



# California Requires Significant New Greenhouse Gas Emission Reductions

## Increases Oversight of the California Air Resources Board

On September 8, 2016, California Governor Jerry Brown signed a pair of bills expanding California's climate change programs and increasing legislative oversight of the lead agency tasked with implementing those programs. [Senate Bill 32](#) ("SB 32") requires the California Air Resources Board ("CARB") to enact regulations ensuring the maximum technologically feasible and cost-effective greenhouse gas ("GHG") emission reductions, and sets a new statewide GHG emission reduction target: by 2030, the state must reduce its GHG emissions to 40 percent below 1990 emission levels. The Global Warming Solutions Act of 2006 already required reductions to 1990 levels by 2020.<sup>1</sup> Now emissions must be reduced 40 percent below that level by 2030. California has made substantial progress toward meeting the 2020 requirement, through implementation of its cap-and-trade program for large stationary sources,<sup>2</sup> the low-carbon fuel standard for transportation fuels,<sup>3</sup> and other programs. CARB now must amend these programs, or develop new ones, in order to meet the new GHG emission reduction requirement. There is little doubt SB 32 will have a substantial effect on the California economy and how business is conducted here.

SB 32 codifies the emission target set the previous year by [Executive Order B-30-15](#). In April 2015, Governor Brown ordered state agencies to work toward achieving GHG emission reduction targets of 40 percent below 1990 levels by 2030, and 80 percent below 1990 levels by 2050. The 2050 target—originally set by former California Governor Schwarzenegger in a [2005 executive order](#)—was not included in SB 32. But the 2050 goal remains CARB's long-term mandate based on executive order.

The companion law, [Assembly Bill 197](#) ("AB 197"), reflects a political compromise with legislators who sought additional legislative oversight of California's climate change programs. AB 197 increases legislative oversight by adding two new non-voting CARB board member seats to be filled by members of the legislature, and by creating a Joint Legislative Committee on Climate Change Policies, composed of three members of the Assembly and three members of the Senate, to monitor and advise the legislature on the state's climate change programs, policies, and investments. It limits CARB board members to staggered six-year terms, with the possibility of reappointment.

The law also creates new public reporting requirements for CARB, which must report emissions data annually on its website and to the new Joint Legislative Committee.

## **CARB Must Consider Social Costs of Climate Change and Prioritize Direct Emission Reductions to Protect Disadvantaged Communities**

The new laws require CARB to reconsider its existing approach to GHG emissions reductions, including cap-and-trade and the low-carbon fuel standard (“LCFS”), and could prompt CARB to significantly change course. In adopting SB 32, the legislature noted the disproportionate effects of climate change on “disadvantaged communities,” finding that such communities are affected first and most frequently by the adverse environmental and public health impacts of climate change. Under AB 197, when adopting rules and regulations to achieve the additional required GHG emission reductions and protect “the state’s most impacted and disadvantaged communities,” CARB must consider “social costs,” or net economic damages including health impacts, caused by climate change. CARB also must prioritize direct emission reductions from stationary, mobile, and other sources.

Several major existing programs adopted under AB 32 do not require direct GHG emission reductions from sources, but instead promote a flexible path to achieving the statewide emission reduction targets. The market-based cap-and-trade program for large stationary sources allows a regulated entity—sources emitting 25,000 metric tons of CO<sub>2</sub>e per year—to choose between reducing emissions from its facility or paying for its GHG emissions by purchasing and surrendering emission credits. Credits may be purchased from CARB at public auctions or from other regulated or nonregulated entities. Emission offset credits also may be purchased from operators of qualifying projects, such as forest management, forest conservation, and livestock manure management projects, which have beneficial effects on atmospheric GHG levels. Under the cap-and-trade program, as the emission cap is reduced and credits become scarcer, source operators will have an incentive to implement emission reductions in order to avoid incurring ever more costly emission credits.

The LCFS is another market-based program aimed at reducing GHG emissions associated with the production and use of transportation fuel. Like cap-and-trade, it does not mandate direct emission reductions from mobile sources. Instead, it requires fuel producers and importers to calculate the GHG emissions generated over the lifecycle of a fuel—from production to consumption—and surrender credits based on the calculated “carbon intensity score”; the more carbon intense the fuel, the more credits producers must surrender. This program gives regulated entities flexibility for compliance, while also promoting the availability of low-carbon fuels in the California market.

By requiring that CARB prioritize direct emission reductions, AB 197 calls the long-term viability of these programs into question, at least in their current forms. Flexible market-based programs give source operators a choice between reducing emissions or purchasing and surrendering emission credits. CARB must now prioritize direct emission reductions, which likely will result in emission caps for stationary sources and increased fuel-efficiency standards for mobile sources.

Direct source reductions, while a priority, are not the only factor CARB must consider when adopting regulations. AB 197 also reaffirms the preexisting requirements that CARB consider other factors, such as the cost-effectiveness of regulations and minimizing leakage, or the flight of industry (and thus emission sources) across state borders.<sup>4</sup> Cap-and-trade and the LCFS are designed to minimize leakage. AB 197 thus provides possible bases for preserving and even expanding these programs.

## **Cap-and-Trade and the Clean Power Plan**

Although CARB has not formally proposed any regulatory changes in response to the new laws, there is strong indication that it expects cap-and-trade to remain a centerpiece of its climate change policy. Under the federal Clean Power Plan (“CPP”),<sup>5</sup> states must submit plans to U.S. EPA for achieving state-specific targets for GHG emissions from existing power plants or electrical generating units (“EGUs”). If a state fails to submit a plan, or if a submitted plan is not approved,

U.S. EPA will enforce a default federal plan for that state. The U.S. Supreme Court has stayed the CPP pending resolution of a legal challenge. Nonetheless, CARB has continued to prepare California's state plan.

On August 5, 2016, CARB published California's [Proposed Compliance Plan for the Federal Clean Power Plan](#). It will hold a public meeting to discuss the proposal on September 22, 2016. Under the proposal, California's cap-and-trade program will serve as a central element of California's state implementation plan. Because the CPP is narrower than cap-and-trade, with the former affecting only EGUs but the latter affecting stationary sources in other industries as well, CARB proposes to amend the cap-and-trade regulations to ensure that the program achieves the federally mandated emission reduction target for EGUs. The proposed amendments will not fundamentally alter the cap-and-trade program. They include, for example, amended reporting requirements for EGUs and timing adjustments to synchronize California's program with the federal program.

Thus, while the new laws require CARB to prioritize regulations that require direct GHG emission reductions, CARB likely will continue to rely on the cap-and-trade program as an important element of its overall GHG emission reduction program.

## Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com/contactus/](http://www.jonesday.com/contactus/).

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## Endnotes

- 1 Cal. Health & Safety Code § 38500 et seq.
- 2 Cal. Code Regs. tit. 17 § 95801 et seq.
- 3 Cal. Code Regs. tit. 17 § 95480 et seq.
- 4 See Cal. Health & Safety Code § 38562(b).
- 5 40 C.F.R. § 60.5700 et seq.