Environment, Energy, and Climate

6

President Biden campaigned on a promise to "end fossil fuel." Some dismissed it at the time as rhetorical bluster. We now know he was serious. He reentered the Paris Agreement and canceled the Keystone XL pipeline on his first day in office; issued a moratorium on all oil and gas leasing in the Alaska National Arctic Wildlife Refuge; suspended oil and gas leasing on federal lands; pledged to reduce U.S. greenhouse gas emissions—chiefly carbon dioxide (CO_2) from fossil-fuel combustion—by 50 to 52 percent below 2005 levels by 2030; pledged to achieve a net-zero electricity sector by 2035; directed the Securities and Exchange Commission, the Department of the Treasury, and other agencies to channel capital flows toward "climate-aligned investments;" and championed hundreds of billions in new subsidies for wind and solar power.

The results have been disastrous. With government threatening their existence, U.S. fossil-fuel producers are reluctant to invest in major new capital projects, and the expectation that demand will increasingly exceed supply in the future has bid up present energy prices. High-cost energy harms lower-income households, contributes to inflation, and puts a drag on the economy. America's energy sector, the world's leading hydrocarbon producer in recent years, is once again ceding global market share to Russia and the Organization of the Petroleum Exporting Countries, or OPEC.

At the same time, climate provisions in the Inflation Reduction Act are increasing demand for energy transition minerals much faster than new mines can be opened

and processing infrastructure can be built in the United States, largely because of the decades-long permitting delays built into the National Environmental Policy Act. That also contributes to inflation and increases the likelihood of future energy price shocks. Far from being a transition from fossil fuels to renewables, the net-zero agenda looks more like a transition from abundant and affordable energy to scarce high-cost energy.

This section discusses several policy options that can help America's energy sector unleash prosperity, lower consumer energy costs, and restore U.S. leadership in global energy markets. Other shortcomings in environmental policies predate the Biden administration. We offer alternatives and improvements in several areas, including, most importantly, the Endangered Species Act (ESA).

Congress should:

- Schedule a debate and vote on whether President Biden should submit articles of ratification to the Senate to make the Paris Agreement an official treaty of the United States.
- Begin oversight of energy, climate, and environmental spending in the Inflation Reduction Act and conduct investigations and hearings of how the funds appropriated are being spent by the various departments and agencies.
- Rein in federal efficiency standards for consumer appliances.
  - Use the Congressional Review Act to pass resolutions of disapproval of all new Department of Energy (DOE) appliance standards that risk harm to consumers.
  - Implement reforms to the statute, including clarifying that climate change cannot be a consideration in the DOE appliance standards-setting process.
  - Repeal the DOE's regulatory authority over appliances.
- Prohibit agencies' use of social cost of carbon (SCC) estimates as a factor in regulatory decisions and net benefits calculations for agency rules.
- Sunset the Renewable Fuel Standard (RFS).
  - Require the Environmental Protection Agency (EPA) to use the waiver authority under the RFS to free up more corn for food use.
  - Set an end date for the program.
  - End all subsidies and favorable tax treatment for biofuels.
- Reform the Endangered Species Act.
  - Undertake a comprehensive historical review through hearings on the effectiveness of the ESA in preserving endangered wildlife by conserving habitat and the impacts on private landowners of the Act's regulatory powers. It can begin by reviewing the hearings conducted in the 104th Congress by the House Natural Resources Committee.

- Enact legislation to reform the ESA by replacing its heavy-handed regulatory structure with a non-regulatory program of voluntary incentives. The model for this major reform should be the Endangered Species Recovery and Conservation Incentive Act, introduced as H.R. 2364 in the 104th Congress.

- Reject proposals to establish a carbon tax.
- Refuse to fund or authorize the president's unauthorized climate programs.
  - Direct every committee of jurisdiction to use its oversight powers to identify all climate-related programs, initiatives, offices, or task forces not authorized by Congress.
  - Refuse to authorize through legislation any of the identified unauthorized programs.
  - Direct the House and Senate appropriations committees to prohibit all funding of any of the unauthorized programs in the FY 2024 and FY 2025 House and Senate appropriations bills.
- Refuse to ratify the Kigali Amendment.
  - Withdraw from the Montreal Protocol on Substances that Deplete the Ozone Layer now that its original goals have been achieved.
  - Consider revisions to the American Innovation and Manufacturing (AIM) Act to reduce compliance costs for manufacturers of air conditioning and refrigeration equipment.

Environmental Treaty Making

The Paris Agreement has three main political functions:

1. Lock the United States into a path of "deep decarbonization" of the economy.
2. Mobilize pressure on future U.S. leaders to honor "America's" (President Obama's and now President Biden's) climate policy pledges.
3. Improve the prospects for anti-fossil-fuel litigation under the national laws of the United States and other parties to the agreement.

To accomplish this, the agreement features a combination of legally binding reporting requirements and "politically binding" emission-reduction and climate finance "commitments" on the part of signatories.

The Paris Agreement was the capstone of President Obama's climate policy agenda. President Trump withdrew the United States from it. However, he did so with the stroke of a pen—the same method by which Obama joined. That allowed President Biden to unilaterally rejoin the Paris Agreement on Inauguration Day 2021.

President Obama called the Paris Agreement the "most ambitious climate change agreement in history." Indeed, it is. The agreement aims to control the Earth's climate, transform global energy infrastructure, and mobilize trillions of dollars in climate finance for developing countries.

Yet Obama refused to submit the Paris Agreement to the Senate for its advice and consent, as required by the Treaty Clause of the U.S. Constitution. Instead, he purported to join it based on his sole authority as chief executive—as if it were of no greater consequence to the United States than the bilateral executive agreements signed by President George W. Bush to promote environmental education in Ethiopia, Niger, and the Republic of Congo.

The Paris Agreement is a treaty—a pact subject to the Senate's advice and consent—by virtue of its costs and risks to the nation as a whole, dependence on subsequent legislation by Congress, potential to affect state laws, past U.S. practice regarding similar agreements, and other common-sense criteria set forth in the State Department's Circular 175 procedure.

U.S. leadership in producing abundant, affordable, reliable energy strengthens the economy, reduces the cost of living, and enhances U.S. geopolitical security. The Paris Agreement is incompatible with U.S. leadership in fossil fuels because it sets up a global framework for pressuring U.S. policy makers and companies to achieve net-zero emissions by 2050.

The Senate should schedule a debate and vote on whether President Biden should submit articles of ratification to make the Paris Agreement an official treaty of the United States. If fewer than two-thirds of the senators present vote in favor of ratification, Senate leaders should declare that the United States is not a party to the Paris Agreement and never has been.

New Energy, Climate, and Environmental Spending in the Inflation Reduction Act

The inaptly titled Inflation Reduction Act, enacted in August 2022, includes an estimated $369 billion in new spending over the next decade through various handouts to special interests. The actual expenditures in the open-ended tax subsidies for various types of green energy technologies—such as wind, solar, carbon capture

and storage, and electric vehicles—could actually be much higher than the estimates. The potential for fraud, corruption, and waste in many of these programs is high. Rather than investigating after the fact, as with the Solyndra scandal, the 118th Congress should take a proactive approach to oversight.

Areas especially susceptible to fraud, corruption, and waste include the following:

- Approximately $60 billion in mandatory funding for Environmental Justice programs, much of it at the EPA
- An expansion in the Department of Energy's loan authority to commercially unviable energy projects of up to $350 billion
- $35 billion for rural, agriculture, and conservation programs
- Credits and programs to increase residential and commercial building energy efficiency

Efficiency Standards for Consumer Appliances

It is hardly news that the private sector is more efficient than government and that consumers know their own interests better than any central planner. Nevertheless, the federal government has gotten into the business of setting efficiency standards for a variety of energy- and water-using appliances—from dishwashers to water heaters to light bulbs—that make those products more expensive and less reliable. It is time to pull the plug on those decades-old mandates and give consumers more choice in the products they purchase and use.

The 1975 Energy Policy and Conservation Act authorized the Department of Energy to set and periodically tighten energy- and water-efficiency standards for home appliances. By now, many home appliances have been subject to four or more rounds of successively tighter standards. In some cases, these regulations raise the up-front cost of appliances more than is likely to be earned back via energy or water savings.

Worse, some standards have adversely impacted appliance performance, although the law expressly forbids the DOE from putting efficiency above consumer utility. This included a standard for dishwashers that resulted in compliant models taking two or more hours to clean a load of dishes rather than one hour or less in older models.

CEI was at the forefront of pushing back against such regulatory overreach, and we succeeded in convincing the Trump administration DOE to take some deregulatory actions on dishwashers, shower heads, and light bulbs. Unfortunately, the Biden administration has reversed most of these measures while adding costly new ones.

Now the DOE has threatened to include climate change as a rationale for even tighter standards. The agency is also using the regulatory process to discourage natural gas appliances in favor of electric versions.

Social Cost of Carbon

The social cost of carbon is an estimate in dollars of the present value of the cumulative climate-related damages caused by an incremental ton of carbon dioxide emitted in a particular year. It is also an estimate of the climate-related benefits of avoiding or reducing one ton of CO_2 emissions in a given year. Federal agencies increasingly use SCC analysis to promote bureaucratic power grabs, political agendas, and market-rigging regulations in the name of science.

The executive branch's Interagency Working Group (IWG) uses three integrated assessment models (IAMs) to calculate SCC values. IAMs "integrate" a climate model, which projects the physical impacts of CO_2 emissions, with an economic model, which projects the dollar value of climate change effects on global GDP.

SCC guestimates are only as good as the assumptions on which they are based. Many key inputs are speculative or subjective, enabling modelers to get almost any result they desire. Raise SCC estimates high enough, and modelers can make fossil fuels look unaffordable, no matter how cheap, and climate regulations look like a bargain at any price.

Although purportedly evidence based, the IWG process is egregiously biased:

- The IWG runs its three IAMs with below-market discount rates—a practice that massively inflates the estimated SCC.
- The IWG runs the IAMs with climate sensitivities derived from ocean-atmosphere models that repeatedly overshoot observed warming in the bulk tropical atmosphere by more than double.

- The IWG runs the IAMs with baseline emission scenarios that implausibly assume coal consumption rapidly scales up to dominate global energy supply during the 21st century and beyond.
- Two IAMs unscientifically ignore the immense agricultural benefits of atmospheric CO2 fertilization and longer growing seasons.
- One IAM unreasonably assumes human ingenuity will be powerless to limit climate-related damages once 21st-century warming and sea-level rise exceed 1°C and 10 inches, respectively.

Substituting reasonable alternative assumptions about emission baselines, climate sensitivity, CO_2 fertilization, and human adaptive capabilities reduces the SCC to very small numbers. In fact, there are high probabilities of negative SCC values, which means that the agricultural benefits of each incremental ton of CO_2 exceed the climate-related damages.

Whatever value SCC analysis may have as an academic discipline, it is too speculative and prone to user manipulation to inform policy decisions or net benefits calculations for agency rules. Therefore, Congress should pass legislation stipulating that SCC estimates may not be used to inform regulatory decisions and net benefit calculations for agency rules.

Renewable Fuel Standard

Congress established the Renewable Fuel Standard in 2005 and greatly expanded it in 2007. At the time of the RFS' enactment, its proponents claimed that it would help enhance energy security, boost the economy, and bring environmental benefits, but the program has failed to deliver on any of those promises. It is, however, contributing to higher food prices.

The RFS requires a specified amount of corn ethanol and other biofuels to be added to the nation's gasoline and diesel supply. This mandate is added to the subsidies and favorable tax treatment already available to the biofuels industry.

Events since 2007 have undercut the rationale for mandating the use of biofuels. At the time, demand for gasoline was rising while domestic oil output was falling and import dependence was growing. Stretching the fuel supply with, presumably, domestic biofuels seemed like a good idea to many in Congress. But soon after

2007, those trends unexpectedly reversed, as the shale revolution led to a rebirth of American oil production and a sharp decline in oil imports.

At the same time as the energy independence rationale for the RFS was eroding, the economic rationale was not doing much better. The costs of compliance never came down enough for the RFS to become economical, especially in the high volumes mandated. That is especially true of the biodiesel portion of the RFS. In addition, the promised big breakthroughs in "next generation" cellulosic biofuels never materialized.

With or without the RFS, a good deal of ethanol would still be added to the gasoline supply because of its benefit in raising octane levels. Even refiners critical of the program agree that inclusion of biofuels makes economic sense up to a point—just not at the levels mandated by the federal government.

Also, attempts to produce cellulosic biofuels from non-fuel feedstocks have failed, so the program still impinges heavily on the food supply. Most notably, nearly 40 percent of America's corn supply now goes to RFS compliance rather than use as food or feed. Given that Ukraine is a major grain producer but will not have much of a crop in 2022 due to the Russian invasion, the risk of already high prices skyrocketing further is worsened by the demands of the RFS.

Endangered Species Act

The Endangered Species Act often has bad consequences for endangered wildlife because it violates private property rights. Under the Act, landowners constantly face the threat of seeing their land declared off-limits to human use if it is found to contain critical habitat or potential critical habitat for listed species. That creates perverse incentives to destroy or eliminate the habitat before it can be regulated by the Fish and Wildlife Service.

On federal lands, the Act has been employed in litigation by environmental advocacy groups to overturn federal agency land management plans. The effect has often been to thwart sound environmental management practices and thereby lead to the degradation of critical habitat.

Carbon Taxes

The environmental rationales for a carbon tax fall apart upon inspection. A carbon tax would not be revenue neutral or displace greenhouse gas regulations. Even if the tax were revenue neutral, it would still be economically harmful. Any enacted carbon tax would have negligible climate effects.

A carbon tax is intended to drive investment into renewable energy sources, not by lowering their cost or improving their performance, but by handicapping competing technologies.

A carbon tax would further increase energy prices, potentially inflicting substantial losses on GDP, job creation, and household income. Even the most aggressive politically feasible carbon tax would have negligible climate effects, and its costs would far exceed any benefits.

Neither the "social cost" of carbon nor the alleged "climate crisis" justifies imposing new taxes on fuels that supply 80 percent of U.S. energy. As noted, the social cost of carbon is too speculative and easily manipulated a measure to justify either taxes or regulations imposing large costs on the economy.

No enacted carbon tax would be "revenue neutral." The carbon fee-and-dividend policies advocated by certain business lobbyists are just tax-and-spend programs in green garb that would not repeal or lower the rates of any existing taxes.

Even if every dollar of carbon tax revenue were to be used to cut other taxes by the same amount, the policy would still be unwise. The tax base for a carbon tax is much narrower than those for most other taxes. That is a problem because the smaller the base on which a tax is levied, the greater its power to destroy businesses, jobs, and local economies. For example, cutting income or Federal Insurance Contributions Act (FICA) taxes by $100 billion would not come close to offsetting the economic losses from a new $100 billion tax on fossil-fuel companies or their products.

No carbon tax likely to be enacted would be deregulatory. The Clean Air Act exemptions in a handful of carbon tax bills introduced in the 116th and 117th Congresses are mostly minor, revocable, or ineffectual. Worse, the carbon tariffs—"border taxes"—that U.S. firms would demand as protection from cheaper non-taxed

foreign imports would require an IRS-style agency to develop, administer, and audit compliance with complex new trade rules.

Enacting a carbon tax would be perceived as validating the climate crisis narrative, so it would strengthen rather than tamp down demands for more radical policies. Pro-growth legislators who endorse carbon taxes risk destroying a prime political asset—the pro-energy, low-tax policies that millions of Americans support.

Unauthorized climate programs

President Biden, on his first day in office, announced that the United States would rejoin the Paris Climate Agreement and signed Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." On January 27, 2021, he announced a "whole-of-government approach to the climate crisis" and signed Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," which orders the creation of numerous new programs, initiatives, task forces, and offices throughout the federal government. And on April 22, 2021, he made a second-round commitment under the Paris Agreement to reduce U.S. greenhouse gas emissions by 50 to 52 percent below 2005 levels by 2030. The president has not sought congressional authorization for these actions.

Neither the Paris Agreement nor the second-round commitment has been ratified by the Senate. Similarly, few of the new programs, initiatives, task forces, and offices created by E.O.s 13990 and 14008 have ever been authorized by Congress. Several notable examples include the following:

- The first sentence of the United Nations Framework Convention on Climate Change's web page on the Paris Agreement (https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement) states: "The Paris Agreement is a *legally binding international treaty on climate change*." [Emphasis in original] Yet President Biden intends to implement the Paris treaty without the required two-thirds Senate vote for ratification.
- The Thirty by Thirty (30×30) Initiative in E.O. 14008 to preserve 30 percent of the nation's lands and waters by 2030 has never had a congressional hearing. The only bill regarding 30×30 introduced in the 117th Congress would prohibit its implementation.

- The administration has charged the Interagency Working Group on the Social Cost of Greenhouse Gases with publishing a guidance document and advising on its wide use in the regulatory process. Congress has never directed the use of any such guidance document in any regulatory proceeding.

Kigali Amendment

Beginning in the 1970s, concerns that refrigerants used in most air conditioners and refrigerators were leaking into the air and depleting the Earth's ozone layer led to the negotiation and signing of the Montreal Protocol on Substances that Deplete the Ozone Layer, a 1987 United Nations treaty that phases out the use of those chemicals. Since then, a number of ozone-safe substitutes have been developed and are now used in most residential and vehicle air conditioners and residential and commercial refrigerators.

However, governments and environmental advocacy groups are now targeting those substitutes because of their alleged contribution to global warming. In 2016, in Kigali, Rwanda, the parties to the Montreal Protocol agreed to an amendment to the treaty, known as the Kigali Amendment, that restricts production of those second-generation refrigerants. U.S. ratification of the Kigali Amendment requires a two-thirds vote in the Senate.

Unfortunately, domestic restrictions on these refrigerants were enacted in December 2020 as part of the American Innovation and Manufacturing Act. The EPA began implementing these measures in 2022, and they are already having an adverse impact on the cost of air conditioning and refrigeration.

These measures were supported by manufacturers of Kigali-compliant refrigerants that stand to benefit by gaining a captive market for those products. They have joined forces with environmental activists to lobby for the AIM Act and now for the Kigali Amendment.

Those companies claim that such government interference in air conditioning and refrigeration will create jobs and bring down costs. In truth, such measures are very likely to kill jobs—particularly for the millions of businesses that rely on such equipment, such as grocery stores and restaurants, and manufacturers that use

industrial process refrigeration and will have to shoulder the increased expense. Home and vehicle air conditioning will also be adversely affected.

Proponents have also asserted that the Kigali Amendment levels the playing field among nations, but in truth, China and other industrial competitors of the United States get far more favorable treatment under the treaty.

As it is, Congress could revisit the AIM Act and consider revisions in the likely event that costs prove high, but such mid-course corrections would be nearly impossible if the Kigali Amendment were to be ratified and the United Nations placed in charge.

Experts: Myron Ebell, Marlo Lewis, Ben Lieberman

For Further Reading

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