

California Leads the Way on Cap and Trade - Will the Nation Follow?

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When President-elect Barack Obama announced his choices for the top energy and environmental posts tasked with carrying out what he promises to be an aggressive agenda to curb global warming, he noted: "Consistently, California has hit the bar and then the rest of the country has followed." Among other proposals, Obama has called for a mandatory, economy-wide emissions cap to cut carbon dioxide and other heat-trapping gases 80 percent by 2050, and which would auction pollution credits to electric utilities and other major emitters to meet the cap. Despite Obama's call to action and U.S. Senate Environment and Public Works Chairwoman Barbara Boxer's plan to introduce federal cap and trade legislation that would provide billions in funding for renewable energy when the 111th Congress begins in January, whether such federal legislation will be successful in 2009 remains to be seen.

In a down economy, it is likely to be difficult to rally support for a potentially costly cap and trade program that is neither vetted nor easily understood. Congressional leaders and the new administration are more likely to take a hard look at federal renewable portfolio standards (RPS), since both have voiced support for a federal mandate to generate 10 to 15 percent of the nation's electricity from renewable resources within the coming decades. Many states, including California, have imposed such standards, and the federal government may pursue several avenues to impose these standards nationwide. In the meantime, California is leading the way on cap and trade programs, with its recent approval of a Scoping Plan that provides a framework for implementing a cap and trade program pursuant to Assembly Bill 32 (AB 32), the California Global Warming Solutions Act of 2006.

Requirements Under AB 32

On December 11, 2008, the California Air Resources Board (CARB) approved a Scoping Plan that provides a framework for implementing a cap and trade program pursuant to AB 32. AB 32 requires California to reduce its greenhouse gas emissions to 1990 levels by 2020, reflecting a 30-percent reduction from "business-as-usual" emissions. The Scoping Plan provides direction for CARB to develop regulations by January 1, 2011, to implement the cap and trade program. Compliance obligations under this program go into effect in 2012. The Scoping Plan places restrictions on 85 percent of emissions throughout California's economy via the cap and trade policies that accompany it, subjecting electricity generation to an emissions cap beginning in the 2012 compliance year, among other restrictions.

Federal Regulation in the New Administration

CARB is the state agency tasked with implementing California's AB 32, but it is still unclear which federal agency would be responsible for implementing federal climate change legislation, and under what authority. President-elect Obama has but a few weeks until he enters the debate over whether to use the Environmental Protection Agency (EPA) and the Clean Air Act, respectively, as the government's primary tools for curbing emissions of greenhouse gases. Some envision the new administration issuing an endangerment finding that declares greenhouse gas emissions a threat to public health or welfare, which may clear the way for a wide range of EPA regulations on power plants, automobiles and other major sources of heat-trapping gases, while others expect Obama to outline his executive powers in an early speech and then allow EPA and other agencies to work through the details. Some policymakers, including Massachusetts Attorney General Martha Coakley, have urged EPA to launch several new emission control programs, arguing that the Clean Air Act has enough leeway built into it to help avoid such traps as impossibly complicated regulations. Others, including the American Public Health Association, urge comprehensive regulation based on what they consider to be greenhouse gas emissions' direct and immediate threat to the public health and welfare. However, some industry leaders, including the U.S. Chamber of Commerce, warn that the overall costs of federal climate regulations may be unbearable for millions of new regulated entities and may be far too unwieldy to implement nationwide.

New Administration

President-elect Obama is not without allies, advisors and advocates for an aggressive approach to climate change legislation. He selected Carol Browner, who was President Bill Clinton's EPA administrator and who has been helping to guide the Obama transition on energy and environmental issues, for the newly created position of Assistant to the President for Energy and Climate Change; Lisa Jackson, the former chief of the N.J. Department of Environmental Protection, to head EPA; Peter Orszag, an expert on climate change policy (specifically cap and trade policies) to head the Office of Management and Budget; Ken Salazar to head the Department of the Interior; Steven Chu as Energy Secretary; and Los Angeles Deputy Mayor Nancy Sutley to head the White House Council on Environmental Quality. Browner, Chu and Sutley are all Californians and climate change advocates. Californians will also dominate much of the action on the Hill with Senator Barbara Boxer a likely author of legislation, Representative Henry Waxman in charge of the House Energy and Commerce Committee and House Speaker Nancy Pelosi leading the charge. Thus, AB 32 is very likely to be the model for any federal climate change legislation.

One of the Obama energy team's first tasks is likely to be assessing what action the administration should take on California's request to regulate vehicle greenhouse gas emissions - environmentalists and California officials have said that granting the waiver is one of the first major actions that they would like to see Obama take in the opening days of his administration, maintaining that it would pave the way for a coast-to-coast effort to address climate change. An early move on climate regulations is likely to please environmentalists and give the impression that the United States is moving on climate change, but it also could trigger legal battles over whether the Clean Air Act and the EPA are best suited for addressing climate emissions, energy efficiency and global air pollution. Senator Boxer has promised that her proposed cap and trade bill will be much more streamlined than the cumbersome (and failed) climate bill she introduced with Senators Joe Lieberman and John Warner in 2008. In essence, the bill would use the same model as California's AB 32, directing the Obama administration and the EPA to set up a cap and trade system for greenhouse gases, taking the thorniest decisions out of the hands of Congress, including allocations of hundreds of billions of dollars in emission credits.

Whether other states or the federal government ultimately choose to follow California on cap and trade legislation, utilities, manufacturers, government agencies and anyone who drives a car should be prepared for some form of climate change legislation in the new administration.

For Further Information

If you have questions about this Alert, please contact [Thomas M. Berliner](#) or [James W. McTarnaghan](#) in our [San Francisco office](#), [Jennifer D. Cook](#) in our [Washington, D.C. office](#), any other [members](#) of the [Energy, Environment and Resources Practice Group](#) or the attorney in the firm with whom you are regularly in contact.