

California Air Resources Board Releases Draft Cap & Trade Amendments

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On July 12, 2016, the California Air Resources Board (ARB) released much-anticipated draft amendments to its Cap and Trade Regulation. ARB's amendment package is ambitious: the 2,000-plus page Initial Statement of Reasons and draft amendments aim to address many controversial issues surrounding ARB's Cap and Trade Program (Program), including extension of the Program beyond 2020, adaptation of the Program for compliance with the federal Clean Power Plan, linkage with the similar cap and trade regime administered by Ontario, Canada, re-writing the calculations that determine the number of free allowances allocated to certain industrial sectors, and modifying the standard for the invalidation of greenhouse gas (GHG) offsets. Perhaps most notably, ARB has proposed to reduce the Program's cap on GHG emissions by 3.5% per year from 2021 through 2030, continuing to ratchet down regulatory pressure on GHG-emitting sources in California well into the future.

AMENDMENT PROCESS LIKELY TO STRETCH INTO THE FALL

ARB's July 12 draft is an "informal" version, and does not signal the commencement of a public comment period. ARB will provide a draft of the regulatory package to the Office of Administrative Law (OAL) on July 19, and, pending approval by OAL, will release the formal draft amendments on August 2. A 45-day public comment period will commence on August 5, when OAL publishes ARB's Notice of Public Hearing. Interested parties will have until September 19 to submit public comments on the draft regulation, and ARB could vote to approve the amendments at its September 22-23 Board Hearing.

In prior rounds of amendments to the Cap and Trade Regulation, ARB has modified its draft regulation in response to comments, and held a second 15-day formal comment period before approval. ARB is likely (but not required) to follow this pattern in this rulemaking process, given that the amendments promise to be controversial and a large volume of comments are expected.

NEXT STEPS FOR THOSE INTERESTED IN THE FUTURE OF CAP AND TRADE

Those who are interested in California's Cap and Trade Program should review ARB's draft amendments closely, and be prepared to engage with ARB throughout the rulemaking process. ARB has been responsive to stakeholder concerns in the past, amending its regulatory proposals to address concerns expressed in public comments. The sooner that stakeholders submit comments to ARB, the more likely the agency is to thoughtfully consider and accommodate their concerns.

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