

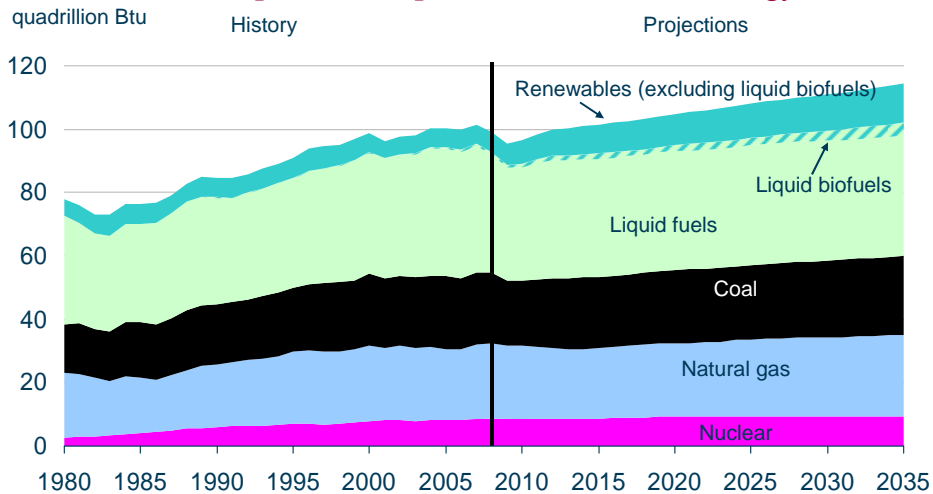


**Energy and Environmental Regulatory  
 Developments: Presentation to the National  
 Oilseed Processors Association**

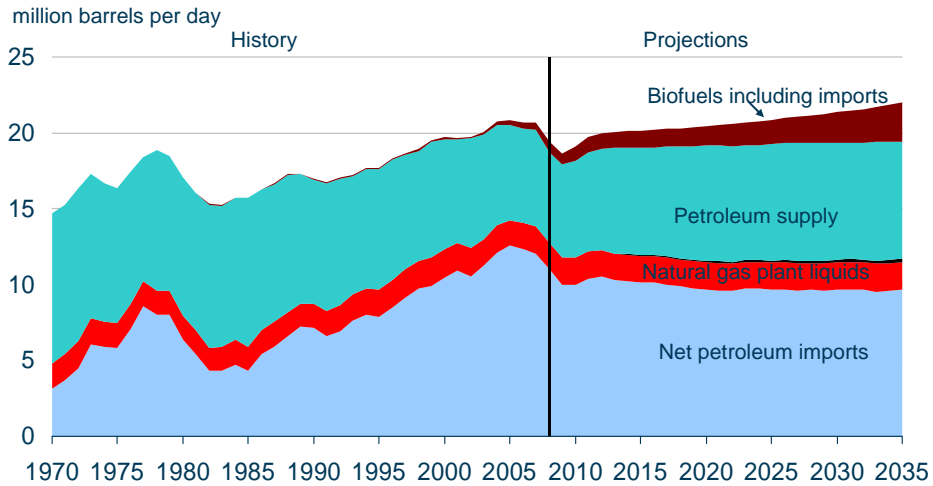
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February 9, 2010

**By 2035, EIA projects U.S. non-fossil use will grow, but fossil  
 fuels still provide 78 percent of total U.S. energy**



EIA projects that biofuels will meet most of the growth in liquid fuels supply between now and 2035

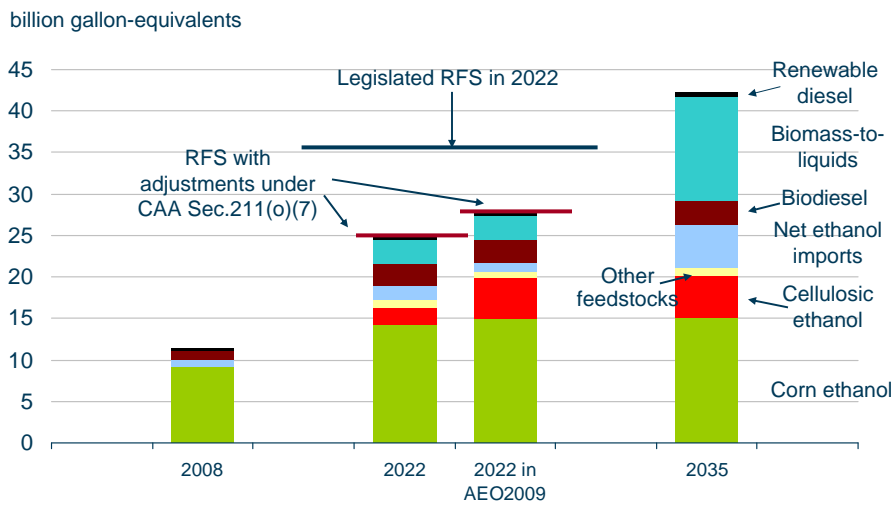


3

Source: EIA Annual Energy Outlook 2010

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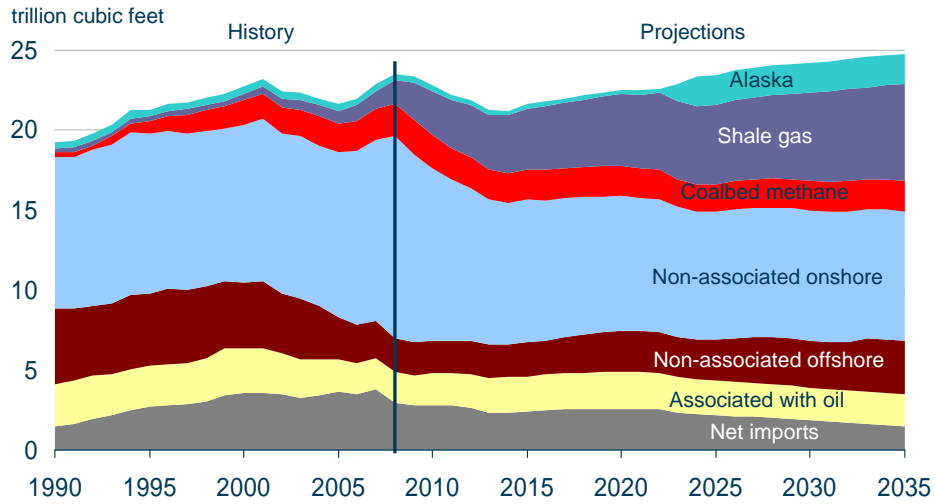
EIA estimates biofuels production will grow, but fall short of the 36 billion RFS mandate in 2022



4

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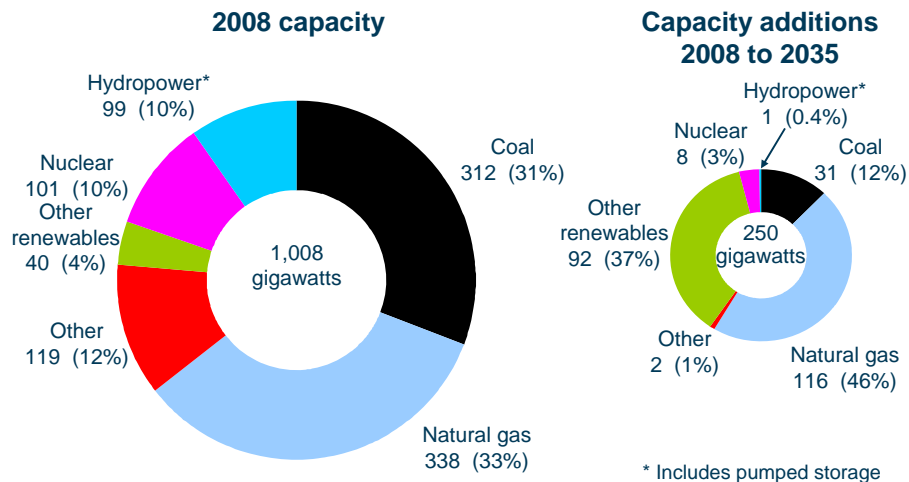
## EIA projects shale gas and Alaskan production will offset declines in other U.S. production



5

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## EIA estimates natural gas and renewables account for the majority of electric capacity additions 2008-2035

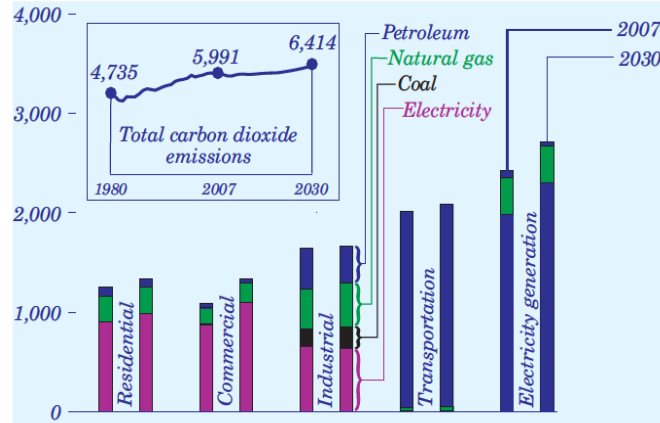


6

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## U.S. GHG Emissions by Economic Sector

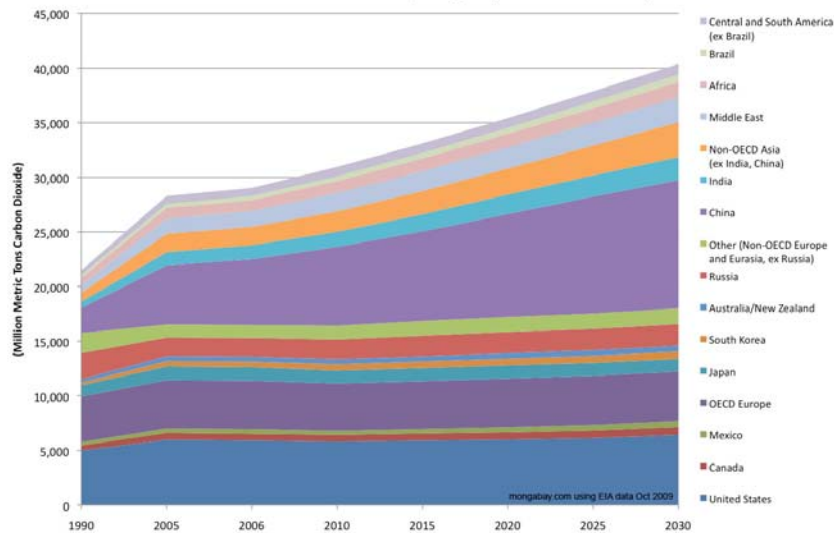
**Figure 81. Carbon dioxide emissions by sector and fuel, 2007 and 2030 (million metric tons)**



7

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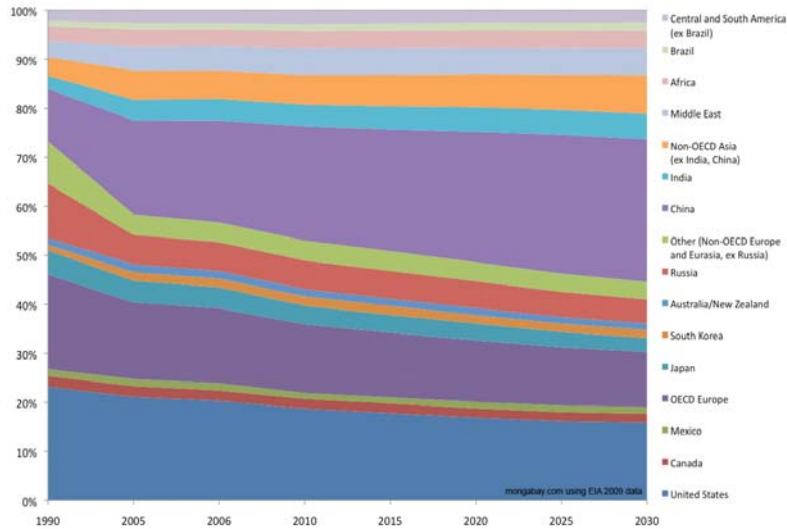
**World Carbon Dioxide Emissions by Region, Reference Case, 1990-2030**



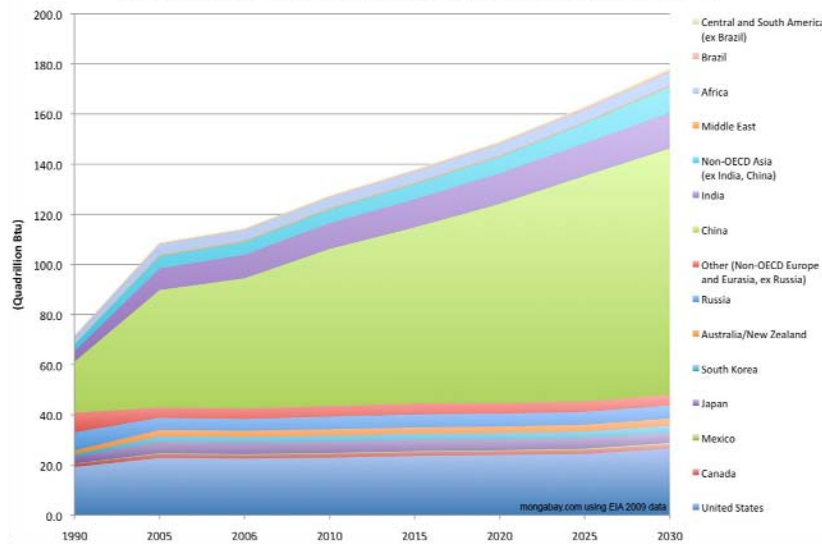
8

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Share of World Carbon Dioxide Emissions by Region, Reference Case, 1990-2030



World Coal Consumption by Region, Reference Case, 1990-2030



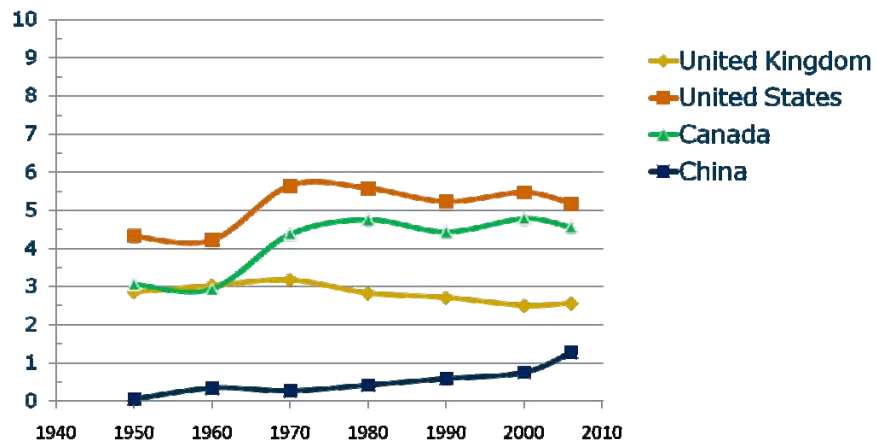
## 2006 Global Per Capita CO<sub>2</sub> Emissions

Ranking	Country	Emissions
#1	Qatar	13.46
#9	United States	5.18
#10	Australia	4.9
#12	Canada	4.55
#19	Finland	3.56
#37	Germany	2.67
#38	United Kingdom	2.56
#39	St. Pierre & Miquelon	2.50
#64	France	1.71
#71	Sweden	1.53
#77	Antigua & Barbuda	1.38
#82	China	1.27
#102	North Korea	0.98
#140	India	0.37

11

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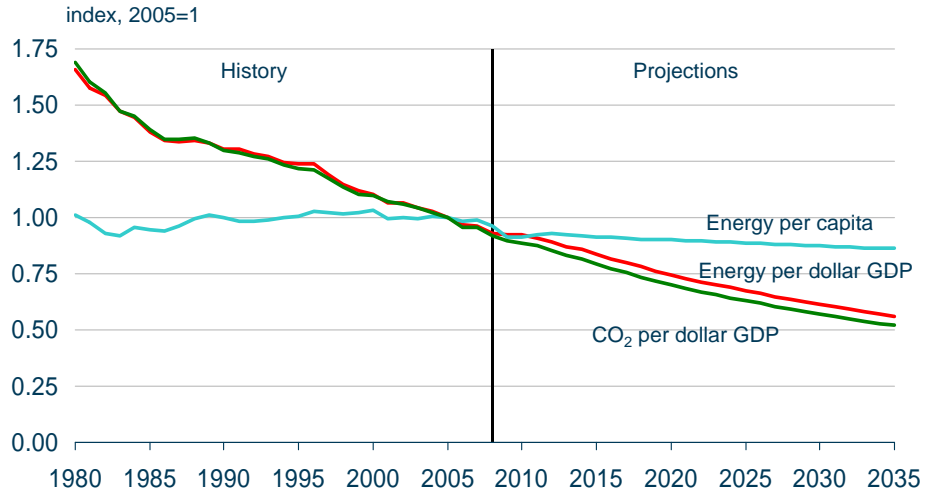
## 2006 Per Capita Emissions By Comparison



12

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## EIA Projection of U.S. Energy Consumption and CO2 Emissions per Dollar of GDP

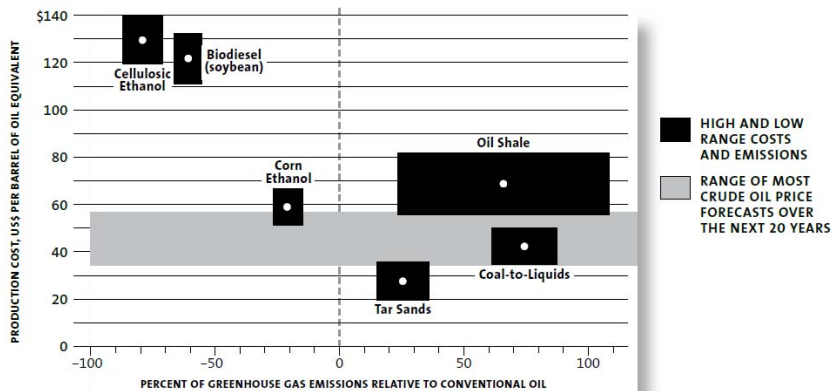


13

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## Costs and Greenhouse Gas Emissions (2006 Data)

### COSTS AND GREENHOUSE GAS EMISSIONS OF LIQUID FUEL FEEDSTOCKS



SOURCE: Costs: U.S. Energy Information, *Annual Energy Outlook* (2006); other sources. Emissions: A. Brandt and A. Farrell, M. Wang (GREET model 2006).

14

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## The Transition to a Carbon Constrained U.S.

EPA's path is a **certainty; rules already have been issued.**

- President Obama has committed to finalizing the first GHG regulations
- EPA already has issued a mandatory GHG reporting rule and the Clean Air Act "endangerment determination"
- EPA is presently pursuing three other significant climate change rulemakings
- Environmental NGOs will use courts to force action

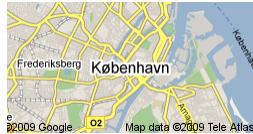


Quick developments in the House, but **less certain future.**

- House of Representatives passed American Clean Energy and Security Act several months ago
- One Senate committee has approved an energy bill
- But Senate passage of a climate bill is more challenging; very little chance a bill will be passed in 2010.



And then there's the UN process.



15

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## The Transition to a Carbon Constrained U.S. What will carbon controls look like?

EPA will use **command and control** approach

- Will try to adapt existing Clean Air Act provisions to regulate energy use and GHG emissions
- Will develop micro-sector-specific approaches
- Will aim to control energy by requiring technology redesign and workplace standards
- Will lead to extraordinary complications under the Clean Air Act



Congress likely would prefer a **market based system**

- Focus has been on cap and trade, but carbon tax is favored by some
- Will impose industry-wide restrictions on GHGs
- In theory, should be comprehensive and preempt Clean Air Act command and control approach, but both Waxman-Markey and Kerry-Boxer leave much Clean Air Act authority intact



16

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## The Transition to a Carbon Constrained U.S. When will controls be enacted?



EPA intends to finalize first GHG control rules by **March 2010**

- First GHG rules will apply to cars and light duty trucks, but likely will be viewed as triggering Clean Air Act regulation for virtually all sectors of the economy
- EPA has established the regulatory foundation for CAA regulation
- Mandatory GHG reporting rule has been finalized; first reporting period began **January 1, 2010**

Both Waxman-Markey and Kerry-Boxer would implement **cap on GHG emissions in 2012**

- Under both bills, 2012 emissions could not exceed 97 percent of 2005 emissions
- By 2050, must have 83% reduction in emissions (economy-wide goal; mandatory for certain sectors)



17

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## Prospects for Action by Congress in 2010

- Some Congressional action on major climate and energy bills
- However, at this point much of the Senate attention is on health care reform – and after that, will be a jobs bill, financial sector reform, etc.
- Very difficult, heavily-partisan slog on these matters – and may be getting progressively more difficult, with results of Massachusetts election and particularly after April 2010 if unemployment stays high
- Health care, jobs bill and financial industry reform will affect not only timing, but also the substance of the climate and energy debate:
  - Not just economics, but also ideology about the role of government
  - Distrust of massive new programs with complicated allowance and derivatives trading systems
- Action to date, and membership on relevant committees, has exacerbated partisanship and the difficulty of enactment
- New Kerry-Graham-Lieberman efforts in the Senate may be the pathway
- But..... unemployment is still at 10%, politics is a zero-sum game, and the 2010 election is less than 9 months away
- And, Murkowski efforts in Senate; Skelton and Peterson in the House

18

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## Portfolio of EPA Rulemakings

### GHG Controls

- Endangerment finding (proposed April 17, 2009; finalized December 7, 2009).
- GHG regulation under Clean Air Act section 202 for cars and light duty trucks (proposed September 2009; likely finalized by March 2010)
- PSD tailoring rule (proposed September 2009; maybe finalized by March 2010)
- Johnson Memo Reconsideration (proposed September 2009; finalized early 2010)

### Other Rules and Actions

- Mandatory reporting of greenhouse gas emissions (regulations proposed March 2009; finalized September 2009; implementation began January 1, 2010)
- Regulations for the renewable fuels standard (finalized February 2010)
- California waiver decision (Obama Administration reconsidered Bush Administration denial of request for waiver to address GHGs; granted waiver on June 30, 2009)
- Carbon sequestration proposal (public comment period closed; possible final rule in early 2010)

19

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## Endangerment Determination

### What EPA Decided

- Six greenhouse gases, taken together, “endanger both the public health and the public welfare of current and future generations”
- Combined emissions of these six GHGs from new motor vehicles contribute to the GHG air pollution that endangers health and welfare
- EPA’s decision was reached “by considering both observed and projected effects of greenhouse gases in the atmosphere, their effect on climate, and the public health and welfare risks and impacts associated with such climate change”
- EPA used a “sliding scale” of risk and harm
- Resulting control measures need not meaningfully reduce endangerment or be effective in addressing climate change

### What the Endangerment Determination Means

- EPA *must* issue standards for emissions of GHGs from new motor vehicles and new motor vehicle engines
- Additional regulatory consequences - other sections of the CAA are geared to similar endangerment determinations (section 213 marine shipping vessels and nonroad vehicles, section 231 aircraft)

20

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## Section 202 Rulemaking

### Proposal

- September 2009 joint proposal by NHTSA to set new CAFE standards, and EPA to set new GHG emissions standards
- Applies to new cars and light-duty trucks; model years 2012-2016
- Standards eventually go to, in 2016, an emissions limit of 250 g/mi CO<sub>2</sub> on average, and about 35.5 mpg CAFE
- Is the follow-on rulemaking to a positive endangerment determination

### Outlook

- Probably finalized by March 2010
- Some interesting issues when regulating fuel economy – rebound effect, discount rate, value per ton of CO<sub>2</sub>, etc.
- EPA and NHTSA will use a value for CO<sub>2</sub> in setting the standards – possibly a range of between \$5 and \$55 per ton, with a central value between \$20 and \$33
- Value will be based on social cost/harm in the absence of a cap

21

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## PSD Tailoring Rule

### Background

- EPA's regulation of GHG emissions from motor vehicles will automatically trigger requirements to regulate GHG emissions from certain stationary sources
- EPA interprets CAA as requiring regulation of new and modified stationary sources emitting more than 250 TPY CO<sub>2</sub> (in some cases 100 tons)
- EPA's interpretation could lead to permitting requirements for more than one million (some estimate more than five million) stationary sources
- Strong arguments that EPA is incorrect, but some stationary sources certainly will be subject to GHG permitting (BACT) requirements

### Proposal

- September 2009, EPA proposed to focus permitting requirements on only larger facilities – those emitting more than 25,000 tons of CO<sub>2</sub> equivalent per year
- Threshold would apply for both New Source Review and Title V permitting
- EPA says its rule would avoid "absurd results"

22

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## Johnson Memo Reconsideration

### Background

- Once EPA issues regulations for GHG emissions from new motor vehicles, GHGs will be regulated under the Clean Air Act
- Question is whether these new standards will make GHGs “subject to regulation” under the CAA for purposes of stationary source regulation, and *when* will they be regulated – when the rule is issued, or when regulations impose actual control requirements
- In late 2008, EPA Administrator Johnson determined that only when regulations require actual controls are emissions subject to regulation
- This matters because it will determine when stationary source permitting requirements kick in

### Proposal

- EPA is reconsidering the Johnson Memo
- Has proposed to come to the same conclusion
- Many points in EPA’s reconsideration document rely on incorrect interpretations of the CAA – particularly as to the extent that regulation of motor vehicles triggers stationary source permitting requirements

23

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## Renewable Fuels Standard

### Background

- Energy Independence and Security Act of 2007 set forth new RFS volume requirements – eventually 36 billion gallons in 2022
- Requirements for individual fuel types and specific years
- In some cases, volume requirements are geared to lifecycle GHG emissions of the fuel – for example, to qualify as “advanced biofuel,” the fuel must have substantially lower lifecycle GHG emissions than 2005 conventional petroleum

### Final Regulations

- Sets 2010 standards for cellulosic biofuel, biomass-based diesel, etc.
- Also makes determinations as to which fuels meet lifecycle GHG thresholds
- Among other things, EPA decided that: biodiesel and renewable diesel from soy oil or waste oils will meet the 50% GHG reduction threshold for biomass-based diesel compared to the 2005 petroleum diesel baseline
- Ethanol from corn starch at a new natural gas, biomass or biogas fired facility using efficient technologies will meet the 20% GHG reduction threshold to constitute “renewable fuel”

24

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## Government “Investments” in New Energy Infrastructure

- ARRA made available billions of dollars for Department of Energy to distribute in the form of grants to a variety of energy-related projects – for example:
  - \$4.5 billion for Electricity Delivery (mainly Smart Grid)
  - \$3.5 billion for Fossil Energy R&D (CCPI and Industrial CCS)
  - More than \$15 billion for energy efficiency and renewables
  - Funding opportunities already and announced and closed – though much of the money has not yet been distributed.
- \$6 billion (later reduced to \$4 billion) to pay the credit subsidy cost of loan guarantees for certain types of projects
  - Two solicitations issued in late July 2009; Phase I and Phase II
  - Only some projects will be eligible for Federal funds to pay credit subsidy costs; currently no way of knowing the total amount of loan guarantees that DOE will be able to issue with the \$4 billion
  - Significant program complexity; current funds don't cover nuclear.
- \$3.25 billion of borrowing authority for BPA; same for WAPA

25

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## Waxman-Markey, Kerry-Boxer

- Reduction of GHG emissions – 3% by 2012, 83% by 2050, compared to a 2005 baseline
- Both bills contain cap and trade programs for covered sources.
- Detailed emissions allowance schemes – some given away, some sold, some to emitting sources, some to other entities and programs. An allowance is just another word for cash.
- Renewable portfolio standards in Waxman-Markey, Bingaman.

### Outlook

- Timeline
- Linkage of climate and energy legislation
- Linkage to action on health care bills and financial industry reform
- Copenhagen
- EPA action

26

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## Waxman-Markey -- Impacted Industries

Section 722 prohibits emissions of GHGs unless owner or operator holds necessary allowances for “capped emissions” from the following “covered entities”:

- Electricity sources
- Fuel producers and importers (>25,000 tons/year)
- Industrial gas producers and importers (>25,000)
- Nitrogen trifluoride sources (>25,000)
- Geological sequestration sites
- Industrial stationary sources (see 700(12)(F)-(H))
- Industrial fossil fuel-fired combustion devices (>25,000)
- Natural gas local distribution companies
- Algae based fuels
- Fugitive emissions

27

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## How the Cap and Trade Program Works

- “Covered Entities” must generate an allowance for each ton of CO2 equivalent of “Capped Emissions”
- Some facilities will not be “covered entities” unless they emit above specified threshold.
- For covered entities, emissions are generally “capped emissions” if they are generated by fossil fuel combustion. Renewable biomass and liquid fuels generally do not generate “capped emissions.”

28

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# Waxman-Markey Allowance Allocation

## Proposed Allowance Allocation

Chairman Henry A. Waxman and Chairman Edward J. Markey  
May 14, 2009

Emission allowances will be allocated to accomplish three primary goals: (1) to protect consumers from energy price increases, (2) to assist industry in the transition to a clean energy economy, and (3) to spur energy efficiency and the development and deployment of clean energy technology. A small amount of allowances will be allocated to prevent deforestation and support national and international adaptation efforts and for other purposes.

### Consumer Protection

**Protection from Electricity Price Increases:** The electricity sector will receive 35% of the allowances, representing 90% of current utility emissions. Local electric distribution companies, whose rates are regulated by the states, will receive 30% of the allowances, which they must use to protect consumers from electricity price increases. Merchant coal and long-term power purchase agreements will receive 3% of the allowances. These allowances will be distributed according to a formula recommended by the utility industry and will phase out over a five-year period from 2026 through 2030.

**Protection from Natural Gas Price Increases:** Local natural gas distribution companies, whose rates are regulated by the states, will receive 9% of allowances, which they must use to protect consumers from natural gas price increases. These allowances will phase out over a five-year period from 2026 through 2030.

**Protection from Home Heating Oil Price Increases:** States will receive 1.5% of allowances for programs to benefit users of home heating oil and propane. These allowances will phase out over a five-year period from 2026 through 2030.

**Protection of Low- and Moderate-Income Households:** 15% of allowances will be auctioned each year and the proceeds of these allowances will be distributed to low- and moderate-income families to protect them from other energy cost increases. These allowances will be distributed through tax credits, direct payments, and electronic benefit payments and will not phase out.

### Transition Assistance for Industry

**Protection for Energy-Intensive, Trade-Exposed Industries:** Pursuant to the Insee-Doyle program, energy-intensive, trade-exposed industries will receive allowances to cover their increased costs from the global warming protection program. The number of allowances set aside for this program will equal 13% of the allowances in 2014 and then decrease based on the percent reductions in the emissions targets. These allowances will phase out after 2025 unless the President decides the program is still needed.

**Protection for Domestic Energy Production:** Oil refiners will receive 2% of allowances starting in 2014 and ending in 2026.

### Energy Efficiency and Clean Energy Technology

**Investments in Carbon Capture and Sequestration:** 2% of allowances from 2014 through 2017 and 5% of allowances in 2018 and subsequent years will be allocated to help electric utilities cover the costs of installing and operating carbon capture and sequestration technologies.

**Investments in Renewable Energy and Energy Efficiency:** States will receive 10% of allowances from 2012 through 2015; 7.5% of allowances in 2016 and 2017; 6.5% of allowances from 2018 through 2021; and 5% of allowances thereafter for investments in renewable energy and energy efficiency. (The 5% of allowances from 2022 through 2025 will include some future year allowances.)

**Investments in Advanced Automobile Technology:** 3% of allowances through 2017 and 1% from 2018 through 2025 will be allocated for investments in electric vehicles and other advanced automobile technology and deployment.

**Investments in Research and Development:** 1% of allowances will be allocated to "Clean Energy Innovation Centers" at research universities and institutions for applied research and development on clean energy technologies.

### Other Public Purposes

**Supplemental Reductions from Preventing Tropical Deforestation:** 5% of allowances will be allocated from 2012 through 2025 to prevent tropical deforestation and build capacity to generate international deforestation offsets. By 2020, this program will achieve additional emission reductions equivalent to 10% of U.S. emissions in 2005. From 2026 through 2030, 3% of allowances will be allocated to this program. In 2031 and thereafter, 2% will be allocated to this program.

**Domestic Adaptation:** From 2012 through 2021, 2% of allowances will be allocated for domestic adaptation purposes. The amount of allowances allocated for domestic adaptation will increase to 4% from 2022 through 2026 and to 8% in 2027 and thereafter. Half of these allowances will be used for wildlife and natural resource protection and half for other domestic adaptation purposes, including public health.

**International Adaptation and Clean Technology Transfer:** From 2012 through 2021, 2% of allowances will be allocated for international adaptation and clean technology transfer. The amount of allowances allocated for these purposes will increase to 4% from 2022 through 2026 and to 8% in 2027 and thereafter. Half of these allowances will be used for adaptation and half for clean technology transfer.

**Worker Assistance and Job Training:** 0.5% of allowances will be allocated for worker assistance and job training from 2012 through 2021. This amount will increase to 1% thereafter.

## Offsets

- Permits capped sources to use up to 2 billion offsets of allowances annually (split between domestic and international offsets)
- Title V (Peterson Amendments) apply to domestic agricultural and forestry projects; Title VII applies to other projects.
- Steps to generating offsets
  - (1) USDA or EPA rulemaking;
  - (2) project certification;
  - (3) project verification.
  - **But** Waxman-Markey (Section 795) also allows exchange for early action offset credits from certain state and voluntary programs.
- Offsets as cost containment
  - CBO: Together, the provisions allowing the use of domestic and international offsets would decrease the price of GHG allowances by \$35 (69 percent) in 2012.
  - EPA: Without international offsets, costs of allowances would increase 96 percent.

## Displacement of Existing Clean Air Act

### Cap and trade legislation should be comprehensive and preempt other federal, state, and local GHG approaches

- Section 811(a) **mandates** EPA promulgate **NSPS** for
  - Certain sources emitting between 10,000 and 25,000 tons/year; and
  - Source categories responsible for at least 10 percent of methane emissions.
- Section 821 **preserves** Clean Air Act authority for **all mobile sources**, despite subjecting fuel providers to cap.
- NAAQS and HAPS (Sections 831 and 834) preempt GHG regulation only on the “basis of effect on global climate change.”
- Other federal laws, such as Endangered Species Act, are not preempted.
- State command and control approaches not preempted; state cap and trade permitted after 2017; regional cap and trade may not be preempted at all (Section 861)

31

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## ACELA (S. 1462) Renewable Energy Mandates

- Establishes a federal Renewable Electricity Standard – sellers of electricity must obtain certain amounts of their electricity from renewables or efficiency improvements:
  - 2011-2013            3%
  - 2014-2016            6%
  - 2017-2018            9%
  - 2019-2020            12%
  - 2021-2039            15%+
- Qualifying renewables
  - Wind, solar, geothermal, biomass, landfill gas, incremental hydropower, hydrokinetic, new hydropower at dams with no generation
  - Note absence of nuclear and existing hydropower
  - DOE can add other innovative sources through rulemaking

32

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## ACELA (S. 1462) Renewable Energy Mandates

- Electricity sellers can meet their mandates:
  - Generating or buying renewable energy
  - Generating efficiency improvements
  - Buying credits
  - Making alternative compliance payments to the Federal Government (2.1 cents per kilowatt hour)
- Special provisions:
  - Triple credits for small renewable distributed generators (1 MW)
  - Efficiency credits can only account for up to 26.67 of total%

33

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## ACELA (S. 1462) Clean Energy Deployment Administration

- ACELA would establish a new Administration within the Department of Energy
  - CEDA would be an independent agency within DOE
  - The purpose would be to encourage the deployment of riskier, more innovative technologies
  - CEDA would be authorized to issue: loans, loan guarantees, letters of credit, insurance products, or other financial instruments.
  - Very broad definition of “clean energy technology” – basically anything related to the production, transportation or use of energy, for which the CEDA Administrator decides there is “insufficient commercial lending” available “to allow for widespread deployment.”
- Creates Clean Energy Investment Fund
  - Allows program to be self-sustaining
  - No longer need appropriations act authority

34

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Thank You.

February 9, 2010

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35

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