



# Climate Change Policy Update: President Issues Executive Order Directing Whole-of-Government Response to Climate Crisis

FEBRUARY 22, 2021

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On January 27, 2021, the Biden Administration issued a detailed and Executive Order addressing climate change, both domestically and internationally. The [Executive Order on Tackling the Climate Crisis at Home and Abroad](#) reengages the United States with the international community to combat climate change, escalates climate change to a climate “crisis,” identifies the climate crisis as a national security issue, and establishes a government-wide approach in response, utilizing an aggressive timeline.

## OVERVIEW

Part I of the Executive Order focuses on the United States’ role in foreign policy and national security as it relates to the climate crisis. To address international commitments and reassert the United States’ leadership, the Executive Order outlines numerous initiatives, including:

- Committing the United States to rejoining the Paris Agreement and directing the government to develop a commitment and set of policies to reduce greenhouse gas (GHG) emissions for the Agreement, referred to as a “nationally determined contribution;”
- Appointing Former Secretary John Kerry to serve in a newly created position: Special Presidential Envoy for Climate. In this role, Kerry is empowered to direct agencies that engage in extensive international work to develop strategies and implementation plans for integrating climate considerations into their work;
- Committing to immediately develop a climate finance plan and identifying steps through which the United States can promote ending international financing of carbon-intensive fossil fuel-based energy projects;
- Directing the Secretary of Energy, in cooperation with the Secretary of State and the heads of other agencies as appropriate, to identify steps through which the United States can intensify international collaborations to drive innovation and deployment of clean energy technologies; and
- Directing the Secretary of State, within 60 days of the date of the Executive Order, to prepare a transmittal package seeking the Senate’s advice and consent for ratification of the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, regarding the phasedown of the production and consumption of hydrofluorocarbons.

Significantly, Part I of the Executive Order also emphasizes the climate crisis as an “essential element” of national security, and establishes mandates accordingly, including:

- Directing the Director of National Intelligence to prepare, within 120 days of the Executive Order, a National Intelligence Estimate on the national and economic security impacts of climate change;
- Directing the Secretary of Defense, in coordination with other department heads, to analyze the security implications of climate change (Climate Risk Analysis) that can be incorporated into modeling, simulation, war-gaming, and other security analyses;
- Directing the Secretary of Defense and the Chairman of the Joint Chiefs of Staff to consider the security implications of climate change in developing the National Defense Strategy, Defense Planning Guidance, and Chairman’s Risk Assessment, and to provide an annual update on incorporating the security implications of climate change into these documents and processes starting in January 2022;
- Directing the Secretary of Homeland Security to consider the implications of climate change in the Arctic, along United States Borders, and to National Critical Functions, and to provide an

annual update on incorporating the homeland security implications of climate change into these documents and processes starting in January 2022;

- Reinstating the [Presidential Memorandum of September 21, 2016 on Climate Change and National Security](#), which directed federal agencies to identify and consider the current and future impacts of climate change on national security.

Part II of the Executive Order outlines a government-wide approach to the domestic side of the climate crisis. The Executive Order aims to reach every sector of the economy and every level of government. Among its many provisions are the following:

- Establishes the White House Office of Domestic Climate Policy to coordinate the policy-making process with respect to domestic climate-policy issues.
- Establishes a National Climate Task Force (Task Force), to be chaired by the National Climate Advisor, Gina McCarthy, and to include relevant department heads that will facilitate the organization and deployment of a government-wide approach to combat the climate crisis. The Task Force will engage with State, local, Tribal, and territorial governments, workers and communities, and leaders across various sectors of the economy as necessary and appropriate to fulfill a number of planning and implementation tasks that reduce climate pollution; increase resilience to the impacts of climate change; protect public health; conserve lands, waters, oceans, and biodiversity; spur new union jobs and economic growth; and environmental justice. *For more information on the Biden Administration's environmental justice plans and implications, please view our accompanying alert on environmental justice [here](#).*
- Leverages the Federal Government's buying power through procurement, real property, and asset management to support robust climate action;
- Focuses on job creation and empowerment of workforces through the construction, manufacturing, and engineering of sustainable infrastructure, and the creation of a Civilian Climate Corps to mobilize the next generation of conservation and resilience workers;
- Directs the Secretaries of the Interior, Agriculture, and Commerce, and the Chair of the CEO, and other relevant agency heads, to submit a report that recommend steps that the United States should take to achieve the goal of conserving at least 30 percent of U.S. lands and waters by 2030, and directs the Secretary of Agriculture make recommendations for an agricultural and forest climate strategy. The EO also directs the Secretary of Commerce, through the Administrator of NOAA, to initiate policies to make fisheries and protected resources more resilient to climate change;
- Establishes an Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization with the aim of ensuring a "just transition" for communities currently heavily reliant on fossil fuel-based industry;
- Establishes a Federal Clean Electricity and Vehicle Procurement Strategy to contribute to achievement of President Biden's goal of ensuring a zero-emitting electricity sector no later than 2035;
- Directs the Secretary of the Interior to review siting and permitting processes on public lands and in offshore waters to identify steps that can be taken to increase renewable energy production on those lands and waters, with the goal of doubling offshore wind by 2030;
- Directs agency heads to identify and remove any fossil fuel subsidies provided by their respective agencies, to the extent consistent with applicable law;
- Directs the Director of the Office of Management and Budget to coordinate with heads of agencies and the National Climate Advisor to eliminate fossil fuel subsidies from the budget request for Fiscal Year 2022 and future years;

## IMPLICATIONS

The Executive Order is consistent with President Biden's campaign goal of implementing a whole-of-government response to climate change, covering both national security and domestic policy. The Biden Administration has already indicated that there will be additional climate-related executive orders in the future.

A president cannot use an Executive Order to regulate private actors. Rather, presidents use Executive Orders to direct actions by federal agencies. To this end, the January 27 Executive Order includes

directives for practically every agency to take steps to address climate change. Some parts of the order direct agencies to consider future policies; it is likely that agency regulations and other policies ultimately will follow from such directives.

Other parts of the order direct agencies to take into account climate impacts in their operations, e.g., in procurement. Because the Federal government is such a large player in certain markets—particularly as a purchaser of electricity and as a purchaser of vehicles—these procurement-related directives could have substantial impacts on decarbonizing the U.S. economy.

The Executive Order also includes a declaration of policy to secure environmental justice and spur economic opportunity through the creation of a White House Environmental Justice Interagency Council. The Council could play an important role in achieving the Executive Order’s mandate to ensure that disadvantaged communities receive 40 percent of the benefit of agency expenditures on climate and clean energy objectives.

### For More Information

Van Ness Feldman is available to provide counsel to companies and others as they assess the implications of the Biden Administration’s Executive Orders on Climate Change and other climate policy and market developments. Please contact [Kyle Danish](#) or any of the other professionals in Van Ness Feldman’s Environmental Practice for additional information.

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