

February 28, 2022

## Biden Administration Announces New Climate Change Initiatives

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**Acting through multiple agencies and using the Spending Authority under the Bipartisan Infrastructure Law, the Administration is launching funding initiatives on regional clean hydrogen hubs and clean hydrogen technologies, seeking to boost federal procurement of low-carbon products and construction materials and issuing new carbon capture, utilization and sequestration (CCUS) guidance, among other steps**

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### BACKGROUND

Since taking office, President Biden has announced a number of executive and regulatory actions under the Administration's stated "whole-of-government" approach towards addressing climate change and achieving net-zero emissions across the United States economy by 2050.<sup>1</sup> In the financial sector, this has included publication of the Financial Stability and Oversight Council's (FSOC) Report on Climate-Related Risks;<sup>2</sup> the Securities and Exchange Commission's (SEC) enhanced focus on climate change disclosures and anticipated climate change rulemaking<sup>3</sup> and the Office of the Comptroller of the Currency's (OCC) proposed principles for the identification and management of climate-related financial risks by large banks.<sup>4</sup> In parallel, the Department of the Interior's Bureau of Ocean Energy Management (BOEM) is exploring opening new areas for offshore wind (including holding an auction for large areas off the coast of New Jersey and New York).<sup>5</sup> And in October 2021, the US and EU announced a commitment to negotiate a carbon-based sectoral arrangement on steel and aluminum trade by 2024.<sup>6</sup>

Meanwhile, the Infrastructure Investment and Jobs Act (also known as the Bipartisan Infrastructure Law) enacted in November 2021 included authorization for \$9.5 billion for clean hydrogen initiatives and more than \$12 billion for CCUS-related projects. Among the other expenditures authorized by the Bipartisan Infrastructure Law are \$110 billion for major infrastructure projects, \$66 billion for railways, \$42 billion for

airports and waterways and \$39 billion for modernizing public transit. The Biden Administration's "Build Back Better" plan, which has not been passed by Congress, would include tax credits for producers of clean hydrogen and also enhance the current tax credits for CCUS.

On February 15, 2022, the Biden Administration announced new climate-related actions mandated by existing legislation, including the Bipartisan Infrastructure Law, as well as additional steps within the control of the executive branch aimed at using the federal government's procurement power to create markets for low-carbon industrial products and construction materials.

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## RECENT BIDEN ADMINISTRATION CLIMATE-RELATED ANNOUNCEMENTS

### A. CLEAN HYDROGEN

On February 15, 2022, the Department of Energy ("DOE") issued a request for information (RFI) on its proposed process and criteria for identifying and funding at least four regional clean hydrogen<sup>7</sup> hubs (H2Hubs) using \$8 billion allocated in the Bipartisan Infrastructure Law, with responses due by March 8, 2022.<sup>8</sup> The BIL requires the DOE to solicit proposals for H2Hubs by May 2022 and choose at least four hubs within one year of receiving proposals. The Bipartisan Infrastructure Law requires the DOE to select H2Hubs based on:

- a. Feedstock diversity: at least one hub must demonstrate clean hydrogen production from renewable energy ("green hydrogen"), one hub from fossil fuels ("blue hydrogen") and one hub from nuclear energy;
- b. End-use diversity: at least one hub must demonstrate the end-use of clean hydrogen in the electric power generation sector, one in the industrial sector, one in the residential and commercial heating sector, and one in the transportation sector;
- c. Geographic diversity: each hub should be located in a different region of the United States and use energy resources that are abundant in that region;
- d. At least two hubs must be in regions with the greatest natural gas resources; and
- e. Priority will be given to hubs likely to create skilled training and long-term employment to the greatest number of residents in that region.

The DOE contemplates a single, multi-year Funding Opportunity Announcement with different launches over the FY 2022 – 2025 timeframe and two main phases: Phase 1 - Hub Planning, taking 3 to 18 months; and Phase 2 – Hub Deployment, with a timeframe of 5+ years.

The Bipartisan Infrastructure Law also authorizes appropriations of \$1 billion for the Clean Hydrogen Electrolysis Program and \$500 million for the Clean Hydrogen Manufacturing Initiative and the Clean Hydrogen Technology Recycling RD&D Program. On February 15, 2022, the DOE also issued a RFI on priority areas under each of these funding initiatives, with responses due on March 29, 2022.<sup>9</sup> Technologies specifically addressed in the RFI in addition to electrolyzers include fuel cells and storage tanks, with the

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aim of achieving pricing of \$2/kg for clean hydrogen by 2026 and \$80/kW for fuel cells and \$9/kWh for storage tanks by 2030.

In addition to environmental impact, the descriptions of the clean hydrogen initiatives in both of these RFIs are consistent with the Administration's stated objectives of prioritizing projects that support domestic supply chains. In addition, both RFIs highlight the Administration's emphasize on job creation, community impact and diversity, equity and inclusion (especially job and partnership opportunities for underrepresented or disadvantaged communities) in implementing President Biden's clean energy initiatives.

### **B. CARBON CAPTURE, UTILIZATION AND SEQUESTRATION (CCUS)**

#### **1. CEQ guidance on CCUS**

Under the mandate of the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act, on February 15, 2022, CEQ issued proposed guidance on responsible deployment of CCUS technologies, with public comments due March 18, 2022.<sup>10</sup> The new interim guidance provides instructions to federal agencies for reviewing, approving and deploying CCUS projects and the construction of carbon dioxide pipelines and would apply when CCUS projects are federally funded or on federally managed lands or waters, and/or subject to federal law requirements such as under the National Environmental Protection Act (NEPA). Among other things, the guidance recommends that federal agencies:

- quantify and report on the potential direct and indirect impacts of CCUS projects (including water and air quality impacts from retrofitting facilities and installing CCUS infrastructure);
- streamline reviews under the NEPA and Endangered Species Act by developing programmatic reviews;
- establish procurement standards;
- assess climate change impacts evaluating carbon dioxide pipelines—e.g., the Department of Transportation updating its geohazard and emergency planning criteria to account for CCUS;
- consider programs regarding the disposal of carbon dioxide; and
- require project sponsors to proactively seek early engagement with Tribal Nations, local communities and other stakeholders, evaluate the costs, benefits, effects, and impacts of the projects they develop and transparently share this information, together with the way in which its environmental impacts are mitigated.

Although certain aspects of the guidance would require agencies and project sponsors to balance potentially competing interests of efficiency and stakeholder engagement, the guidance notes that the EPA has the authority to use additional funding under the Bipartisan Infrastructure Law during fiscal years 2022 through 2026 to increase staff size and enhance training, which could mean a more expedient review and permitting process for CCUS projects in the future.

## **2. New EPA Rules on GGRP for CCUS activities and DOI Rules on Sequestration Expected**

The White House also announced that the Environmental Protection Agency (EPA) is developing a proposed rule revising its Greenhouse Gas Reporting Program (GGRP), which collects and publishes annual greenhouse gas data from large industrial sources, to add reporting requirements for direct air capture and carbon storage facilities. The White House also noted that, in alignment with the BIL, the DOI is working on new safeguards and regulations for geologic carbon sequestration on federally managed lands and in the outer continental shelf.<sup>11</sup>

## **C. FEDERAL PROCUREMENT OF LOW-CARBON PRODUCTS AND MATERIALS**

A number of US federal agencies have recently solicited feedback on how best to reduce carbon emissions associated with manufacturing and materials, focusing in particular on how the federal government can use its buying power to promote low-carbon energy, products and materials. These developments include:

### **1. Buy Clean Task Force**

In December 2021, the White House established an interagency “Buy Clean Task Force”.<sup>12</sup> Its scope includes: identifying materials and pollutants to be prioritized for consideration in federal procurement and federally funded projects; launching pilot programs boosting federal procurement of clean construction materials; and increasing transparency through supplier reporting, with incentives and technical assistance for domestic manufacturers.

### **2. GSA Low-Carbon Concrete and Asphalt RFIs**

On February 15, 2022, the US General Services Administration (GSA), which manages a nationwide federal real estate portfolio and oversees approximately \$75 billion in annual contracts, issued two RFIs related to concrete and asphalt materials procured for its building projects with environmental product declarations, low embodied carbon or superior environmental attributes.<sup>13</sup> Responses are due by March 1, 2022.<sup>14,15</sup>

### **3. DOD/GSA Carbon Pollution-Free Electricity RFI**

On February 3, 2022, the Department of Defense and the GSA issued a RFI on achieving 100 percent carbon pollution-free electricity for federal operations.<sup>16</sup> The RFI is seeking pricing information for retail carbon-free electricity to be supplied in certain competitive retail markets (specifically PJM, ERCOT, ISO-NE, MISO and NYISO). Responses are due March 7, 2022.

### **4. DOE Low-Carbon Industrial Sector RFI**

On January 27, 2022, the DOE issued a RFI on reduction of carbon emissions in steel, chemicals, cement, and food and beverage industries.<sup>17</sup> Responses are due February 28, 2022.

## 5. First Movers Coalition Expansion

On February 15, 2022, the White House announced plans to expand the sectors covered by the First Movers Coalition.<sup>18</sup> Launched this fall at the COP26 in partnership with the World Economic Forum and the US State Department, the Coalition includes 34 large corporate purchasers (valued at \$6 trillion) who have committed to use their global purchasing power to create new markets for emerging decarbonization technologies. The Coalition currently covers aviation, shipping, trucking and steel and is expected to cover four additional sectors in 2022: aluminum, cement, chemicals, and carbon removal.

## 6. Additional Developments

Other developments announced by the White House include the launch of a new Initiative for Interdisciplinary Decarbonization Research by the White House Office of Science and Technology Policy and the expansion of the EPA's ENERGY STAR manufacturing program to incorporate carbon intensity metrics for certain industries in order to promote lower carbon products.<sup>19</sup>

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## CONCLUSION

It remains to be seen whether new tax credits for hydrogen, CCUS and/or other low-carbon technologies could be part of any future US legislative package, but, in the meantime, businesses active in the US infrastructure, energy and industrial sectors should continue to monitor ongoing Administration initiatives in these areas. Parties that anticipate being affected by a proposed initiative or guidance may also want to consider submitting comments during the applicable public comment or RFI processes, where available.

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ENDNOTES

- 1 The White House, Statement and Releases, “Fact Sheet: President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across Federal Government”, January 27 2021, *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>.
- 2 Sullivan & Cromwell LLP, “Financial Stability Oversight Council Report on Climate-Related Financial Risk”, November 2, 2021, *available at* <https://www.sullcrom.com/files/upload/sc-publication-financial-stability-oversight-council-report-on-climate-related-financial-risk.pdf>.
- 3 Sullivan & Cromwell LLP, “SEC Staff Highlights Review of Climate Change Disclosure”, September 23, 2021, *available at* <https://www.sullcrom.com/sc-publication-sec-staff-highlights-ongoing-review-of-climate-change-disclosure>.
- 4 Sullivan & Cromwell LLP, “OCC Seeks Public Feedback on Principles for Climate-Related Financial Risk Management for Large Banks”, December 21, 2021, *available at* <https://www.sullcrom.com/sc-publication-occ-release-and-seeks-feedback-on-principles-for-climate-related-financial-risks-management-for-large-banks>.
- 5 U.S. Department of Interior, “Interior Department Announces Historic Wind Energy Auction Offshore New York and New Jersey”, January 12 2022, *available at* <https://www.doi.gov/pressreleases/interior-department-announces-historic-wind-energy-auction-offshore-new-york-and-new>.
- 6 The White House, Statement and Releases, “Fact Sheet: The United States and European Union to Negotiate World’s First Carbon-Based Sectoral Arrangement on Steel and Aluminum Trade”, October 31, 2021, *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/31/fact-sheet-the-united-states-and-european-union-to-negotiate-worlds-first-carbon-based-sectoral-arrangement-on-steel-and-aluminum-trade/>.
- 7 The BIL defines clean hydrogen as generating no more than 2 kg CO<sub>2</sub>e/kg H<sub>2</sub> at the point of production.
- 8 U.S. Department of Energy – Energy Efficiency and Renewable Energy, EERE Funding Opportunity Exchange, Bipartisan Infrastructure Law (BIL) - 2022 Regional Clean Hydrogen Hubs Implementation Strategy RFI, February 15, 2022, *available at* <https://eere-exchange.energy.gov/Default.aspx#Foald5d96172f-e9b6-48ff-94ac-5579c3531526>.
- 9 U.S. Department of Energy – Energy Efficiency and Renewable Energy, EERE Funding Opportunity Exchange, Bipartisan Infrastructure Law (BIL) - RFI On Clean Hydrogen Manufacturing, Recycling, and Electrolysis, February 15, 2022, *available at* <https://eere-exchange.energy.gov/Default.aspx#Foalda1255029-22c4-4c18-9e90-356e92cbb795>.
- 10 The White House, Statement and Releases: “CEQ Issues New Guidance to Responsibly Develop Carbon Capture, Utilization, and Sequestration”, February 15, 2022, *available at* <https://www.whitehouse.gov/ceq/news-updates/2022/02/15/ceq-issues-new-guidance-to-responsibly-develop-carbon-capture-utilization-and-sequestration/>. Council of Environmental Quality, Carbon Capture, Utilization, and Sequestration Guidance, 87 Federal Register 2, February 16, 2022, *available at* <https://www.govinfo.gov/content/pkg/FR-2022-02-16/pdf/2022-03205.pdf>.
- 11 The White House, Statement and Releases, “Fact Sheet: Biden-Harris Administration Advances Cleaner Industrial Sector to Reduce Emissions and Reinvigorate American Manufacturing”, February 15, 2022, *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/15/fact-sheet-biden-harris-administration-advances-cleaner-industrial-sector-to-reduce-emissions-and-reinvigorate-american-manufacturing/>.

ENDNOTES (CONTINUED)

- <sup>12</sup> The White House, Statement and Releases, “Fact Sheet: President Biden Signs Executive Order Catalyzing America’s Clean Energy Economy Through Federal Sustainability”, December 8, 2021, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/08/fact-sheet-president-biden-signs-executive-order-catalyzing-americas-clean-energy-economy-through-federal-sustainability/>.
- <sup>13</sup> U.S. General Services Administration, News Releases, “GSA Announces Actions to Reduce Emissions from Building Materials”, February 15, 2022, available at <https://www.gsa.gov/about-us/newsroom/news-releases/gsa-announces-actions-to-reduce-emissions-from-building-materials-02152022>.
- <sup>14</sup> U.S. General Services Administration, Contract Opportunity, Request for Information Regarding Concrete: Environmental Product Declarations and Low Embodied Carbon Products, February 15, 2022 available at <https://sam.gov/opp/344c2772e6854f0b98e2c1675884d373/view> ; U.S. General Services Administration, Contract Opportunity, Request for Information Regarding Asphalt: Environmental Product Declarations and Sustainable or Low Embodied Carbon Products, February 15, 2022 available at <https://sam.gov/opp/bdff92df33b946569c2147035673d5fb/view>.
- <sup>15</sup> The GSA and DOE also issued a RFI in 2021 on technologies that will enable commercial buildings to transition to net-zero carbon emissions. See GSA, DOE Issue RFI for Technologies that Reduce Greenhouse Gas Emissions, October 13, 2021, available at <https://www.gsa.gov/about-us/newsroom/news-releases/gsa-doe-issue-rfi-for-technologies-that-reduce-greenhouse-gas-emissions-10132021>.
- <sup>16</sup> DOD, GSA Announce RFI to Gather Information for Supplying 24/7 Carbon Pollution-Free Electricity for Federal Government, February 3, 2022, available at <https://www.gsa.gov/about-us/newsroom/news-releases/dod-gsa-announce-rfi-to-gather-information-for-supplying-24-7-carbon-pollutionfree-electricity-for-federal-government-02032022>.
- <sup>17</sup> Office of Energy Efficiency and Renewable Energy, Articles – Advanced Manufacturing, “Department of Energy Seeks Input on Technology Pathways to Decarbonize America’s Industrial Sector”, January 27, 2022, available at <https://www.energy.gov/eere/amo/articles/department-energy-seeks-input-technology-pathways-decarbonize-americas-industrial>.
- <sup>18</sup> See *supra* note 11.
- <sup>19</sup> *Id.*

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