 - Funding of commercial deployment
 - CO₂ standards for new coal plants

Congress: Waxman-Markey



- Clean Transportation (Subtitle C)
 - Low carbon fuel standard
 - Electric vehicle infrastructure
- Smart Grid (Subtitle E)
 - Peak Demand Reduction Goals from LSEs
- Transmission Planning (Subtitle F)
 - Facilitate renewable/zero-carbon resources, energy efficiency, distributed generation, Smart Grid, electricity storage

Congress: Waxman-Markey



- Energy Efficiency (Title II)
 - Model building energy codes
 - Lighting and appliance efficiency standards
 - Vehicle GHG emission standards
 - Local transportation efficiency plans
 - Utility energy efficiency resource standard
 - Demonstrate that customers have achieved required energy savings
 - 1% electricity/0.75% gas savings in 2012
 - 15% electricity/10% gas by 2020



- “REDUCING GLOBAL WARMING POLLUTION”
(Title III)
 - “Covered entities”
 - Any electricity source
 - Any source emitting 25,000 tons or more of CO₂e
 - Any entity that sells or distributes in interstate commerce fossil fuels which will emit 25,000 tons or more of CO₂e
 - Any CCS site
 - Any source in a listed category
 - Any distribution company that delivers 460mcf of natural gas to non-covered entities (i.e., residential and small commercial customers)

Congress: Waxman-Markey



- Economy-Wide Reduction Goals
 - 3% below 2005 levels in 2012
 - 20% below 2005 levels in 2020
 - 42% below 2005 levels in 2030
 - 83% below 2005 levels in 2050
- Reduction targets for capped (“covered”) sources are same

Congress: Waxman-Markey



■ Regulated GHGs

- Carbon dioxide (CO₂)
- Methane (CH₄)
- Nitrous oxide (N₂O)
- Sulfur hexafluoride (SF₆)
- “Hydrocarbons emitted as a byproduct”
- Perfluorocarbons
- Nitrogen trifluoride (NF₃)
- Any other anthropogenic gas designated as a GHG by EPA

Congress: Waxman-Markey



- Federal GHG registry
- Emission allowances
 - One allowance is right to emit one ton of CO₂e
 - 4.77 billion in 2012
 - 1.035 billion in 2050 and thereafter
 - Unrestricted trading
 - Offsets may be used (1 offset = 0.8 allowance)
 - No provisions for auction v. free allocation

Congress: Waxman-Markey



■ GHG Standards

– New Source Performance Standards

- List of industrial sources emitting 10,000 tpy of CO₂e or more per year
 - Emit 20% or more of emissions not covered by cap
 - Emit 10% or more of methane emissions not covered by cap
 - Except for “enteric fermentation” (i.e. cows)
- GHG performance standards for listed sources



Congress: Other Proposals



- “Cash-for-clunkers”
- Transmission infrastructure for renewables
- Loan guarantees for renewable energy development
- Carbon tax

EPA GHG Reporting



- Mandatory GHG Reporting Rule (74 Fed. Reg. 16447 (April 10, 2009))
 - Report GHG emissions from sources representing 85-90% of GHG emissions in US
 - Suppliers of fossil fuels, vehicle/engine manufacturers, and stationary facilities emitting 25,000 tpy or more of CO₂e to report
 - First report due to EPA in 2011 for 2010 emissions (except vehicle manufacturers beginning in 2012 for 2011 emissions)
 - 40 source categories
 - Comment period expires June 9, 2009

EPA – Endangerment Finding



- PROPOSED ENDANGERMENT FINDING (74 Fed. Reg. 18885 (April 24, 2009))
 - Required by section 202(a)(1) of CAA
 - EPA to determine whether emissions from new vehicles and new vehicle engines “cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare”
 - Massachusetts v. EPA (U.S.S.Ct. 2007)
 - Held that CO₂ is an air pollutant for purposes of section 202(a)(1)
 - Ordered EPA to determine “whether sufficient information exists to make an endangerment finding”
- Comment period expires June 23, 2009

EPA – Endangerment Finding



- Defines “air pollution” to include:
 - CO₂
 - Methane
 - Nitrous oxide
 - Hydrogenated fluorocarbons
 - Perfluorocarbons
 - Sulfur hexafluoride

EPA – Endangerment Finding



- Defines “endanger” broadly
 - Assessment of current and future risks
 - Not limited to proof of actual harm
- Unlike similar findings for other pollutants, there are no direct health impacts from GHGs in atmosphere

EPA – Endangerment Finding



- GHGs from vehicles contribute to climate change which in turn lead to -
 - Intensification of heat waves, droughts, and storms, which in turn leads to
 - Increased mortality and morbidity among vulnerable population groups
- Welfare effects
 - Sea level rises
 - Ecosystem harm
 - Water quality and quantity problems

EPA – Endangerment Finding



- THE “GLORIOUS MESS” (Cong. Dingell)
 - Begins a legal process under the Clean Air Act that will, unless Congress intervenes, lead to:
 - GHGs as regulated pollutants under New Source Review (“NSR”) permitting
 - New Source Performance Standards (“NSPS” for GHGs
 - National Ambient Air Quality Standards (NAAQS) for CO₂

EPA – Endangerment Finding



■ New Source Review

- “Major Source” – potential to emit (“PTE”) 100 tons per year if a listed source or 250 tons per year of other sources of “any air pollutant”
 - 260,000 office buildings
 - 150,000 warehouses
 - 92,000 health care facilities
 - 71,000 hotels and motels
 - 51,000 food service facilities
 - 37,000 places of worship
 - Average restaurant has PTE of 600 tons per year of CO₂
- “Major Modification” – “significant” increase in emissions from physical change or change in method of operation

EPA – Endangerment Finding



- NSR (Cont'd)

- Best Available Control Technology

- Required as part of major source/major modification permit process
 - Independently of Endangerment Finding, EPA is considering BACT for CO₂ emissions from proposed power plants, etc.
 - BACT for GHGs may force fundamental redesign of facility
 - E.g., from pulverized coal to IGCC with CCS

EPA – Endangerment Finding



- New Source Performance Standards
 - Categories of sources that contribute significantly to dangerous air pollution
 - Applies to new and modified sources
 - Require best demonstrated achievable emissions reduction system that EPA finds has been “adequately demonstrated”
 - BACT can be no less stringent than NSPS

EPA – Endangerment Finding



- National Ambient Air Quality Standards
 - Protect human health and welfare
 - States required to develop and follow plans to maintain or come into compliance with NAAQS
 - Current NAAQS:
 - PM10/PM2.5
 - Ozone
 - Carbon monoxide
 - Sulfur dioxide
 - Nitrogen oxide
 - Lead

EPA – Endangerment Finding



- NAAQS (cont.)
 - Ambient levels differ significantly from airshed to airshed for current NAAQS pollutants
 - CO₂ levels uniform throughout globe
 - How can a state develop a plan to deal with sources of GHG emissions within the state that will have any significant impact on ambient GHGs?

EPA – Endangerment Finding



- NAAQS (cont'd)
 - If NAAQS for CO₂ set at level below current level, entire US will be in nonattainment, which means:
 - CAA deadlines for coming into compliance even though compliance is impossible
 - Statutory sanctions for missing deadlines
 - Loss of highway funds
 - Loss of wastewater treatment financing
 - Severe restrictions on new facilities emitting GHGs
 - EPA taking over air programs from state
 - Potential retrofits of existing major sources of GHGs
 - GHG offsets required for new major source or major modification

EPA – Endangerment Finding



- NAAQS (cont'd)
 - If ambient standard is set at level higher than existing ambient GHG level
 - State plan must show how to stay below ambient level
 - Even 100% shutdown of energy use in Utah will have no impact on growth/decline of ambient GHG levels
 - If levels exceed NAAQS, state will be penalized for global GHG emissions



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