



The Biden administration's "Clean Energy Revolution"[1] includes a wide range of legislative and executive priorities to reach its net-zero emissions target by 2050. While major legislation depends on support in Congress, executive actions could be taken on day one, and some anticipate that implementation of President-elect Biden's clean energy strategy will rely heavily on executive action. We highlight some of Biden's proposals that could take effect immediately or shortly after inauguration.

Clean Technologies—With or Without Congress

The Biden administration is focusing on the use of clean technologies to achieve its net-zero emissions target. Biden has stated that he will increase federal procurement by \$400 billion on clean energy inputs, like batteries and electric vehicles. Biden has committed to funding research and development of clean technologies and intends to create a new agency—Advanced Research Projects Agency on Climate (ARPA-C)—to develop clean technologies, including: grid-scale energy storage at a lower cost than lithium-ion batteries; advanced nuclear reactors that are smaller and more efficient than traditional reactors; net-zero buildings through innovations in smart materials, appliances and systems; production of carbon-free hydrogen through new or updated technologies, including electrolyzers; and direct carbon sequestration of power plant emissions and use of agricultural technologies for in-ground carbon storage.

But creating a new agency requires an act of Congress, and some have expressed skepticism that a new agency is necessary: many of the research goals of the proposed ARPA-C appear to overlap with the existing Advanced Research Projects Agency on Energy (ARPA-E), which was created in 2007 under the George W. Bush administration. ARPA-E has a legislative mandate to develop energy technologies to reduce reliance on foreign energy sources, reduce energy-related emissions, and improve energy efficiency across economic sectors.[2] If the Biden administration is unable to convince Congress to create ARPA-C, it may instead use ARPA-E to accomplish many of its stated goals. This alternative, however, may maroon those clean technologies not directly related to energy, perhaps including carbon sequestration.

Since using legislation to advance its clean technology agenda will take time and may depend on the balance of power within Congress, the Biden administration has stated it will issue new executive orders and revoke some existing orders. Specifically, the administration has said that it will use executive orders to accomplish the following with respect to clean technologies:[3]

- Require federal buildings and facilities to operate more efficiently, using the purchasing power and supply chains to implement innovative technologies in building operations and efficiency.
- Using federal procurement process to move toward clean energy and zero-emissions vehicles.
- Increase the use of and investment in advanced biofuels that reduce emissions in planes and oceangoing vessels.
- Requiring federal permitting decisions to consider the effects of greenhouse gas emissions and implementing aggressive methane pollution limits for new oil and gas operations.

These commitments to spend more federal dollars on clean technologies signal to the market that demand will soon be increasing for clean technologies that the federal government may implement into their building portfolio and vehicle fleet. Companies can also expect that going forward, greenhouse gas emissions could be factored into federal permitting decisions, in doing business with the federal government, and in other interactions with the federal government.

Corporate Accountability and Enforcement

The Biden administration will demand increased financial and operational transparency. Biden intends to issue an executive order requiring public companies to disclose "climate-related financial risks and the greenhouse gas emissions in their operations and supply chains." [4] Biden has not specified the scope of this disclosure, although some point to recommendations provided by the Financial Stability Board Task Force on Climate-Related Financial Disclosures as a guide.[5] Some companies already voluntarily report. While the shape and

scope of such disclosures remains unclear, after Inauguration Day, companies should be prepared for new climate-related reporting mandates.

Biden also promises to reverse the Trump administration's de-emphasis on prosecuting criminal anti-pollution cases. According to Biden, under the Trump administration, the U.S. Environmental Protection Agency referred to the U.S. Department of Justice the fewest number of criminal anti-pollution cases in 30 years.[6] Biden intends to reverse this trend and direct EPA and DOJ to prosecute such cases to the fullest extent of the law.[7] Biden further plans to establish an Environmental and Climate Justice Division within DOJ to prosecute criminal anti-pollution cases. The new division will also be instructed to implement by executive action, to the extent possible, Senate Bill S.2236 - Environmental Justice Act of 2019,[8] aimed at addressing environmental justice. In addition to executive action, Biden intends to seek additional "legislation requiring polluters to bear the full cost of their climate pollution," including "seek[ing] additional legislation to hold corporate executives personally accountable—including jail time when merited." [9]

Due to Congressional uncertainty, the Biden administration will likely look first to executive action and DOJ enforcement for implementation. Regulated entities should be prepared for a shift in the number of environmental enforcement actions, and a more aggressive attitude towards the enforcement of environmental laws generally.

Conclusion

The Biden administration will not wait for new legislation to advance its clean energy agenda and will instead use executive action and other creative measures to implement its clean energy agenda. Clean technology companies will likely see increased demand for those products that the Biden administration can purchase and implement by executive action, while publicly traded companies should prepare now for enhanced disclosure and reporting requirements, federal permitting requirements, federal procurement processes, and a more stringent enforcement of environmental laws.

Endnotes

- 1) <https://joebiden.com/9-key-elements-of-joe-bidens-plan-for-a-clean-energy-revolution/>
- 2) 42 U.S.C. § 16538
- 3) <https://joebiden.com/climate-plan/>
- 4) <https://joebiden.com/9-key-elements-of-joe-bidens-plan-for-a-clean-energy-revolution/>
- 5) <https://www.fsb-tcfd.org/recommendations/>
- 6) <https://joebiden.com/environmental-justice-plan/>
- 7) <https://joebiden.com/climate-plan/>
- 8) <https://www.congress.gov/116/bills/s2236/BILLS-116s2236is.pdf>
- 9) <https://joebiden.com/climate-plan/>

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