

Sustainability & Climate Change Reporter



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First U.S. Economy-Wide Cap & Trade Coming to California

When California regulators took the major step on December 16th of adopting cap and trade [regulations \(PDF\)](#), they did what Congress has been unable to do, and appears unlikely anytime soon, at the federal level. At more than 3,000 pages in length, the regulations are the epitome of complex. Even so there still are a number of important issues to be determined. And while adoption might not have happened at all if California voters last November had approved an initiative to suspend the state's landmark Global Warming Solutions Act (also known as AB 32), the fate of the new cap and trade program may yet depend on interpretation of another initiative that voters did pass.

State Program

Cap and trade has been the centerpiece for compliance with AB 32's mandate to reduce California's greenhouse gas emissions to 1990 levels by 2020, amounting to a 15 percent overall reduction. Unlike the 10-state Regional Greenhouse Gas Initiative (RGGI) emissions trading program that focuses solely on power plant emissions, California's will apply economy-wide.

Starting in 2012, approximately 600 of California's major industrial facilities and largest greenhouse gas emitters --not just power plants but also refineries and other large industrial plants -- will be subject to a cap and have to obtain allowances for the excess emissions. Three years later, in 2015, the program extends to transportation fuel and natural gas distributors.

Initially, about 90 percent of the allowances for each industrial sector will be distributed for free, with the rest to be auctioned at a floor price of \$10/ton. By comparison, the most recent [RGGI](#) emissions allowance auctions have been selling for \$1.86/ton and have never had clearing price above \$3.51/ton. Money generated from the electrical generating sector would go back to California ratepayers.

Issues to be Resolved

While the regulations are extensive, they are not the final word on California's cap-and-trade system. Several details remain to be filled in by later rules, including:

- • Calculating allowance levels for emitters;
- • Creating offsets;
- • Determining whether biomass emissions should be inside or outside the cap; and
- • Distributing revenue from non-utility auctions.

And it won't just be regulators taking up some of these issues. For example, the legislature will have to decide who gets non-utility auction revenue because regulators do not have that authority. What will happen in the legislature is anyone's guess.

Even before those issues are ironed out, the rules could face legal challenges. One potential focus in the courts could be the newly-adopted [Proposition 26](#), which requires a two-thirds' supermajority vote to impose or imcrease fees. Right now it's uncertain whether Prop. 26 applies to allowances under the cap and trade program and it may be up to the courts to decide.

Adoption of the cap-and-trade program also means that California can move forward with New Mexico and three Canadian provinces (British Columbia, Ontario and Quebec) in the Western Climate Initiative's (WCI) cap and trade program. New Mexico could still back out, particularly as the [incoming governor](#) opposes her state's recent adoption of cap and trade rules and utilities there have filed [appeals](#). But without California, the eighth largest economy in the world and highest state gross product in the U.S., the WCI cap and trade probably couldn't fly. By adopting cap and trade rules, California ensures that it will continue to have a considerable impact on greenhouse gas regulation throughout the U.S. and North America.

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