

USET SPF Alert: Biden-Harris Day 1 Executive Actions – January 21, 2021

Dear USET SPF Board of Directors and DC Tribal Reps,

Following yesterday's inauguration ceremony during which President Joe Biden was sworn in as the 46<sup>th</sup> President of the United States and delivered his [inaugural address](#) [linked], the Biden-Harris Administration issued a number of executive orders and other actions. Many of these are designed to reverse policies instituted by the previous Administration and/or respond to the ongoing COVID-19 crisis. This includes targeting certain regulatory actions for review and ultimately, repeal.

Yesterday, the Biden-Harris Transition Team issued a release titled, "[Executive Actions Deliver Relief for Families Across America Amid Converging Crises](#)." The release outlines, "a combination of executive orders, memoranda, directives, and letters to take initial steps to address these crises, including by changing the course of the COVID-19 pandemic, providing economic relief, tackling climate change, and advancing racial

equity." Also yesterday, the Biden-Harris Transition Team issued a release titled, "[Fact Sheet: List of Agency Actions for Review](#)." This list includes several regulatory and memoranda actions that federal departments and agencies will be directed to review to determine consistency with President Biden's first Executive Order, "[Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#)". These include, but are not limited to, the following items with direct and/or in-direct implications for Tribal Nations:

## **Executive Orders**

- **Protecting the Federal Workforce and Requiring Mask-Wearing**  
President Biden's EO on [Protecting the Federal Workforce and Requiring Mask-Wearing](#) requires compliance with Centers for Disease Control and Prevention (CDC) guidelines be followed when it comes to masks and physical distancing in all federal buildings, on all federal lands, and by federal employees and contractors. The EO directs the Department of Health and Human Services (HHS) and CDC to engage with state, local, Tribal, and territorial officials to maximize the public's compliance with CDC guidelines.
- **Advancing Racial Equity and Support for Underserved Communities Through the Federal Government**  
The EO on [Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#) directs the federal agencies to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Through the EO, federal agencies are instructed to redress inequities in policies and programs that may serve as barriers to equal opportunity through a systematic approach to embedding fairness in

decision-making processes. The EO seeks to accomplish these goals through major sections/measures, including:

1. Role of the Domestic Policy Council;
  2. Identifying Methods to Assess Equity;
  3. Conducting an Equity Assessment in Federal Agencies;
  4. Allocating Federal Resources to Advance Fairness and Opportunity;
  5. Promoting Equitable Delivery of Government Benefits and Equitable Opportunities;
  6. Engagement with Members of Underserved Communities;
  7. Establishing an Equitable Data Working Group; and
  8. Revocation of:
    - a. EO 13950, [Combating Race and Sex Stereotyping](#), which set policy of the U.S. “not to promote race or sex stereotyping or scapegoating” and prohibits federal contractors from inculcating such views in their employees in workplace diversity and inclusion trainings.
    - b. EO 13958, [Establishing the President's Advisory 1776 Commission](#), which sought to impose a “patriotic education” curriculum based on the history of the American founding and foundational principles.
- **Organizing and Mobilizing the United States Government to Provide a Unified and Effective Response to Combat COVID-19 and to Provide United States Leadership on Global Health and Security**  
The EO on [Organizing and Mobilizing the U.S. Government to Provide a Unified and Effective Response to Combat COVID-19 and to Provide U.S. Leadership on Global Health and Security](#) creates the position of Coordinator of the COVID-19 Response and Counselor to the President who will advise and assist the administration in responding to the pandemic. The COVID-19 Response Coordinator will further coordinate all elements of the federal COVID-19 response, including efforts with state, Tribal, local, and territorial authorities, to produce, supply, and distribute personal protective equipment, vaccines, and tests.
  - **Revocation of Certain Executive Orders Concerning Federal Regulation**  
President Biden’s EO on [Revocation of Certain Executive Orders Concerning Federal Regulation](#) would revoke certain Executive actions authorized under former-President Trump that hinder the federal government’s ability to use appropriate regulatory tools to address the COVID-19 pandemic, economic recovery, racial justice, and climate change.
  - **Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis**  
The EO on [Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#) directs all agencies to review regulations, orders, guidance documents, policies, and other actions adopted between January 20, 2017, and January 20, 2021. The agencies will determine if those actions are inconsistent with improving public health, protecting our environment, holding polluters accountable, and bolstering resilience to the impacts of climate change and will move to suspend, revise, or rescind the agency action. The EO further requires that agencies seek input from state, Tribal, local, and territorial officials as well as the public. In addition, the EO seeks to restore the boundaries of certain National Monuments that were modified under EOs issued under former President Trump. These include National Monuments of Bears Ears, Grand Staircase-Escalante, and the Northeast Canyons and Seamounts Marine. The

EO directs the Secretary of Interior to consult with Tribal Nations as well as other federal agencies. The EO further places a moratorium on all oil and gas activities within the Arctic National Wildlife Refuge and revokes former President Trump's Presidential permit to construct, connect, operate, and maintain the Keystone XL pipeline.

- **Regulatory Freeze Pending Review**

To prevent any detrimental "midnight regulations" from the outgoing Trump administration from taking effect, President Biden issued a Presidential Memorandum [Regulatory Freeze Pending Review](#). The memorandum postpones, or freezes, any rules and regulatory actions from taking effect for 60 days that have been published in the Federal Register or rules that have been issued but have not taken effect, for review by the OMB Director. The OMB Director will review the rule to determine its effect on health, safety, environmental, financial, or national security matters, or other effects and to take actions that the deemed appropriate based on that review.

- **Modernizing Regulatory Review**

President Biden issued a Presidential Memorandum [Modernizing Regulatory Review](#) that directs the OMB Director, in consultation with federal agencies and informed by public engagement with relevant stakeholders, to begin a process of producing a set of recommendations for improving and modernizing regulatory review. The recommendations should include proposals that would ensure that regulatory review serves as a tool to affirmatively promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations.

- **Paris Climate Agreement**

President Biden signed an EO rejoining the [Paris Climate Agreement](#), the largest international effort to limit climate-warming greenhouse gas emissions with almost 200 signatories. Former President Trump began the process to withdraw from the agreement in 2017.

- **Ethics Commitments by Executive Branch Personnel**

The EO on [Ethics Commitments by Executive Branch Personnel](#) requires all appointees in every executive agency to sign an ethics pledge contractually committing the appointee to:

- Decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit;
- Conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice;
- Ethical choices of post-government employment that do not raise the appearance of utilizing government service for private gain.

## **Executive Actions**

### **U.S. Department of the Interior**

- [M-37055: Withdrawal of Solicitor’s Opinion M-37029, “The Meaning of ‘Under Federal Jurisdiction’ for Purposes of the Indian Reorganization Act” \[link\] \(March 9, 2020\).](#)
- [M-37056: Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Indian Reservation \(North Dakota\) \[link\] \(May 26, 2020\).](#)
- [“National Environmental Policy Act Implementing Procedures for the Bureau of Land Management \(516 DM 11\),” 85 Fed. Reg. 25472 \[link\] \(May 1, 2020\).](#)
- [“Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule,” 82 Fed. Reg. 61924 \[link\] \(December 29, 2017\).](#)

### **Council on Environmental Quality**

- [“Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act,” 85 Fed. Reg. 43304 \[link\] \(July 16, 2020\).](#)
  - USET SPF [submitted a letter](#) [link] on March 10, 2020 to the Council on Environmental Quality citing concerns that proposed revisions would affect Tribal Nations, communities, and cultural resources.
  - USET SPF [submitted a letter](#) [link] on September 17, 2017 to the Environmental Protection Agency citing concerns with proposals to rescind and recodify the definition of “Waters of the United States” and those implications for the protection of the general welfare and natural and cultural resources of Tribal Nations.

### **U.S. Department of Justice**

- [“Prohibition on Settlement Payments to Non-Governmental Third Parties,” 85 Fed. Reg. 81409 \[link\] \(December 16, 2020\).](#)

### **U.S. Environmental Protection Agency**

- [“National Primary Drinking Water Regulations: Lead and Copper Rule Revisions,” 86 Fed. Reg. 4198 \[link\] \(January 15, 2021\).](#)
  - USET SPF [submitted a letter](#) [link] on March 15, 2018 to the Environmental Protection Agency citing concerns with proposed revisions to the Lead and Copper Rule (LCR) that created a unfunded mandate on Tribal Nations when federal funding for drinking water infrastructure improvements have historically been cut and underfunded. USET SPF also advocated that EPA either exempt Tribal governments or other Tribal entities from proposals that expanded LCR standards, or to allow phased-in LCR requirements for Tribal utilities pending the identification of funding, and the establishment of a Tribal set-aside for LCR compliance.
- [“The Navigable Waters Protection Rule: Definition of ‘Waters of the United States,’” 85 Fed. Reg. 22250 \(April 21, 2020\).](#)
  - USET SPF [submitted a letter](#) [link] on April 15, 2019 to the Environmental Protection Agency reiterating concerns from the [September 27, 2017 letter](#) and advocating that any revisions to the definition of “Waters of the United States” must move forward in a manner that respects Tribal sovereignty and upholds federal trust and treaty obligations.
- [“Review of the National Ambient Air Quality Standards for Particulate Matter,” 85 Fed. Reg. 82684 \[link\] \(December 18, 2020\).](#)

USET SPF will continue to monitor the early actions of the Biden-Harris Administration and will inform our membership regarding items of interest. As a reminder, last month, USET SPF transmitted a [letter](#) to the

Biden-Harris Administration Transition Team outlining early items of interest and opportunities for collaboration. While by no means an exhaustive list of priorities for our member Tribal Nations, the letter provides a foundation for initial engagement. For more information on the Biden-Harris Administration as it takes office, please visit our information page [here](#).

Thank you,

Liz Malerba ~ *Citizen of the Mohegan Tribe*

Director of Policy and Legislative Affairs

United South and Eastern Tribes

Sovereignty Protection Fund (USET SPF)