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Environmental, Health and Safety

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Review of President Biden's Ambitious Climate Executive Orders

President Biden's Executive Orders Mobilize the Administrative State to Address Climate Change

On January 27th, the White House held a "Climate Day" press briefing where President Biden, Special Presidential Envoy for Climate John Kerry, National Climate Advisor Gina McCarthy, and others showcased the new Administration's commitment to placing climate change at the center of its agenda. Among other things, the President signed his latest climate-related executive order, the third in his first two weeks in office. Although these orders are primarily administrative in nature, they forecast several highly consequential policies that will have significant impacts on the energy industry in the coming years. Here are some of the more notable highlights.

EXECUTIVE ORDER ON PROTECTING PUBLIC HEALTH AND THE ENVIRONMENT AND RESTORING SCIENCE TO TACKLE THE CLIMATE CRISIS (JANUARY 20, 2021)

- Revokes the Keystone XL Permit.
- Places a moratorium on oil and gas activity in the Arctic National Wildlife Refuge. The order cites "alleged legal deficiencies underlying the program, including the inadequacy of the environmental review required by the National Environmental Policy Act."
- Creates a new group to model a "social cost of carbon" (SCC), "social cost of nitrous oxide" (SCN), and "social cost of methane" (SCM). Once fully published, agencies must use SCC, SCN, and SCM when monetizing values in new regulations and in "other relevant agency actions."
- Directs all agencies to review all the previous administration's agency actions and consider suspending, revising, or rescinding those actions. The order explicitly asks the relevant agency to publish for notice and comment a proposed rule suspending, revising, or rescinding the previous

administration's regulations in four broad categories: (i) methane emissions standards¹; (ii) fuel economy standards²; (iii) appliance and building efficiency standards³; and (iv) hazardous air pollutants and cost benefit analysis.⁴

- Orders the EPA Administrator to (i) create new regulatory standards for emissions from operations in the oil and gas sector, including E&P, transmission, processing, and storage and (ii) propose a Federal Implementation Plan for California, Connecticut, New York, Pennsylvania, and Texas by January 2022.

ACCEPTANCE OF PARIS CLIMATE AGREEMENT (JANUARY 20, 2021)

- Rejoins the Paris Climate Agreement but leaves the plan for achieving the Agreement's goals to be determined.

EXECUTIVE ORDER ON TACKLING THE CLIMATE CRISIS AT HOME AND ABROAD (JANUARY 27, 2021)

- Orders a pause on all new oil and gas leases on public lands or in offshore waters. Notably, the order does not impact current drilling operations as well as acres already leased.
- Makes it a federal government policy to procure zero-emission vehicles for Federal, State, local, and Tribal government fleets. It does not create a timeline.
- Asks the Department of Interior to identify necessary steps to double offshore wind by 2030.
- Orders agency leaders to identify any fossil fuel subsidy and ensure that federal funds do not directly subsidize fossil fuels with the goal of eliminating all direct fossil fuel subsidies by 2022.
- Directs Interior to submit a report within 90 days recommending steps that the United States should take to achieve the goal of conserving at least 30 percent of our lands and waters by 2030.

TAKEAWAYS

Although many details are missing, these new orders signify the Biden Administration's intent to mobilize the entire administrative state to further the President's climate-change-focused policies. The orders create new positions, committees, and task forces to lay a foundation for executing the President's ambitious plan. The regulated community should expect a significant change in emphasis from regulators as the precise implications of these actions begin to unfold over the coming year.



¹ “Oil and Natural Gas Sector: Emissions Standards for New, Reconstructed, and Modified Sources Reconsideration,” 85 Fed. Reg. 57398 (September 15, 2020).

² “The Safer Affordable Fuel Efficient (SAFE) Vehicle Rule Part One: One National Program,” 84 Fed. Reg. 51310 (September 27, 2019) and “The Safer Affordable Fuel-Efficient (SAFE) Vehicle Rule for Model Years 2021-2026 Passenger Cars and Light Trucks,” 85 Fed. Reg. 24174 (April 30, 2020).

³ Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment,” 85 Fed. Reg. 8626 (February 14, 2020); “Energy Conservation Program for Appliance Standards: Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards,” 85 Fed. Reg. 50937 (August 19, 2020); Final Determination Regarding Energy Efficiency Improvements in the 2018 International Energy Conservation Code (IECC),” 84 Fed. Reg. 67435 (December 10, 2019); and “Final Determination Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1-2016: Energy Standard for Buildings, Except Low-Rise Residential Buildings,” 83 Fed. Reg. 8463 (February 27, 2018).

⁴ “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units-Reconsideration of Supplemental Finding and residual Risk and Technology Review,” 85 Fed. Reg. 31286 (May 22, 2020); “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process,” 85 Fed. Reg. 84130 (December 23, 2020); and “Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information,” 86 Fed. Reg. 469 (January 6, 2021).

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