

Biden's First Climate Actions Drill Down on Oil and Gas Leasing in the Arctic, and Beyond

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Key Points:

- The Biden administration's Day One climate actions have put traditional energy sources squarely in its crosshairs. In addition to [rejoining the Paris Agreement](#), the administration paused the issuance of oil and gas leases in the Arctic National Wildlife Refuge, withdrew certain areas in Arctic waters and the Bering Sea from leasing, and suspended the authority of most Department of the Interior officials from issuing **any** new onshore or offshore fossil fuel authorizations.
- These actions make good on the President's campaign promise to start the transition to a clean energy future and foreshadow additional, more comprehensive climate-inspired orders and policies that could materialize as early as next week on what the administration has internally referred to as "Climate Day."

During the 2020 presidential campaign, Joe Biden pledged that, if elected, he would steer the country away from its reliance on traditional energy sources and toward a clean energy future with net-zero greenhouse gas emissions. His Day One climate actions followed through on that promise and made clear that his administration will seek to impose the most significant hurdles the oil and gas industry has ever faced from a White House occupant. These actions, however, are just a prelude to what we expect to see on January 27 (which the administration [reportedly](#) has dubbed "Climate Day"), when Biden plans to unleash a bevy of climate-related policies, many of which are anticipated to touch on the industry.

In his "[Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#)," President Biden established his administration's policy of protecting the environment, ensuring access to clean air and water, reducing greenhouse gas emissions and bolstering climate resiliency. To meet those goals—and a longtime campaign promise—Biden issued a temporary moratorium on the issuance of oil and gas leases on over 1.5 million acres of land in the Arctic National Wildlife Refuge (ANWR). The Trump administration had begun the process to lease that land, culminating in an August 2020 [Record of Decision](#) and the January 2021 [issuance](#) of leases on nine tracts of land. The Executive Order halts this process, at least for now, as the U.S. Department of the Interior (DOI) reviews the

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Coastal Plain Oil and Gas Leasing Program covering the ANWR and analyzes its potential environmental impacts anew. Similarly, the Executive Order reinstates Obama-era withdrawals from oil and gas leasing of certain areas in Arctic waters and the Bering Sea.¹

The Biden administration did not stop there, however. On Wednesday, in what rings as a first step to fulfill another campaign promise—to ban new oil and gas leasing on federal lands—the Acting DOI Secretary issued a [Secretarial Order](#) that temporarily suspends the authority of lower-level DOI officials “to issue any onshore or offshore fossil fuel authorization,” which by its text covers virtually **any** new leases, permits and other federal approvals.² While the Secretarial Order is not itself an outright ban on the issuance of new leases or permits and will not impact ongoing operations that already have received all necessary approvals, its most likely practical outcome will be a short-term freeze on the issuance of the vast majority of new leases, permits or approvals required for the exploration and production of fossil-based energy sources. As with the ANWR moratorium, DOI will use the temporary suspension period (currently set at 60 days) to study the “questions of fact, law, and policy” that these activities raise.

At some point within the next 60 days—and likely on “Climate Day”—the Biden administration is expected to institute an extended, though still temporary, moratorium on the issuance of new fossil fuel leases. Federal statutes afford the executive branch a degree of discretion to justify a moratorium while it prepares a Programmatic Environmental Impact Statement to assess the environmental, health and financial impacts of fossil fuel leasing.³ A finding that the government’s approval of fossil fuel leases results in significant negative impacts (that it cannot mitigate adequately) could then support new regulations or a departure from DOI’s previous leasing plans and policies. The resulting new rules or policies are apt to impose more stringent limitations on future leasing activities and conditions that impact economic feasibility, further diminishing the value proposition of new fossil fuel production on public lands. A Biden-issued moratorium would not be unprecedented, as we have seen comparable suspensions during the tenures of Presidents Nixon, George H. W. Bush and Obama.

Although the Biden administration’s climate actions undoubtedly will face a plethora of litigation from states and industry, its Day One orders represent the opening salvo of a tenure that aims to oversee a rapid and lasting transition away from the United States’ current energy mix.

¹ President Trump sought to revoke President Obama’s withdrawal of these areas from leasing through Executive Order 13795, but the U.S. District Court for the District of Alaska vacated the revocation in March 2019. *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013 (D. Alaska 2019).

² The Order provides a few exceptions, such as where conditions exist that could pose human health or safety risks or adverse impacts to public lands or mineral resources.

³ See, e.g., 30 U.S.C. § 201(a)(1) (discretion to offer leases for lands containing coal); 30 U.S.C. § 226(g) (discretion to set standards related to financial arrangements, ensuring reclamation of lease tracts, and restoration of any lands or surface waters adversely affected by lease operations); 43 U.S.C. § 1344(a)(2)(G) (allowing DOI to base the “timing and location” of oil and gas offshore activities on “the relative environmental sensitivity and marine productivity” of the outer continental shelf).