

THE CLIMATE PRESIDENT'S EMERGENCY POWERS

A LEGAL GUIDE TO BOLD
CLIMATE ACTION FROM PRESIDENT BIDEN

EXECUTIVE SUMMARY

“The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents.”

– U.S. President Joe Biden, Jan. 27, 2021

The climate emergency presents a “code red for humanity,”¹ and its devastating impacts are already here. More than 40% of Americans live in a county hit by climate-related extreme weather last year. At least 656 people died as climate-driven disasters including wildfires, heat domes, deep freezes and hurricanes ravaged the country, costing upwards of \$100 billion. These disasters capture only a fragment of the climate emergency’s global impact: intensifying food insecurity, climate migration, political unrest and irreversible biodiversity loss.

Fortunately President Biden has the tools to lead a tectonic shift. Now is the moment for Biden to turn the page on a first year marked by stalled climate legislation and fossil fuel expansion. The president possesses unused executive pathways — through both ordinary and emergency executive powers — to protect the country from increasingly dire climate threats and build a just and regenerative energy system.

A course change is crucial. Largely through burning fossil fuels, we’ve already heated the planet about 1.2 degrees Celsius above preindustrial levels — enough for 80% of the United States to experience a heat wave last year. Scientists expect sea levels on U.S. coasts to rise a foot in the next 30 years. To avert far worse climate consequences and limit warming to 1.5°C, the target of the 2015 Paris Agreement, climate science makes clear that all governments must significantly replace fossil fuels with renewable energy by 2030. Instead the Biden administration has galloped past Trump in its approvals of oil and gas drilling permits on federal lands and held the largest offshore lease sale in U.S. history.

Climate change is a compounding crisis. Every delay makes it worse and harder to solve. It breeds glaring injustice, with Black, Latino, Indigenous, Asian American and Pacific Islanders, and other communities of color and low-wealth communities experiencing the gravest impacts. Unless we ignite a technological and economic transformation now, we will spiral toward a dangerous and increasingly unlivable planet.

By declaring a national climate emergency, Biden can unlock emergency executive powers already granted by Congress to aggressively combat the crisis. This paper identifies five key climate actions the president can take using three emergency and defense framework statutes: the National Emergencies Act, the Defense Production Act, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This discussion complements the Center for Biological Diversity’s 2019 legal report, which identified the most significant ordinary executive powers that could be used for bold climate action — including a permanent end to the federal fossil fuel leasing and drilling program.²

¹ United Nations Secretary-General, *Secretary-General’s statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment* (Aug. 9, 2021), <https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>.

² Kassie Siegel & Jean Su, *Legal Authority for Presidential Executive Action on Climate: Legal Analysis Underpinning the #ClimatePresident Action Plan* (2019), at 20-25, <https://climatepresident.org/Legal-Authority-for-Presidential-Climate-Action.pdf>

Key Climate Emergency Executive Actions

CLIMATE ACTION

LEGAL AUTHORITIES

Halt Crude Oil Exports

After declaring a national climate emergency, the president can reinstate the crude oil export ban overturned in 2015. This would cut greenhouse gas emissions by up to 165 million metric tons of CO₂-equivalent each year, comparable to closing 42 coal plants.

National Emergencies Act

Energy Policy
Conservation Act (42
U.S.C. § 6212a(d))

Stop Oil and Gas Drilling in the Outer Continental Shelf

After declaring a national climate emergency, the president can suspend the operations of all offshore leases. This will stop extraction in the more than 11 million acres of federal waters currently subject to active oil and gas leases and complement ordinary executive powers for offshore oil and gas extraction.

National Emergencies Act Outer Continental Shelf Lands Act (43 U.S.C. §§ 1334(g), 1341(c))

Outer Continental Shelf
Lands Act (43 U.S.C. §
1341(a))

Restrict International Trade and Private Investment in Fossil Fuels

After declaring a national climate emergency, the president can restrict U.S. fossil fuel exports that are primarily derived from the Permian Basin; curb fossil fuel imports that would add to the U.S.' carbon emissions; and halt hundreds of billions of dollars of U.S. investment in fossil fuel projects abroad.

National Emergencies Act International Emergency Economic Powers Act (50 U.S.C. §§ 1701, 1702)

Grow Domestic Manufacturing for Clean Energy and Transportation to Speed the Nationwide Transition Off Fossil Fuels

After determining that the climate emergency threatens the national defense, the president can marshal domestic industry to manufacture renewable energy and clean transportation technologies while generating millions of good-paying, union jobs. The president can leverage DPA funds and the federal procurement budget of \$650 billion per year to purchase these technologies and allocate them in federal agencies and in partnership with priority environmental justice communities and public entities.

Defense Production Act Title I (50 U.S.C. §§ 4511 *et seq.*) Title III (50 U.S.C. §§ 4531 *et seq.*) Title VII (50 U.S.C. §§ 4551 *et seq.*)

Build Resilient and Distributed Renewable Energy Systems in Climate-Vulnerable Communities

After declaring the climate crisis an emergency and after declaring major disasters, the president can direct the Federal Emergency Management Agency to construct renewable energy systems, optimizing distributed energy resources in partnership with environmental justice communities vulnerable to climate disasters, as well as limit construction of fossil fuel infrastructure.

Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5170, 5191)

Congress enacted emergency powers to allow the executive branch greater flexibility to respond to extraordinary events. The climate emergency is the pinnacle of extraordinary events faced in our lifetimes. Biden should lawfully use emergency powers to address this existential threat.

The use of emergency powers to respond to the climate crisis is precisely the purpose for which the laws are intended and should be employed. In fact, Senate Majority Leader Chuck Schumer, Sens. Jeff Merkley and Bernie Sanders, and House Reps. Earl Blumenauer and Alexandria Ocasio-Cortez, with 50 additional representatives, have directly urged Biden to use his lawful emergency powers to declare a national climate emergency and take significant action. The public has echoed these calls in peaceful protest and legal petitions.

The use of emergency powers is not new. Since the National Emergencies Act was enacted in 1976, every president has declared at least one national emergency during their term of office. Further, presidents have routinely used the Defense Production Act and Stafford Act to deal with emergency situations threatening national security. In fact Biden has already employed his executive powers under both statutes to address the coronavirus pandemic and climate-related disasters in his administration's first year.

How the administration confronts the climate emergency will define not just the Biden presidency but the lives of future generations. President Biden can save lives and homes, create good-paying jobs and transform a punishing and racist energy system into a clean, regenerative one – all with the stroke of a pen. It's time for Biden to, in his own words, "seize the opportunity" of this watershed moment and secure the renewable, just, and equitable transformation the country needs.