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### SLIDES: Federal Law and Climate Change: Possible Future Directions

Kyle Danish

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# Federal Law and Climate Change: Possible Future Directions

Kyle Danish

**Climate Change and the Future of the American West:  
Exploring the Legal and Policy Dimensions**

University of Colorado School of Law

June 8, 2006

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# Perspective

- Van Ness Feldman
  - Energy, Environment, Natural Resources Law Firm
- Climate Change Practice
  - Advising companies on policy and strategic issues
  - Counsel on emissions trading, domestic and international
- Commissioned research on climate change policy
  - Pew Center on Global Climate Change
  - National Commission on Energy Policy
  - Electric Power Research Institute
- Published articles on climate change policy
  - *Boston College Environmental Affairs Law Review*
  - *Environmental Law Reporter*
  - *Public Utilities Fortnightly*
  - *Journal of Forestry*



# Overview

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- Review of the Bush Administration climate change policy
- Proposals for regulatory programs in Congress
- Key design issues for a regulatory program
- Message:
  - Details matter . . . and not just stringency



# Bush Administration Approach

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- **Theory of the case**
  - If climate change is a problem, it will require substantial long-term reductions
  - Near-term mandates do not make sense
  - Invest in technology
- **National emissions goal**
  - Slow the growth of emissions, then evaluate strategies for reductions
- **Target**
  - Reduce GHG intensity of the U.S. economy by 18% by 2012
    - Intensity = emissions/output



# Bush Administration Programs

- **Voluntary action and technology promotion**
  - *Increased Federal funds for R/D/D in clean energy technologies*
    - Geologic sequestration
    - Futuregen (zero-emissions coal-fired powerplant using sequestration)
    - Fuel cell vehicles
  - *Voluntary industry commitments*
    - ClimateVISION – agreements with industry sectors
    - Climate Leaders – commitments by individual companies
    - Upgrade the voluntary emissions and reductions reporting program – the 1605(b) program
  - *International: Asia-Pacific Partnership*
    - US, South Korea, India, China, Japan, Australia
    - “The Partner countries will work together and with private companies to expand markets for investment and trade in cleaner, more efficient energy technologies, goods, and services in key sectors.” White House Fact Sheet (January 11, 2006)



# Activity in Congress

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- Sense of the Senate Resolution (2005)
  - *It is the sense of the Senate that Congress should enact a comprehensive and effective national program of **mandatory, market-based limits** and incentives on emissions of greenhouse gases that **slow, stop, and reverse** the growth of such emissions at a rate and in a manner that – (1) **will not significantly harm the United States economy**; and (2) **will encourage comparable action by other nations** that are major trading partners and key contributors to global emissions.*
- Support from 53 Senators



# Current proposals in Congress

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- Senate
  - Feinstein (D-CA)
  - Carper (D-DE)
  - Bingaman (D-NM) (2005)
  - McCain (R-AZ) / Lieberman (D-CT) (2005)
- House
  - Udall (D-NM) / Petri (R-WI)
- Common element: cap-and-trade approach
- Variations:
  - Stringency, scope of regulation, allowance allocation, point of regulation, timing



# Domenici-Bingaman White Paper Process

- **Publication of white paper on designing a cap-and-trade program**
  - Request for public comments
- **Over 150 comments**
- **April 4th conference before the Senate Energy & Natural Resources Committee**
  - Testimony from Duke Energy, Wal-Mart, Southern Company, American Electric Power, Shell, and others
- **Milestone in the evolution of Federal climate policy**
  - Engagement of companies in the design discussion



# Key policy design issues

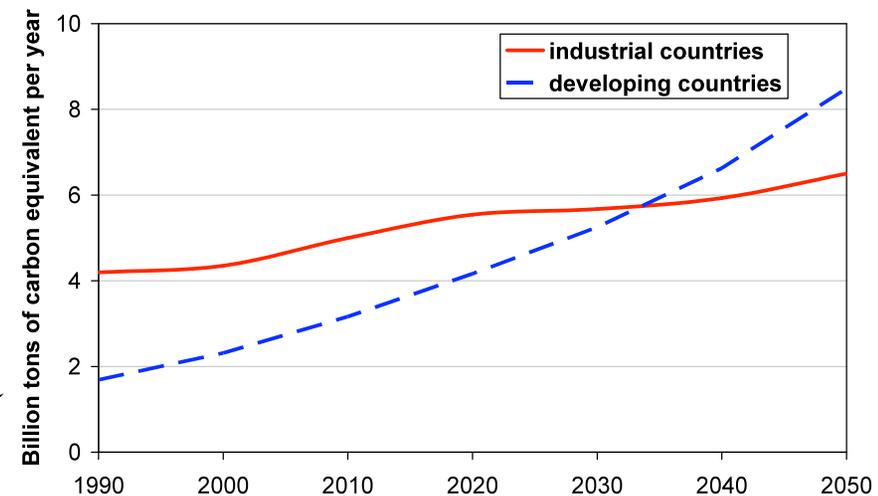
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- Stringency
- Scope of regulation
  - Electric power sector only (Carper)
  - Economy-wide
- International
- Point of regulation
- Allowance allocation
- Cost controls



# International interaction

- Interaction of US policy with other key countries (e.g., China and India)?
- *Option 1*
  - Continue with policies to promote technology
  - Wait until key countries commit to regulation
- *Option 2*
  - Start a mandatory program now at a low level of stringency
  - Condition more aggressive action on comparable action by others
  - See Feinstein, Bingaman, Udall-Petri proposals
- *Other options?*





# Point of regulation for CO<sub>2</sub> emissions

- Objectives:
  - Maximize coverage of CO<sub>2</sub> emissions
    - Ensure regulatory “price signal” reaches end-users of energy
  - Regulating smallest number of facilities
- Historical approach is a “downstream” approach
  - Limit emissions from *sources*
    - Acid Rain program– regulate *sources* of sulfur dioxide emissions (power plants)
  - Cannot work for CO<sub>2</sub> – sources of CO<sub>2</sub> emissions number in the tens of millions (power plants, factories, residences, cars)
- Alternative: regulate wholly or partially on an “upstream” basis
  - Limit fossil fuel sold by *producers*
    - Theory: regulatory “price signal” will reach end-users of fuels
- Different combinations
  - Downstream/Upstream (Feinstein, McCain-Lieberman)
  - Upstream only (Bingaman, Udall-Petri)



# Point of regulation: coal

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- Downstream: Require power plants to surrender allowances to cover CO<sub>2</sub> emissions
- Upstream: Require coal mines to surrender allowances to cover carbon content of coal sold downstream
  - Power plants will incur higher cost for coal



# Point of regulation: natural gas

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- **Difficult issues**

- Difficult to regulate one set of entities and reach 100% of natural gas (e.g., gas to industrial users)
- Some entities may be too great in number to regulate (e.g., producers)
- Some entities face substantial obstacles to passing through regulatory costs (e.g., pipelines)



# Point of regulation: oil

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- Downstream regulation is not feasible
  - Cars, trucks, etc., number in the tens of millions
- **Upstream** regulation
  - Require refineries to surrender allowances for carbon content of oil sold downstream
    - Translates into higher fuel prices
- Alternative: “**Midstream**” regulation
  - Require automakers to surrender allowances for CO<sub>2</sub> emissions associated with use of vehicles



# Allowance allocation

- How allowances are initially distributed could create significant winners and losers
  - Asset value of allowances could be substantial
    - \$20/tCO<sub>2</sub>eq = \$70 billion (World Resources Institute)
- Historical approach
  - Allocate allowances to regulated entities
- Recent thinking
  - Allocate allowances to those who bear costs of regulation
    - Could be end-users
    - Could be product suppliers
  - Auction some allowances to support other ends
    - R/D/D for clean energy technology
    - Energy efficiency
    - Adaptation



# Cost control

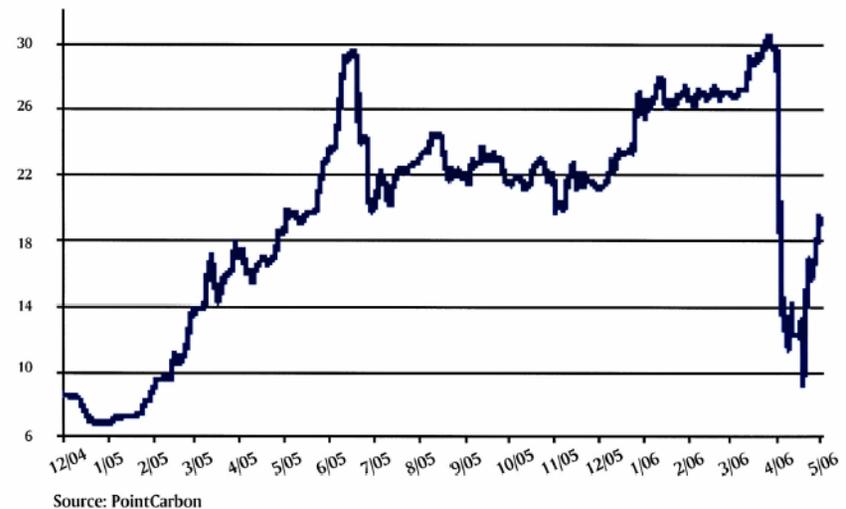
- **Issue**

- Under a conventional cap-and-trade program, the cap is met regardless of cost (allowance price)
- Costs of CO<sub>2</sub> control are uncertain, could be volatile – **see EU ETS experience**

- **Option**

- Designate “safety valve” allowance price
- Make unlimited allowances available at safety valve price
- Provides compliance cost certainty – *Costs are capped at safety valve level*
- See Feinstein, Bingaman, Udall-Petri, Carper proposals

EU Allowance Prices (Dec. 04 – May 06)





# Conclusions

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- Thinking on the design of a Federal climate change regulatory program has started in earnest
- Proposals are oriented toward cap-and-trade programs
- Increasingly, industry is engaging in the policy design discussion
- In addition to stringency, programs vary along key design parameters
  - International interaction
  - Point of regulation
  - Allowance allocation
  - Cost controls



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