

# ARB Passes Final Regulations for Cap-And-Trade Program

*November 3, 2011 by [Whitney Hodges](#) and [Olivier Theard](#)*

After months of CEQA litigation and political lobbying, including an appeal to the California Supreme Court (previous article can be found [here](#)), California's landmark climate change bill, the Global Warming Solutions Act of 2006 ("AB 32"), has been modified and appears ready to be implemented starting in January 2012.

As reported in prior blogs (which describe the mechanics of cap-and-trade in more detail), on July 25, 2011 the California Air Resources Board ("ARB") issued modifications to the cap-and-trade program, the primary greenhouse gas ("GHG") emission reduction strategy for achieving AB 32's mandate of cutting emissions to 1990 levels by 2020. The public comment period for these modifications ended August 11, 2011. On September 12, 2011, ARB staff proposed additional modifications addressing public comments and reflecting as additional staff analysis and stakeholder engagement. The public comment period for the second round of modifications ended September 27, 2011.

ARB unanimously adopted the final cap-and-trade regulation in an eight hour meeting on October 20, 2011. This made California's cap-and-trade program the nation's first state-administered cap-and-trade regulation and a landmark moment in the history of air pollution regulation. This final regulation was filed with the California Office of Administrative Law prior to the October 28, 2011 deadline for review and approval. Once the final regulations are approved by the

California Office of Administrative Law, the regulation will go into effect on January 1, 2012.

The final regulation includes changes to the applicability of the cap-and-trade program relating to imported electricity and inclusion of a formula, and the resulting allocations, for state electricity providers. Changes also include modifications, such as auction purchases and holding limits, that are designed to prevent market manipulation. Most notably, the modified language in the final regulation postponed the compliance obligation to January 1, 2013, while maintaining the January 1, 2012 start date for allocation, auction, and trading. The first allowance auctions will be held in August and November of 2012. Starting in 2013, auctions will be scheduled on a quarterly basis.

Beginning in 2013, the start of the first compliance period, the state's largest emitters will be required to meet the assigned cap on carbon emissions or buy carbon credits to cover the difference. The delayed start means that retirement allowances will not be required for 2012, but the compliance date will have the same end period as previously written - December 31, 2014. Under this modification, covered entities will still be required to retire allowances covering 30% of their 2013 verified emissions by November 1, 2014. The remainder of allowances for the two year compliance period will be due November 1, 2015.

The second phase of compliance will begin in 2015 and is estimated to cover 85% of California's emission sources.

The final vote, which was applauded by former Governor Arnold Schwarzenegger as a "major milestone for California's continued leadership in reducing the world's greenhouse gas," is being closely watched by other states and is expected to act as a model for future legislation. In fact, California is currently working closely with six other western states and four Canadian providences through the Western Climate Initiative to design a regional program that can deliver GHG emission reductions within the region at a lower cost than could be realized through a California-only initiative alone.

Some business and industry leaders criticize this most recent action as onerous and an incentive for businesses to leave the state, resulting in lost jobs for California citizens. Again, only time will tell what the ultimate outcome in this environmental debate will be. Stay tuned...

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