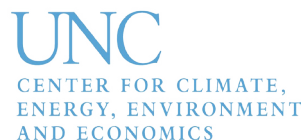


Illuminating the Energy Policy Agenda: Electricity Sector Issues Facing the Next Administration

Jonas Monast*
Kate Konschnik†
Ari Peskoe†
Sarah Adair§
Christina Reichert§

Part 6: Federal Government Procurement



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Affiliations

*University of North Carolina, Chapel Hill

†Harvard University

§Nicholas Institute for Environmental Policy Solutions, Duke University

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Review

The work reported in this publication benefited from review from experts in the field. The preliminary analysis was shared with external parties, and this publication reflects their feedback. However, this publication has not undergone a formal review process due to the timely nature of its contents.

SUMMARY

The next president will take office during a period of rapid market and regulatory change for the U.S. electricity sector. Due to statutory deadlines, pending lawsuits, and agency rulemakings—if not by choice—the next president will tackle energy policy. To prepare policy makers for what promises to be a dynamic period in electricity law and policy, this report provides an overview of each of six key areas of federal policy and, for each area, identifies the decision points—in time or circumstances—that will force the next administration to make choices that shape the future of the grid. For each decision point, the report explores the next president's options and the federal agencies and authorities that he or she could deploy.

Part 6 of this report describes a variety of renewable energy and efficiency mandates for federal agencies and executive orders encouraging energy efficiency in the federal government. One of those orders aims to reduce the federal government's GHG emissions by 40% by 2025. However, because the goal is enshrined only in an executive order and implementing agency documents, the next president could disregard it.

FEDERAL GOVERNMENT PROCUREMENT

At a Glance

Federal Actors: General Services Administration (GSA), Department of Defense, Department of Energy, other Federal Agencies, White House.

Appointments: The next president will appoint the heads of the General Services Administration (GSA) and the Office of Management and Budget (OMB).

Legal Authorities: 40 U.S.C. § 501, 40 U.S.C. § 121(c), National Energy Conservation Policy Act.

Decision Points:

- Whether to continue implementation of Executive Order 13693, which establishes new energy and greenhouse gas reduction goals for federal agencies, or retreat to less ambitious goals set by Congress in 2005 and 2007.
- How to implement procurements that consider supply-chain GHG emissions.
- How to spur deployment of electric vehicle infrastructure and expand the federal government's ownership of electric vehicles.

The federal government spends approximately \$5 billion per year on electricity, which is more than 1% of the entire nation's electric bill.¹ The U.S. government is also the nation's largest vehicle fleet operator, with approximately 600,000 total vehicles.²

Congress established renewable energy and efficiency mandates for federal agencies in 2005 and 2007; those have recently plateaued.³ Both President George W. Bush and President Obama issued executive orders encouraging energy efficiency in the federal government. In 2015, President Obama issued an executive order that expands and extends the congressional mandates into the 2020s and that sets a goal to reduce the federal government's GHG emissions by 40% by 2025.⁴ Achieving these goals will require a range of procurement and reporting programs. However, because the goals are enshrined only in an executive order and implementing agency documents, the next president could disregard them.

BACKGROUND

Congress tasks the General Services Administration (GSA) with procuring public utility services for federal government buildings, although agencies can request delegated authority from GSA.⁵ The GSA also procures vehicles for about two-thirds of the federal fleet and owns and leases to federal agencies approximately 200,000 vehicles. Beginning in 1992, a series of congressional acts and executive orders established efficiency, GHG emissions, and renewable energy or alternative fuel goals for federal agency energy consumption and vehicle procurement and use.

For federal buildings, Congress required each agency to establish incentives for energy efficiency and conservation and authorized agencies to participate in utility efficiency programs.⁶ Since 1994, DOE's Federal Energy Management Program has leveraged \$2.8 billion through utility partnerships and has

provided agencies with a range of technical assistance. In 2005, Congress required agencies to reduce building energy consumption 20% by 2015, and in 2007, it increased that target to 30%.⁷ Congress also tasked DOE with “seek[ing] to ensure that, to the extent economically feasible and technically practicable,” at least 7.5% of energy purchased by the federal government come from renewable sources. A 2007 executive order implemented these requirements.⁸

For the federal fleet, the Energy Policy Act of 1992 set purchasing mandates for “alternative fueled vehicles.”⁹ In 2007, Congress required agencies to reduce vehicle petroleum consumption by 20% and to increase alternative fuel use by 10%, both by 2015. The 2007 Energy Independence and Security Act also prohibited agencies from acquiring light duty vehicles or medium duty passenger vehicles that the EPA did not identify as “low greenhouse gas emitting vehicles.”¹⁰ A 2009 executive order expanded Congress’s target, requiring agencies to reduce consumption by 30% from a 2005 baseline.¹¹

In 2015, the Obama Administration issued Executive Order 13693, which established new energy goals for agencies and rescinded the Bush Administration’s Executive Order 13423 and Obama’s earlier Executive Order 13514.¹² It requires each agency to reduce building energy intensity by 2.5% per year through 2025, to source at least 25% of building electricity and thermal energy from renewable and alternative energy by 2025, and to generate no less than 30% of building electricity from renewable energy by 2025. For the federal fleet, the order requires that 50% of all new agency passenger vehicles be zero emission or plug-in hybrid by 2025 and that agencies reduce per-mile GHG emissions by 30%. Overall, the order sets a goal of reducing federal government GHG emissions by 40% by 2025, and it identifies a host of other procurement, waste management, and water reduction targets and practices.

DECISION POINTS

Carrying out the Executive Order

Achieving the goals established by Executive Order 13693 will require a sustained commitment by the executive branch. The order establishes a federal chief sustainability officer, provides key roles to the Council on Environmental Quality (CEQ) and Office of Management and Budget (OMB), and directs each agency head to develop and implement a strategic sustainability plan. Implementing instructions issued by CEQ in June 2015 detail the actors and policies involved.¹³ The next administration could implement this agenda and build on the 2015 executive order with a new set of goals that extend past 2025, or it could retreat to the less ambitious goals established by Congress in 2005 and 2007.

Much of the work needed to meet the 2015 executive order’s goals is under way. For instance, federal data centers are installing advanced energy meters and aiming to achieve specific power-use effectiveness targets. In August 2016, the Federal Chief Information Officer set a September 2018 target date for achieving the energy use goals and included procurement goals.¹⁴ A recent U.S. Government Accountability Office report highlights that half of all federal data centers identified in 2015 are scheduled to close by 2019.¹⁵ By then, it may be appropriate to consider new targets for data center energy use. As another example, the GSA has entered into binding contracts with energy service companies to implement energy efficiency measures to cut energy costs in government buildings.¹⁶

Accounting for Emissions in the Supply Chain

The Obama Administration may finalize a recently proposed procurement rule but would rely on the next administration for its implementation. Proposed in May 2016 by the Department of Defense, GSA, and National Aeronautics and Space Administration (NASA), the rule would facilitate compliance with Executive Order 13693's directive to implement procurements that consider contractors' GHG emissions.¹⁷ If finalized and implemented, the rule would establish a contractor reporting system. The next administration would use the information to identify opportunities to reduce supply chain emissions and implement procurements that incorporate consideration of those emissions.

Government Automobile Fleet and Transportation Infrastructure

A number of events may spur deployment of electric vehicle infrastructure and expand the federal government's ownership of electric vehicles. First, a provision in the 2015 transportation bill (the "FAST" Act), authorizes the GSA to install and operate electric vehicle charging stations in government parking facilities.¹⁸ Although this move could facilitate compliance with Executive Order 13693, it might induce the federal government to purchase electric vehicles even if the order is rescinded. Meanwhile, the Department of Justice's proposed settlement with Volkswagen for alleged cheating on diesel engine emissions tests requires the car manufacturer to submit to the EPA a draft national plan that details how the company will spend \$2 billion on zero-emission vehicle investments.¹⁹ Under the terms of the proposed agreement, the next administration's EPA would have to approve this plan and manage its implementation. Overseeing deployment of billions of dollars in electric-vehicle infrastructure could poise the next administration to usher in an unprecedented expansion of electric or other zero-emission vehicles in the government fleet.

ENDNOTES

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- ¹ U.S. EIA, *Energy Consumption by U.S. Government at Lowest Level Since at least 1975*, TODAY IN ENERGY, Feb. 4, 2015, <http://www.eia.gov/todayinenergy/detail.cfm?id=19851>.
- ² GSA, *Electric Vehicle Pilot Program*, <http://www.gsa.gov/portal/content/281581>; see also U.S. GAO, FEDERAL FLEETS: OVERALL INCREASE IN NUMBER OF VEHICLES MASKS THAT SOME AGENCIES DECREASED THEIR FLEETS (2012), <http://www.gao.gov/assets/600/593249.pdf> (counting approximately 400,000 non-postal, non-tactical vehicles in the federal fleet).
- ³ Energy Policy Act of 2005, 119 Stat. 594, §§ 102, 203; Energy Independence and Security Act of 2007, 121 Stat. 1492, § 431.
- ⁴ Exec. Order, No. 13,693, 80 Fed. Reg. 15,869 (Mar. 25, 2015).
- ⁵ 40 U.S.C. § 501; see GSA, PROCUREMENT GUIDE FOR PUBLIC UTILITY SERVICES: A PRACTICAL GUIDE TO PROCURING UTILITY SERVICES FOR FEDERAL AGENCIES (2015), http://www.gsa.gov/portal/mediaId/240463/fileName/Procurement_Guide_for_Public_Utility_Services_08-2015.action.
- ⁶ 42 U.S.C. § 8256.
- ⁷ Energy Policy Act of 2005, Pub. L. No. 109-119, 119 Stat. 594, §§ 102, 203; Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492, § 431.
- ⁸ 80 Fed. Reg. at 15,869.
- ⁹ Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776, §§ 301–302.
- ¹⁰ 121 Stat. 1492, §§141–142.
- ¹¹ 80 Fed. Reg. at 15,869.
- ¹² *Id.*
- ¹³ CEQ, IMPLEMENTING INSTRUCTIONS FOR EXECUTIVE ORDER 13693 – PLANNING FOR FEDERAL SUSTAINABILITY IN THE NEXT DECADE, (2015), https://www.whitehouse.gov/sites/default/files/docs/eo_13693_implementing_instructions_june_10_2015.pdf.
- ¹⁴ Memorandum from Tony Scott, Federal Chief Information Officer, to Heads of Executive Department and Agencies, Aug. 1, 2016, https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m_16_19_1.pdf.
- ¹⁵ U.S. GAO, AGENCIES MAKING PROGRESS, BUT PLANNED SAVINGS GOALS NEED TO BE ESTABLISHED (2016), <http://www.gao.gov/assets/680/675592.pdf>.
- ¹⁶ See, e.g., GSA's \$114 million contract with Trane U.S., Inc. to retrofit 14 federal buildings in New York, at a savings to the government of \$7.4 million, <http://www.gsa.gov/portal/content/129362>.
- ¹⁷ Federal Acquisition Regulation: Public Disclosure Of Greenhouse Gas Emissions And Reduction Goals-Representation (Far Case 2015-024), 81 Fed. Reg. 33,192 (May 25, 2016).
- ¹⁸ 42 U.S.C. § 6364. See also CEQ, GUIDANCE FOR FEDERAL AGENCY IMPLEMENTATION OF WORKPLACE CHARGING PURSUANT TO THE FIXING AMERICA'S SURFACE TRANSPORTATION ACT (2016), https://www.whitehouse.gov/sites/default/files/guidance_for_federal_agency_implementation_of_workplace_charging_-_11_ch....pdf.
- ¹⁹ *In re: VW Clean Diesel Marketing Sales Practices and Products Liabilities Litigation*, no. MDL 2672 (N.D. Cal. Jun. 28, 2016).

Nicholas Institute for Environmental Policy Solutions

The Nicholas Institute for Environmental Policy Solutions at Duke University is a nonpartisan institute founded in 2005 to help decision makers in government, the private sector, and the nonprofit community address critical environmental challenges. The Nicholas Institute responds to the demand for high-quality and timely data and acts as an “honest broker” in policy debates by convening and fostering open, ongoing dialogue between stakeholders on all sides of the issues and providing policy-relevant analysis based on academic research. The Nicholas Institute’s leadership and staff leverage the broad expertise of Duke University as well as public and private partners worldwide. Since its inception, the Nicholas Institute has earned a distinguished reputation for its innovative approach to developing multilateral, nonpartisan, and economically viable solutions to pressing environmental challenges. www.nicholasinstitute.duke.edu

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CE3 at the UNC School of Law exists to provide advanced student education and policy and legal examination of issues surrounding the law of climate, energy, environment, and economic development, with particular attention to the intersection of these issues. Addressing this intersection requires engaging in (1) the holistic needs of communities; (2) the role of innovative technologies, finance, and the private sector in protecting our environment and providing for development; and (3) protecting the environment and climate systems upon which humanity relies. www.law.unc.edu/centers/ce3

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Contact

Nicholas Institute, Duke University, P.O. Box 90335, Durham North Carolina 27708 • 919.613.8709 • nicholasinstitute@duke.edu • www.nicholasinstitute.duke.edu