

Carbon Taxes are coming to Manitoba in January, 2019: are you ready?

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On October 3, 2018, Manitoba Premier Brian Pallister announced that Manitoba would no longer include a “carbon tax” in the *Made-in-Manitoba Climate and Green Plan*. Federal Environment Minister Catherine McKenna responded by indicating that the federal “backstop” under the *Greenhouse Gas Pollution Pricing Act (Canada)* would apply.



The Manitoba plan called for a flat-rate \$25/tonne carbon tax. This differed from the Pan-Canadian Framework in that the latter calls for a progressively increasing carbon price. Manitoba joins Saskatchewan, Ontario and New Brunswick as the hold-outs for a carbon pricing scheme.

Canada has stated that any provinces or territories that do not have a carbon pricing scheme in place by January 1, 2019, will be subject to the federal “backstop” carbon tax of \$20/tonne in 2019. The carbon tax will increase at a rate of \$10/tonne/year until 2022, when the price will reach \$50/tonne.

In April, 2018, Saskatchewan launched a “reference” case which asks the Saskatchewan Court of Appeal to determine whether a federally imposed carbon tax is constitutional. The Saskatchewan case will be heard in the Spring of 2019. In August, 2018, Ontario launched a similar reference case in the Ontario Court of Appeal. No matter the outcome, it is likely that both of these reference cases will end up before the Supreme Court of Canada for a final decision.

Manitoba has not indicated whether it will launch its own reference case in the Manitoba Court of Appeal or join the cases in Saskatchewan or Ontario. Manitoba had obtained a legal opinion, which it released publicly, as to the constitutionality of Canada’s backstop. The opinion stated that while Canada does not have unlimited power to legislate in the area of greenhouse gas emissions, it is likely that Canada does have the power to enact the backstop on non-compliant provinces.

On October 23, 2018, Canada held news conferences across the country that outlined how the “backstop” carbon tax would be applied to the provinces that have decided not to introduce their own carbon tax. Carbon taxes, in some form, will apply in Manitoba effective January 1, 2019.

What does the Federal backstop carbon tax system mean for Manitoba residents and

businesses?

1. *Fossil fuel costs for residents*

There will be an immediate impact on prices for all carbon-based fuels such as gasoline, diesel and natural gas to reflect the carbon tax on April 1, 2019.

Canada has stated it will issue direct rebates to taxpayers called “Climate Action Incentive payments” to offset the cost of the carbon tax faced by individuals. These rebates will be issued by the Canada Revenue Agency through the income tax system. According to Canada, 70% of taxpayers subject to the backstop carbon tax will receive more in rebates than they spend throughout the year on carbon taxes. Rural residents will be entitled to a 10% higher rebate to reflect increased costs, especially in relation to transportation.

1. *Fossil fuel costs for businesses*

Based on Canada’s announcements, there are exemptions to the carbon tax available in Manitoba for fuel used by registered farmers and fishers. This exemption will apply to marked fuels used solely for agricultural production and to fuels used by registered fishers that meet Canada’s criteria. Farmers and fishers will require an “exemption certificate” from Canada.

There is no word on business-specific rebates or programs that may be available to offset the increased cost of fuel use for businesses that are not considered industrial emitters or are otherwise exempt from the backstop carbon tax.

iii. *Industrial emitters*

There is currently less certainty for large-scale industrial greenhouse gas emitters.

A large-scale industrial emitter is an operation that emits 50,000 tonnes or more of CO₂ equivalent emissions per year. Large-scale emitters will not be subject to the carbon tax in the same fashion as other Manitoba residents or businesses.

Manitoba had proposed an “output-based pricing system” for large-scale industrial emitters. Other industrial operations that emit between 10,000-50,000 tonnes of CO₂ equivalent emissions and are in an “emissions-intensive trade-exposed sector” could also apply to be considered for the output-based system. Based on to-be-determined industry standards for emissions, industrial emitters would either:

- pay the carbon tax, purchase “credits” from other industrial producers, or both to offset their emissions over the industry average; or
- receive “credits” for the emissions they were allowed to emit but did not.

Manitoba has not yet said whether the output-based pricing system will also be purged from the *Made-in-Manitoba Climate and Green Plan*, but with the \$25/tonne carbon tax now dead,

there is no mechanism under which it can be applied.

It is expected that Canada's backstop "output-based pricing system" will be in force for Manitoba's large-scale industrial emitters in 2019. Canada's system is not yet finalized, but will apply retroactively, from January 1, 2019.

Canada's carbon tax payment and trading scheme will work much the same as Manitoba's proposed plan; but the industrial standards for emissions will not be finalized until after the implementation date of January 1, 2019. One major difference is that industrial facilities emitting between 10,000-50,000 tonnes of CO₂ equivalent emissions will not be able to voluntarily opt in before 2020.

The standard for each industrial emitter will generally be 80% of the industry standard for emissions in that specific sector (the "80% standard"). For example, this means that where the 80% industry average is 60,000 tonnes of CO₂ equivalent emissions per year, and an industrial emitter produces 80,000 tonnes of CO₂ equivalent emissions in a year, that industrial emitter will have to pay the carbon tax amount on 20,000 tonnes of emissions or purchase off-set credits for some or all of those emissions.

To date, four industrial sectors have had their industry standard adjusted from the 80% standard under Canada's plan to a 90% standard: 1) cement; 2) iron and steel manufacturing; 3) lime; and 4) nitrogen fertilizer manufacturing.

Until Manitoba makes its intentions clear to the public Manitoba's large-scale industrial emitters should be prepared to follow Canada's backstop output-based pricing system beginning January 1, 2019.

The regulatory regimes are complicated and in a state of flux in the lead up to implementation on January 1, 2019. Proper preparation for monitoring and compliance with any draft legislation will be an important step for every large-scale industrial emitter in Manitoba.

Carbon taxes on fossil fuels and output-based pricing systems will, without a doubt, have an effect on Manitoba's businesses. Are you ready?

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