

U.S. Climate Change Policy: Implementation Pathways and Obligations

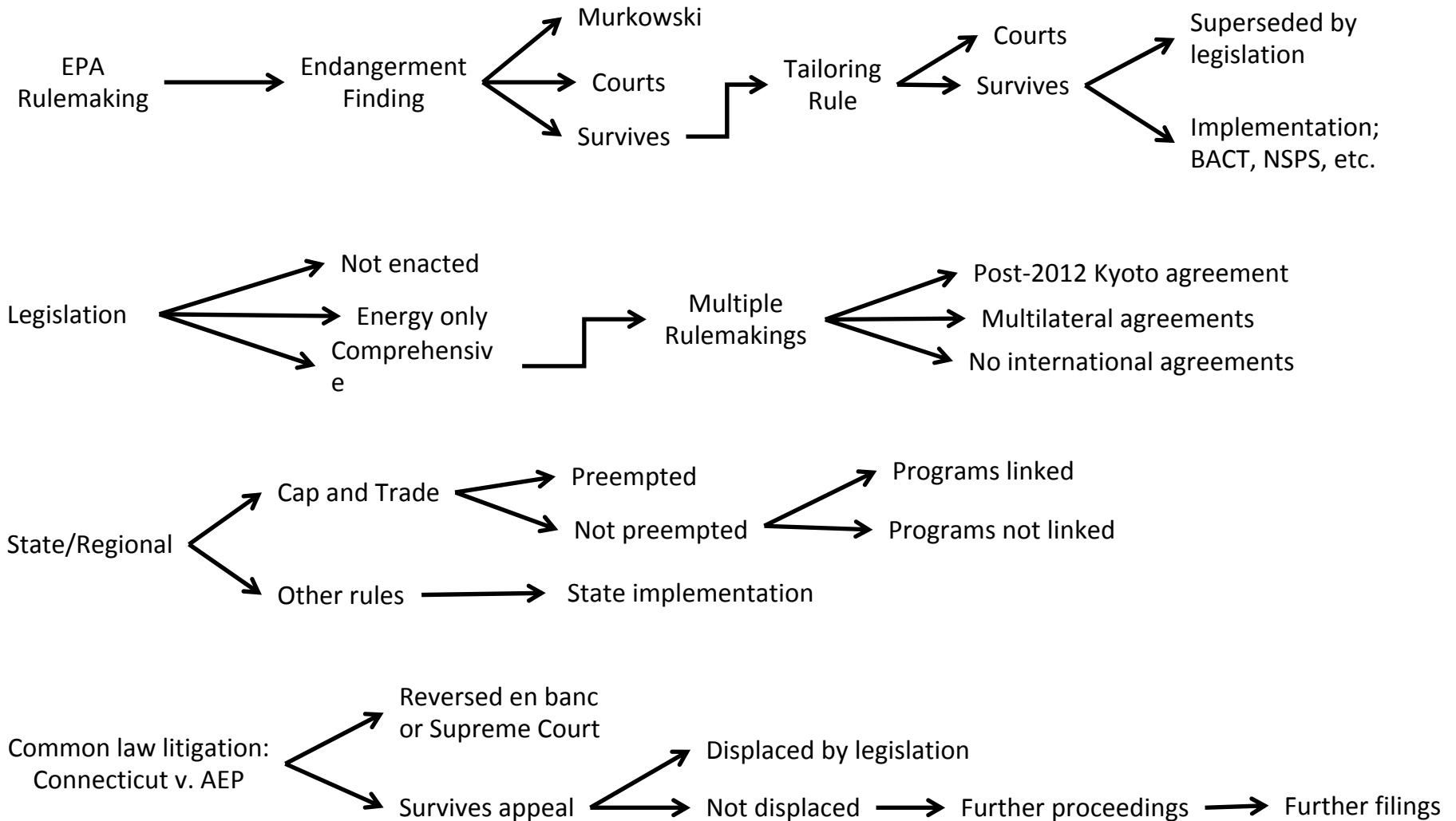
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February 5, 2010

U.S. Climate Regulation: Possible Paths Forward



Number of Rulemakings Required by Waxman-Markey

EPA	59
DOE	37
HUD	16
FERC	7
USDA	6
HHS	5
AS/FFIEC*	2
CFTC	2
Commerce	2
Interior	1
Labor	1
State	1
Transportation	1
FTC	1
GAO	1
OMB	1
“Federal banking agencies”	1
“Financial institutions regulatory agencies”	1

*Appraisal Subcommittee of the Federal Financial Institutions Examination Council

Number of Rulemakings Required by Waxman-Markey

Title	Title Name	EPA	DOE	Total
I.	Clean Energy	8	11	25
II.	Energy Efficiency	11	25	61
III.	Reducing Global Warming Pollution	33	1	39
IV.	Transitioning to a Clean Energy Economy	4	0	12
V.	Agricultural and Forestry Related Offsets	3	0	8
	Totals:	59	37	145

EPA Rulemakings Timeline Under Waxman-Markey

Timeline 1: Deadlines Given in Days/Months/Years

No date given	10
Six months	2
One year	11
15 months	1
18 months	4
Two years	16
Three years	2
Four years	2

EPA Rulemakings Timeline Under Waxman-Markey

Timeline 2: Deadlines Given in Dates

Dec. 31, 2010	1
June 30, 2011	2
Sep. 30, 2011	1
Sep. 30, 2012	1
Dec. 31, 2012	1
Jan. 1, 2014	1
Mar. 31, 2014	1
Feb. 1, 2017	1
2025	1

EPA Rulemakings Timeline Under Waxman-Markey

Timeline 3: All Deadlines, Combined Assumes enactment on May 1, 2010

No date given	10
Nov. 1, 2010	2
Dec. 31, 2010	1
May 1, 2011	11
June 30, 2011	2
Aug. 1, 2011	1
Sep. 30, 2011	1
Nov. 1, 2011	4
May 1, 2012	16
Sep. 30, 2012	1
Dec. 31, 2012	1
May 1, 2013	2
Jan. 1, 2014	1
Mar. 31, 2014	1
May 1, 2014	2
Feb. 1, 2017	1
2025	1

Summary Timeline for EPA Rulemaking

Assumes Enactment on May 2, 2010

2010	3
2011	19
2012	18
2013	2
2014	4

Typical annual number of EPA major regulations: 5-10

Waxman-Markey

Agency Mandates by Category

Adaptation to Climate Change	32
Energy Efficiency	27
Greenhouse Gas Emissions Regulation	22
Buildings	18
Offsets	14
Carbon Capture and Sequestration	10
Appliances	9
Financial Market Oversight	9
Technology Deployment Support	9
International Reserve Allowance Program	8
Lighting	8
Renewable Biomass Fuels	8
Vehicles - Emission Standards	8
Hydrofluorocarbons	7
Home Lending and Appraisals	6
State/Indian Tribe/Island Renewable Energy and Energy Efficiency	6
Transmission Planning	6

Likelihood of Legal Challenge to EPA Rules

EPA's "significant" rules published between 2001 and 2005 were challenged in court **41.5% of the time.**¹

"Significant" rules, as defined by Executive Order 12,866, are actions likely to result in a rule that may:

- 1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy or some sector, region, or industry thereof;
- 2) Create a serious inconsistency or interfere with an action taken or planned by another agency;
- 3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients; or
- 4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth by E.O. 12,866.

Those rules that meet the definition of "significant" by the \$100 million economic effect category are considered "economically significant," and are subject to additional regulatory review requirements.

Of the **economically significant rules** published by EPA between 2001 and 2005, **75% (12 of 16) were challenged in court.**

¹ Stephen M. Johnson, "Ossification's Demise? An Empirical Analysis of EPA's Rulemaking from 2001-2005," 38 *Envtl. L.* 767 (2008). 10

Some Large Items on EPA's To-Do List

One Year

- Propose national transportation-related GHG emission reduction goals (with DOT) – finalize within 18 months of enactment
- Promulgate regulations governing State Energy and Environmental Development (“SEED”) Accounts
- Determine GHG equivalencies and develop requirements for petitioning to designate new GHGs and methods and standards for setting equivalencies

18 Months

- Propose black carbon regulations under existing CAA authorities, to be finalized within two years of enactment

Some Large Items on EPA's To-Do List

Two Years

- Establish international offset credit program (with State, USAID, and the Offsets Integrity Advisory Board)
- Establish international deforestation allowance set-aside program (with USAID)
- Promulgate regulations providing for distribution of allowances for commercial deployment of Carbon Capture and Sequestration technology in both electric power generation and industry
- Promulgate regulations governing auction of allowances from the Strategic Reserve

Some Large Items on EPA's To-Do List

Three Years

- Establish a formula for distributing allowance rebates to U.S. petroleum refineries to reward energy efficiency and GHG emission reductions (with the EIA)

No Timeline

- Establish an International Reserve Allowance Program to place tariffs/adjustments on products in sensitive industries imported from countries without carbon cap (with help of Commissioner of Customs and Border Patrol)
- Develop standards for the Retrofit for Energy and Environmental Performance (“REEP”) Program for residential and non-residential buildings (with DOE)

New Government Entities Created by Waxman-Markey

Independent U.S.-Owned Corporations

- Clean Energy Deployment Administration
 - Energy Technology Advisory Council

Independent Advisory Boards

- Offsets Integrity Advisory Board

Agency Advisory Boards

- CFTC Position Limit Energy Advisory Group
- HHS Climate Change Health Effects Science Advisory Board
- NOAA/USGS Adaptation Science Advisory Board
- USDA Agricultural Emission Reduction and Sequestration Advisory Committee

New Government Entities Created by Waxman-Markey

Inter-Agency Commissions and Taskforces

- Geologic Sequestration Taskforce
- HUD Commission to Develop Energy- and Location-Efficient Mortgage Products and Underwriting Guidelines
- Interagency Carbon Market Oversight Working Group
- Interagency Clean Technology Export Working Group
- Interagency Climate Change Data Management Working Group
- Interagency Committee for Global Change Research
- Natural Resources Climate Change Adaptation Pane