

Climate Change Alert

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New U.S. Paris Agreement Pledge Sets Aggressive Target and Offers Clues for Business Planning and Advocacy Efforts on Climate Change

April 30, 2021

Key Points:

- On Earth Day, the Biden-Harris administration announced a new target for the United States to achieve a 50 to 52 percent reduction in economy-wide GHG emissions by 2030, which constitutes the country's new NDC under the Paris Agreement.
- To achieve the new NDC, the United States envisions a “whole-of-government” approach to catalyze opportunities for businesses to partner with the federal government to rapidly transform the power, transportation, buildings, industrial and agriculture and lands sectors.
- The close partisan split in Congress likely will force the administration to rely on a combination of agency regulation and other executive actions to demonstrate progress toward achieving the NDC.

Introduction

On April 22, 2021—fewer than three months after rejoining the Paris Agreement—the Biden-Harris administration announced a new target to reduce U.S. economy-wide greenhouse gas (GHG) emissions by 50 to 52 percent below 2005 levels by 2030. The voluntary target constitutes the nation's new “Nationally Determined Contribution” (NDC) under the Paris Agreement, which the United States formally communicated to the United Nations Framework Convention on Climate Change (UNFCCC) in a 24-page [submission](#). The administration explains that a “whole-of-government approach on climate action at the federal level will play an important role in achieving” the 2030 target, and envisions that “[a]ll levels of government and the private sector will partner to drive and implement this NDC.”¹

What, exactly, this “whole-of-government” approach entails is the critical question. The aggressive goal, aimed at reducing emissions in key sectors—electricity, transportation, buildings, industrial, and agriculture and lands—would seem to demand action from both the administration and Congress. In this alert, we take a deep dive into the NDC; assess its implications for future domestic policy, legislation and

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regulation; and outline strategic considerations and actions for prudent businesses to undertake.

Background on NDCs

Signatories to the Paris Agreement agreed to do their fair share to uphold the Agreement's goal of limiting global warming to "well below" 2 degrees Celsius, with aspirations to limit warming to 1.5 degrees Celsius. The agreement calls for countries to embark on an "economic and social transformation" through five-year cycles of increasingly ambitious climate action. This process begins with the submission of domestic climate action plans known as "Nationally Determined Contributions," or "NDCs," a bottom-up approach through which countries communicate their emissions reduction goals along with relevant "information necessary for clarity, transparency and understanding."² Notably, the Agreement does not impose legally binding provisions on countries to implement their NDCs, nor does it include an enforcement mechanism for non-compliance. Instead, success depends on peer pressure and the political will of each individual country to implement domestic laws and regulations necessary to achieve its NDC.

Prior to leaving office, President Obama **pledged** to reduce U.S. emissions by 26 to 28 percent below 2005 levels by 2025, which was formally communicated to the UNFCCC in early 2016 (the "2016 NDC"). The 2016 NDC outlined various existing and then-proposed regulations "relevant to the implementation of the U.S. target," including the Department of Energy's (DOE) energy conservation standards for buildings and appliances, the Department of Transportation's fuel economy standards and the Environmental Protection Agency's (EPA) then-pending Clean Power Plan.

The United States' New NDC

The new NDC is the product of a nearly three-month interagency process led by National Climate Advisor Gina McCarthy and the White House Office of Domestic Climate Policy. To develop the NDC, the administration "considered sector-by-sector emissions reduction pathways" for each sector of the economy that produce carbon dioxide and other GHGs—i.e., electricity, transportation, buildings, industrial and agriculture and lands—weighing a variety of possible "[s]tandards, incentives, programs, and support for innovation."³ The administration further points to "analyses show[ing] that the United States can deliver on its NDC . . . by investing in efficiency, beneficial electrification, clean energy, plugging methane leaks, addressing direct greenhouse gas emissions from industrial processes, climate smart agriculture and forestry, innovation, and other priorities."⁴

While the NDC does not cite these analyses, many third-party organizations and researchers have demonstrated that a 50 percent reduction from 2005 levels by 2030 **is** achievable, but will require Congress and federal agencies to adopt new legislation and regulations, respectively.⁵ With that in mind, below we outline potential policies and administrative actions we think the United States may pursue to achieve its new NDC.

Electricity

The NDC references the U.S.'s goal of reaching "100 percent carbon pollution-free electricity by 2035," suggesting the administration plans to rely heavily on a clean electricity standard (CES) as envisioned in President Biden's **Build Back Better** plan or

as proposed in recent legislation. For example, the [Climate Leadership and Environmental Action for our Nation's \(CLEAN\) Future Act](#) features a technology-neutral CES that would require retail electric utilities to provide 80 percent zero- or low-carbon electricity by 2030, and 100 percent “zero-emission” electricity by 2035.

In lieu of—or perhaps in addition to—a CES or other Congressional action, the administration could promulgate new national standards regulating carbon emissions from power plants. In January 2021, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Trump administration’s replacement of the Obama-era Clean Power Plan, leaving no federal regulations in place while sanctioning the legal underpinning supporting the original rule.⁶ In a recent interview, EPA Administrator Michael Regan confirmed that the agency is working on a replacement rule.⁷ It remains to be seen whether the agency will focus on emissions reduction requirements at individual power plants (e.g., heat-rate improvements) or instead follow the Clean Power Plan in considering “beyond-the-fence-line” approaches, such as shifting generation to less polluting energy sources or an emissions trading system. Regardless of which approach the agency chooses, new regulations are on the horizon.

Transportation

The NDC envisions that a variety of policies will “contribute to emissions reduction pathways consistent with the NDC,” including “tailpipe emissions and efficiency standards; incentives for zero emission personal vehicles; funding for charging infrastructure to support multi-unit dwellings, public charging, and long-distance travel; and R&D to advance low carbon fuels in aviation.” The administration already has taken steps toward greater motor vehicle emissions reductions and fuel economy improvements, as last week both the National Highway Transportation Safety Administration and EPA began the process to rescind rules from the prior administration that sought to preempt California’s authority to regulate GHG emissions from motor vehicles or require the production of zero-emission vehicles. By July, the administration is expected to propose more stringent emissions and fuel economy standards for future model year vehicles.

In addition, the administration could establish emissions targets for all U.S. flights that would set the aviation sector on a path to net-zero emissions. The Clean Air Act grants the EPA and the Federal Aviation Administration authority to set aircraft emissions standards and limits on the emissions of conventional pollutants. The Clean Air Act could also be wielded to establish aviation low-carbon fuel standards, and the administration—likely alongside Congress—could craft incentives that would help increase production and lower costs of sustainable aviation fuel (SAF).

Buildings

The NDC says the United States will consider “ongoing government support for energy efficiency and efficient electric heating and cooking in buildings via funding for retrofit programs, wider use of heat pumps and induction stoves, and adoption of modern energy codes for new buildings.”⁸ The DOE is in the process of reviewing a number of the prior administration’s actions related to building and appliance energy efficiency standards. Chief among these is the Department’s “Process Rule,” the planned revisions to which will reshape the process DOE uses to develop energy conservation standards and test procedures for many consumer products and commercial

equipment.⁹ President Biden also directed the DOE to reconsider its prior determinations that two prominent energy efficiency building codes—the 2018 International Energy Conservation Code and the 2016 ANSI/ASHRAE/IES Standard 90.1—improve energy efficiency compared to prior standards.¹⁰

Industry

To reduce emissions in the heavy industry sector—resulting from onsite energy use and direct process emissions—the NDC suggests the United States will primarily focus on increasing the adoption of carbon capture technology through federal policies and incentives. Similarly, the administration will look to increase the prevalence and use of green hydrogen fuel and energy storage to power and support manufacturing.¹¹

Congressional Democrats have targeted industrial emissions reductions through two programs proposed in the recently reintroduced CLEAN Future Act. Under the “Buy Clean” program, the DOE and the National Institute of Standards and Technology would gather data on greenhouse gas emissions from construction materials and create environmental product declarations to shift other federal agencies’ procurement efforts toward low-emissions materials. The “Climate Star” program would follow the well-known Energy Star program by creating a labeling system that rewards cleaner products used in households, offices and even industrial settings. For more on the Buy Clean and Climate Star programs, see our analysis [here](#).

Agriculture and Lands

Recognizing that “America’s vast lands provide opportunities to both reduce emissions” and sequester carbon dioxide, the NDC explains that the United States “will support scaling of climate smart agricultural practices (including, for example, cover crops), reforestation, rotational grazing, and nutrient management practices.” To this end, the recently re-introduced bipartisan [Growing Climate Solutions Act](#) could play a role.¹² The Act would create a “Greenhouse Gas Technical Assistance Provider and Third-Party Certification Program” to help farmers, ranchers and private forest landowners overcome barriers to participation in voluntary carbon offset markets. In doing so, the Act could incentivize adoption of farming and land practices that result in measurable, verifiable emissions reductions and carbon dioxide or methane sequestration.

Non-CO₂ GHG Emissions

The administration plans to draw on its existing authorities to curtail non-carbon dioxide GHG emissions, namely by implementing the American Innovation and Manufacturing (AIM) Act to phase down the use of hydrofluorocarbons (HFCs). Specifically, the AIM Act “requires EPA to implement an 85 percent phase down of the production and consumption of hydrofluorocarbons, so they reach approximately 15 percent of their 2011-2013 average annual levels by 2036.”¹³

President Biden also has called for robust standards to reduce methane emissions from oil and gas operations. Although his Day One executive order directed the EPA to reconsider the prior administration’s methane rule, on April 28, the Senate approved a measure to use the Congressional Review Act (CRA) to reject that rule.¹⁴ If the House approves the resolution, the Obama administration’s standards would once again become effective, but the CRA’s prohibition on the promulgation of a similar rule may

prevent the Biden-Harris administration from pursuing more aggressive methane reduction standards in the future.

Carbon Border Adjustments

Notably, the new NDC explains that the United States “will work to ensure that [U.S.] firms and workers are not put at an unfair competitive disadvantage and cooperate with allies and partners that are committed to fighting climate change,” for example, through the “consideration of carbon border adjustments in relation to carbon-intensive goods.”¹⁵ While similar statements are present in the Office of the U.S. Trade Representative’s [2021 Trade Policy Agenda](#), inclusion in the new NDC provides further indication that the Biden-Harris administration is seriously weighing the option.

We expect the conversation around border carbon adjustments to gain momentum as the European Union prepares to implement a [carbon border adjustment mechanism](#) and other key trade partners consider using trade policy to advance their domestic environmental policy goals.

Conclusion and Next Steps

Now for the hard work—operationalizing a plan to meet this aggressive new NDC target. The administration’s “whole of government” approach must result in effective, durable regulations and policies to endure the political winds between now and 2030 while taking immediate steps to secure near-term progress toward the U.S. commitments under the Paris Agreement. Businesses and regulated entities should prepare for the increased regulation and enforcement that is likely to result, and consider engaging with lawmakers and agencies prior to legislative and regulatory developments and during rulemaking processes.

The new U.S. NDC also offers clues for businesses seeking to establish new commitments on climate change or to build climate-related risks and advocacy into existing or new environmental, social and governance (ESG) programs. In fact, numerous U.S. businesses and trade associations are rallying around the new NDC, and have committed to working with the federal government to achieve the 2030 target.¹⁶ Businesses and regulated entities can better position themselves by committing to setting [science-based emissions reduction targets](#) rooted in, or aligned with, the new U.S. NDC’s 2030 target. As the U.S. NDC is in line with the NDCs of many other major world economies, alignment with its emissions reduction objectives is simply smart business for many companies. Equally important, the legislative and regulatory changes intended to achieve the NDC present significant opportunities for engagement on these transformational policies.

¹ 2021 NDC at 2.

² Paris Agreement, art. 4.8.

³ 2021 NDC at 3.

⁴ 2021 NDC at 14.

⁵ See, e.g., [America Is All In](#); [EDF](#); [Energy Innovation](#); [University of Maryland](#).

⁶ *Am. Lung Ass’n v. EPA*, 985 F.3d 914 (D.C. Cir. 2021).

⁷ Id. Lisa Friedman, *New E.P.A. Head Says Agency Has Climate Regulations Underway*, N.Y. Times (Mar. 15, 2021), <https://www.nytimes.com/2021/03/15/climate/michael-regan-epa.html>.

⁸ 2021 NDC at 4.

⁹ Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 Fed. Reg. 18901 (Apr. 12, 2021).

¹⁰ Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 25, 2021).

¹¹ Id.

¹² As a [press release](#) notes, the Act has “broad, bipartisan support from 42 Senators and over 70 agricultural and environmental organizations,” and was recently reported favorably out of the U.S. Senate Committee on Agriculture, Nutrition and Forestry.

¹³ Press Release, Kennedy, senators announce historic bipartisan agreement on American Innovation and Manufacturing Act (Dec. 21, 2020), <https://www.kennedy.senate.gov/public/2020/12/kennedy-senators-announce-historic-bipartisan-agreement-on-american-innovation-and-manufacturing-act>.

¹⁴ S.J.Res. 14, 117th Cong. (2021).

¹⁵ 2021 NDC at 2.

¹⁶ See, e.g., statements from Retail Industry Leaders Association; [Business Council for Sustainable Energy](#); [Edison Electric Institute](#); and [CEO Climate Dialogue](#). See also Maria Mendiluce, Corporate climate advocacy in action as business stands ready to deliver US NDC increase (Apr. 22, 2021), <https://www.wemeanbusinesscoalition.org/blog/us-ndc/>; We Mean Business Coalition, Earth Day: Global businesses unveil increased ambition and action (Apr. 22, 2021), <https://www.wemeanbusinesscoalition.org/blog/earth-day-global-businesses-unveil-increased-ambition-and-action/>.

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