The Biden-Harris Administration Boosts States' Abilities to Achieve Their Ambitious Climate Change Goals

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Over the last four years, states have been at the forefront of climate change policies. As of 2020, 15 states and U.S. territories have taken action to move toward 100 percent clean energy. During the Trump-Pence Administration, states received little support from the federal government in their quest to meet these goals, as the administration's focus was on reducing or eliminating federal climate change and greenhouse gas (GHG) emission reduction requirements. President Biden, on the other hand, has called climate change one of the four "historic crises" currently facing the United States. Although President Biden has only been in office for a short time, major efforts have already been made signaling the Biden-Harris Administration's plan to implement aggressive policies to significantly pursue renewable energy and reduce GHGs on a national level. These initiatives will have the effect of helping states meet their climate and GHG goals.

Under President Trump, the United States withdrew from the Paris Agreement, an international agreement between 197 countries focused on reducing GHG emissions. Former President Trump also used executive orders (EOs) that required federal agencies to roll back then-existing guidance in an effort to facilitate the development of fossil fuels and limit requirements to reduce GHG emissions. Key examples that sought to abandon President Obama's GHG emission reduction road map included the 2017 EO Promoting Energy Independence and Economic Growth, which required agencies to repeal and replace GHG and climate regulations, including the Clean Power Plan, a key Obama-era regulatory action to reduce GHG emissions from power plants and methane regulations; reversed a moratorium on new coal mining leases on federal lands; removed consideration of climate change in environmental reviews; and eliminated federal agencies' use of the Social Cost of Carbon (SCC) guidance.

In contrast, President Biden has outlined aggressive goals to eliminate carbon emissions from the electric sector by 2035 and achieve a zero GHG emission economy by 2050. President Biden's climate plan calls for a massive investment in clean energy, weatherization, and efforts to green the transportation sector.

EXECUTIVE ORDERS

On his very first day in office, President Biden signaled his Administration's focus on reducing GHGs and fighting climate change by moving to reinstate the United States to the Paris Agreement, and signing the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (EO 13990). This EO is a major shift in federal policy and strongly signals the new administration's stance on climate change. Among other things, it rescinded the Keystone XL pipeline's permit and directed all agencies to immediately review all federal regulations, orders, guidance documents, policies, and agency actions taken during the Trump-Pence Administration, and consider rescinding, revising, or replacing those that are inconsistent with the Biden-Harris Administration's climate goals that include generally, protecting the environment, reducing GHG emissions, putting an end to fossil fuels, and expanding renewables in the energy sector.

EO 13990 requires specific action by agencies to suspend, revise, or rescind the following Trump-era rules: oil and gas sector methane emission standards (85 Fed. Reg. 57398); fuel economy standards (84 Fed. Reg. 51310 and 85 Fed. Reg. 24174); appliance and building efficiency standards (85 Fed. Reg. 8626, 84 Fed. Reg. 67435, and 83 Fed. Reg. 8463); and coal and oil-fired power plant hazardous air pollutant standards (85 Fed. Reg. 31286). It also revoked multiple EOs issued under the Trump-Pence Administration, including the 2017 EO Promoting Energy Independence and Economic Growth, which sought to promote fossil-fuel projects and reduce requirements to reduce GHG emissions.

Importantly, EO 13990 further reinstituted the use of the SCC by federal agencies and the SCC Working Group. The SCC was first instituted under the Obama-Biden Administration in 2010 and is a set of estimates of the monetized damages to society associated with incremental increases or decreases in GHG emissions, including carbon, methane, and nitrous oxide. The SCC is a policy tool for agencies to use in determining the social benefits of reducing GHG emissions when considering climate impacts of potential agency actions.

Less than a week after taking office and signing EO 13990, President Biden signed his second major climate change initiative, Executive Order on Tackling the Climate Crisis at Home and Abroad (EO 14008). The central goal of EO 14008 is to lay out the Administration's strategy for carbon neutrality and includes determining new national GHG emission reduction goals consistent with the Paris Agreement, increasing renewables on public lands and off-shore waters, creating a National Climate Task Force to shape domestic response across agencies, and efforts to make the electricity sector carbon free by 2035. Other provisions of EO 14008 include environmental justice initiatives, worker training and community revitalization efforts, ending fossil fuel subsidies, ensuring climate considerations are an essential element of U.S. foreign policy and national security, and pausing all new oil and gas leases on public lands.

To coordinate and implement the administration's zero carbon agenda, EO 14008 also formally established the White House Office of Domestic Climate Policy, headed by the National Climate Advisor, and a National Climate Task Force consisting of various Executive Branch agency heads. Gina McCarthy, the former Environmental Protection Agency (EPA) administrator, has been appointed the national climate advisor and is to lead the climate efforts across federal agencies. Every federal agency must submit a draft action plan to the task force that details the agency's efforts to increase resilience of their facilities and operations in an environmentally responsible manner. The EO also requires coordination with state and local governments, tribal authorities, private developers, and any other interested party.

The actions directed in these EOs create national polices that will hold every federal entity to the same climate goals, which may push private markets to shift to lower GHG practices and products. As such, the Biden-Harris Administration has signaled that states with their own climate agendas will have a partner in the federal government to help combat climate change and aggressively pursue renewable energy. And, with the support of a Democratically controlled Congress, the new administration is likely to turn to legislative initiatives to solidify its climate change priorities and make its policies more permanent.

EPA

Due to the breadth of the EPA's regulatory authority, it will play a lead role in implementing the Biden-Harris Administration's climate goals, as well as supporting states' plans. Given EO 13990's requirement to review all Trump-era agency actions, the EPA is expected to immediately initiate rule-making activities to not only get rid of the Trump-Pence Administration's rollbacks, but to accelerate the pace of rulemakings to support the new Administration's plan. The EPA is likely to start by focusing on the major GHG emitting sectors, including transportation, electricity, and oil and gas. This may include rule-making activities, and also reconsideration and replacement of Trump-era rules. The Clean Air Act Affordable Clean Energy Rule, Trump's replacement rule for Obama's Clean Power Plan, was recently struck down by the District of Columbia Circuit on the former president's last day in office, paving the way for the EPA to promulgate a new rule that is in line with the Biden-Harris Administration's ambitious GHG reduction goals.

FERC

The Federal Energy Regulatory Commission (FERC) may also be a major player in realizing both the Biden-Harris Administration's and the states' energy goals. FERC has jurisdiction over interstate transmission of electricity, natural gas, crude oil, and refined pipelines, as well as over the rates, terms, and conditions of services. In the past four years, under a Republican majority, FERC has been accused of making decisions that harm state efforts to move away from fossil fuels and toward renewable resources. For example, the New York Independent System Operator, Inc. (NYISO), the electric grid operator in New York, proposed a buyer-side mitigation (BSM) exemption to entice renewable sources to enter the NYISO market. When a new source enters the New York energy market, BSM rules require that revenue from an outside source, such as state renewable energy credits, be subtracted from that source. The result is renewables having more cost hurdles than fossil fuels, and therefore fewer renewables added to the market. NYISO had sought to exempt renewables from this BSM requirement, which FERC rejected, effectively benefitting fossil fuel generators.

President Biden has appointed Richard Glick, a Democrat on the FERC Commission, chairman. Glick had made comments prior to appointment that signal his priorities as he steps into this new role, including his intent to approve state proposals to except renewable and energy storage resources from BSM rules. Despite the appointment, Republicans still maintain a 3-2 majority on the commission. To permanently advance renewables and a zero carbon future, Democrats who now control Congress could pass a clean-energy standard, which FERC would then be required to implement regardless of what political party is in control. Regardless, with the current support of FERC, the states may promote renewables in their markets as a cheaper alternative to fossil fuels.

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