

Client Alert.

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What a Difference a Year Makes: California Delays its New Carbon Trading Program

By Peter Hsiao, Michael Steel, William Sloan, and Travis Brandon

California's innovative cap-and-trade program to control greenhouse gas emissions will have to wait another year. Air Resources Board ("ARB") Chairwoman Mary Nichols testified to state lawmakers that the ARB planned "to initiate the program in 2012, but start the requirements for compliance in 2013," a full year after the planned start date.

The postponement was not a surprise. Last March, a state court enjoined the program, ruling that the ARB had failed to meet the procedural requirements of the California Environmental Quality Act ("CEQA") in adopting its cap-and-trade regulations by (1) failing to adequately describe and analyze alternatives in its Scoping Plan, specifically with regard to its justification for a cap-and-trade program, and (2) improperly beginning to implement the Scoping Plan prior to completing its CEQA-required environmental review process. More details regarding the ruling are available in our prior update [here](#).

State Senator Fran Pavley, an author of AB 32, the state's greenhouse gas law, called a hearing to address the implications of the court rulings. In the meantime, the ARB appealed the superior court's ruling and, earlier this week, the appellate court lifted the superior court's injunction pending a decision on the appeal. Although the appellate ruling gave the ARB a green light to go forward with its cap-and-trade program, Ms. Nichols explained that, to comply with the trial court's order, the ARB had released a revised Scoping Plan alternatives analysis for public comment and eventual adoption by the Board.

Ms. Nichols also stated, however, that the motivation for the delay went deeper than addressing procedural concerns regarding CEQA. Ms. Nichols said that the ARB would use the additional time to respond to concerns about market manipulation and to firm up the details of the cap-and-trade program before full implementation. "We will be testing the system, doing simulation models, but no one will be held accountable during that year for compliance," she said. Ms. Nichols acknowledged the importance of California's cap-and-trade program, which is expected to serve as a model for the country, stating that the decision to delay was made "in light of the importance of this regulation to the success of California's climate change program and the need for all necessary elements to be in place and fully functional."

According to Ms. Nichols, the one-year delay will not have an effect on California's long-term plans to reduce emissions because the cap for 2012 was set at the level of expected emissions without any benefits from cap-and-trade. Under the revised plan, the ARB will shorten the first three-year compliance period, which was scheduled to begin in 2012, to two years in order to make up for the delay.

The details of the proposed cap-and-trade regulations can be found in our prior update by clicking [here](#). Cap-and-trade is highly controversial, and the new schedule will cause California's leading program to be implemented immediately after the 2012 national elections. With energy and climate issues to be highlighted in the campaign, California's program is certain to be a center of attention in the continuing debate over a national regulatory policy.

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Morrison & Foerster LLP is widely recognized as a leader among law firms in matters pertaining to climate change and greenhouse gas emissions, and maintains a full-service environmental law practice. For further information relating to AB 32 or other important climate change developments, please contact:

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