



## ABC's Weekly Federal Legislative Update March 8, 2021

### Introduction

After passing President Biden's \$1.9 trillion stimulus package, the legislation must head back to the House for a final vote due to Senate modifications of the original House package. The House is planning for a vote on Wednesday. The Senate will continue to work through the confirmation process for President Biden's nominees. Below is news from Washington, D.C.

### Administration

#### [EPA and CEQ Nomination Hearings](#)

***A confirmation hearing for Janet McCabe to be the Deputy Administrator of the EPA was held last week before the Senate Environment and Public Works Committee. Ms. McCabe is an Obama administration alumni who has worked on issues such as the Renewable Fuel Standard. Below are hearing highlights.***

Kevin Bogardus and Kelsey Brugger of [E&E Daily](#) wrote on March 4, "Yesterday's hearing on President Biden's nominees to lead the White House Council on Environmental Quality and for EPA deputy administrator offered clues about what worries senators about the new administration's plans and GOP tactics to fight back.

"CEQ pick Brenda Mallory and EPA nominee Janet McCabe appeared before the Senate Environment and Public Works Committee for their joint confirmation hearing.

"Senators quizzed them for their thoughts on climate change, environmental justice and science as well as their prior service during the Obama administration.

"The lawmakers took issue with actions to block pipeline projects, measure the cost of carbon and potential regulations on the energy sector they argue will cost jobs back home.

"The nominees were conciliatory and promised to work with the committee if confirmed. They fared well under senators' questioning and look to be on the path to being approved.

“Yet confirmation for Mallory and McCabe still may be some time off. Before he adjourned the hearing, Senator Tom Carper (D-DE), the committee's chairman, said senators have to submit written questions by March 10 and the nominees have to respond by March 17.

“The EPW panel last month advanced its first Biden pick, Michael Regan for EPA administrator, but Senate floor votes have not been scheduled yet on his nomination.

“Here are five takeaways from Mallory and McCabe's confirmation hearing yesterday.

#### Culture war on climate

“Instead of focusing on Mallory and McCabe's own past remarks, Republicans often pressed the nominees on what was said by a high-profile Biden administration official: Gina McCarthy, the former EPA administrator now leading domestic climate policy in the White House.

“Republican senators zeroed in on McCarthy saying, "We have to get the middle of the country understanding and active on climate," and "We have to show them what resilience looks like," at an event last month.

“Ranking member Shelley Moore Capito (R-WV) mentioned the remark in her opening statement with disapproval. Others soon followed.

"Would you both agree with this statement?" Senator Joni Ernst (R-Iowa) asked Mallory and McCabe about McCarthy's comments.

“McCabe, who is currently director of Indiana University's Environmental Resilience Institute, said, "Folks in the Midwest are very aware of what's going on in their environment and very eager to work across their states to come up with approaches that will allow them to be more resilient in the face of environmental challenges."

“Ernst hoped the nominees, if confirmed, would tell McCarthy that people in the Midwest are concerned about resilience.

"This was an affront. Many of us across Middle America had taken this as just another example from Ms. McCarthy as a 'we know best' attitude that's pretty common amongst our coastal elite counterparts," Ernst said.

#### Republicans rebrand environmental justice

“Republicans yesterday, seeking to recast environmental justice, suggested Biden's plans to halt oil and gas drilling would harm Indigenous and forgotten communities.

“Senator Dan Sullivan (R-AK) held up a chart showing the life expectancy of Alaskans has increased in some areas by 13 years, a spike he said was because of ramped up oil and gas drilling.

"There are a lot of talk about environmental justice," he said. "These are mostly Alaska Native communities, where the increase in life expectancy was huge — 10 years or more in some communities."

“Sullivan said the reason could be attributed to "significant resource development. These communities now have running water and gymnasiums and clinics — most things that Americans take for granted. This happened because resource development happened — oil and gas, mining."

“He claimed several Biden initiatives "target" Alaska and stand to reverse positive trends. The nominees did not get a chance to weigh in.

“In a similar vein, Capito asserted that joblessness was also an environmental hazard. "When you have people who have depression or opioid addictions or joblessness or hopelessness, the environment surrounding those folks, those homes, those communities, I think can be just as damaging to our environment in some ways as maybe a factory or a power plant," she said.

"There's a great emphasis in this administration on environmental justice and equity," Capito said. "I think [the definition] does matter because we'll be putting a lot of resources into this, meaning federal dollars."

“Capito noted the Biden executive order that promises to put 40% of investment into communities affected by energy transitions, but she said affected states were skeptical of such vows.

“Mallory repeatedly stressed the need to strike a balance between creating jobs and considering climate and environmental impacts.

The future of NEPA

“Republicans pressed Mallory on National Environmental Policy Act implementation rules, which the Trump CEQ spent years rewriting in an attempt to speed up major project permitting.

“The Biden CEQ — under Mallory's leadership, should she be confirmed — is expected to do away with those changes.

“In her opening statements, Capito read aloud a past Mallory quote on the Trump action: "You almost don't have a choice but to remove the whole thing."

“She stressed that Mallory's most recent workplace — the Southern Environmental Law Center — has challenged many energy projects.

“Later in the hearing, when asked by Ernst, Mallory said some of the Trump permitting changes were not completely off the table.

“She said the recent Biden order directed CEQ and the White House budget office to examine Trump's one federal decision policy "to see whether it should be revised or reinstated." The Trump policy sought to reduce bureaucratic hassle.

"The issue has not gone away," she said. "The question is — is there a way to address the approach to permitting in a way that also responds to the values that we are going after."

### Relitigating the Clean Power Plan

“Rather than scrutinizing potential Biden climate rules, Republicans focused yesterday's hearing on the Obama administration's signature initiative on the issue.

“As acting head of EPA's air office from 2013 to 2017, McCabe was one of the senior officials behind the Clean Power Plan. The rule, meant to limit power plants' carbon emissions, came under frequent Republican attack then and again yesterday.

"You have a steeper hill to climb, frankly, than most, largely because in 2014, you sat before the same committee and promised federalism. You did again today promise federalism," Senator Kevin Cramer (R-ND) told McCabe.

"And yet the Clean Power Plan proved to be one of the most overbearing, big-government impositions on states ever, which is why 26 states successfully litigated it, including mine," Cramer said.

“McCabe defended the rule. She said the agency at the time thought the regulation was legal and worked with states on the carbon-cutting goals.

"I was absolutely sincere in my commitment to involve everybody, and I know that there are many who disagreed with the outcome of that rule," McCabe said in response to Cramer.

"But in terms of listening to people, and hearing people, and taking everybody's perspective into account, we certainly did that in the lengthy process that we went through on the Clean Power Plan," she said.

“Carper later entered an EPA fact sheet on the Clean Power Plan into the hearing's record and asked McCabe to confirm how many public comments it received.

"It was 4-plus million. Yes, sir," McCabe said.

"Did you respond to any of those?" Carper asked.

"We responded to every substantive comment, senator," McCabe replied.

"Carper said, "That's a lot."

"The Supreme Court halted the Clean Power Plan, and the Trump administration moved to replace it. That replacement is now stuck in the courts.

Fixing EPA

"McCabe's nomination for EPA's No. 2 spot has received letters of support from former deputy administrators, ex-agency staff and environmental groups.

"They are looking to McCabe, along with Regan, to restore EPA after four tumultuous years under President Trump. The nominee yesterday faced questions over if she would improve agency operations.

"Senator Ed Markey (D-MA) asked McCabe whether she was committed to ensuring there was a safe workplace for EPA employees.

"Agency staff have been teleworking during the COVID-19 pandemic to avoid exposure to the virus. The Biden team has said that will be EPA's posture for the foreseeable future.

"The main reason I am so honored to be considered for this position is because my main job, as I understand it, would be to support the amazing workforce and they need a safe environment," McCabe said.

"They need support. They need respect," she said. "They need to be in the room and consulted because they have expertise to bring to the table, and the agency can't make good decisions without that workforce."

"McCabe was also asked about how EPA would handle science.

"What lessons, if any, can we draw from EPA's experience under the previous administration to improve agency safeguards that protect scientific research and the publication of scientific findings?" Carper asked McCabe as the hearing came to a close.

"Many have been concerned at some of the things that happened during the prior administration about the treatment of scientists and the use of science in agency decisionmaking processes," said McCabe, adding the Biden administration has already made clear that science will be the foundation of policy going forward.

"I know that's the commitment of Secretary Regan," McCabe said. "And if confirmed, it will be mine as well."

Reporter Nick Sobczyk contributed.

## Congress

### [Energy and Commerce Committee introduces CLEAN Future Act](#)

***Last week, House Democrats introduced the CLEAN Future Act which focuses on policy priorities to address climate change including a number that would promote biogas technologies. The following story discusses aspects of the bill.***

On March 2, Nick Sobczyk of [E&E News PM](#) reported, “Top House Democrats today introduced a bill that offers an economywide outline to achieve net-zero greenhouse gas emissions by 2050, a potential starting point for the kind of broad climate change legislation that President Biden promised on the campaign trail.

“Leaders of the Energy and Commerce Committee unveiled an updated version of the “Climate Leadership and Environmental Action for Our Nation's (CLEAN) Future Act,” legislation drafted from dozens of hearings over the last two years that would set a national goal to halve greenhouse gas emissions by 2030 and hit net zero by 2050.

“It's a nearly 1,000-page bill centered on a clean electricity standard that would eliminate emissions from the power sector by 2035, in line with the pledge Biden made during his campaign.

“The legislation, however, does not include an explicit price on carbon. The policy has gotten the spotlight in recent weeks because it could fit easily into budget reconciliation, the process that allows certain legislation to bypass the Senate filibuster.

“Although it falls outside E&C's jurisdiction, Chairman Frank Pallone (D-NJ) said the politics of carbon pricing are less appealing than the kind of research spending and electricity standards proposed in the “CLEAN Future Act.”

“We don't have a carbon tax, and I think it's time to try something new,” Pallone told reporters this afternoon.

“There's also a lot of environmental justice concerns with allowing companies to pay to continue polluting, so the votes are just not there for a price on carbon,” Pallone added.

### More ambitious

“Energy and Commerce Democrats unveiled a draft version during the last Congress, but the legislation has changed substantially since then.

“For one thing, last year's draft would have authorized roughly \$316 billion in spending over 10 years.

“The version introduced today would authorize \$565 billion over a decade, including a variety of new programs for environmental justice, energy efficiency, transportation and electrical transmission.

“The clean electricity standard is also more ambitious. The new bill would now aim to achieve 80% clean energy in the power sector by 2030 and 100% by 2035, instead of the 2050 target proposed in the draft last year. The standard would be administered on a technology-neutral basis via a system of clean energy credits.

“Generators with a carbon intensity lower than 0.82 metric ton of carbon dioxide equivalent per megawatt-hour, including upstream emissions, would be eligible for partial credit in 2030, phasing down to 0.4 metric ton of carbon dioxide equivalent per MWh by 2035.

“That would allow for some natural gas generation as the power sector transitions through 2035, when most fossil fuel sources would no longer be able to earn credit under the standard.

#### Labor, environmental justice

“The clean electricity standard includes new labor provisions that would require companies building new generation to pay prevailing wages and remain neutral to labor organization.

“The legislation incorporates a variety of smaller bills introduced around Capitol Hill in the last few years, including a Clean Energy and Sustainability Accelerator authorized at \$100 billion to finance clean energy and climate-resilient infrastructure, and a provision that would require companies to disclose climate risk and greenhouse gas emissions to the Securities and Exchange Commission.

“The legislation puts a heavy focus on environmental justice with new language to establish an Office of Energy Equity at the Department of Energy, create a grant program for climate justice and set requirements for EPA to assess cumulative health risks.

“The legislation would dictate that 40% of its funding be directed toward environmental justice communities, mirroring an executive order Biden issued earlier this year.

#### Path forward

“The "CLEAN Future Act" is heavy with Biden administration priorities, but larger questions remain about how Democrats will proceed with climate policy.

“Energy and Commerce leaders said they want to advance their bill through regular order, with hearings, a markup and at least nominal attempts to draw support from Republicans.

“But there's also talk of moving climate, infrastructure and economic stimulus policy in a second round of reconciliation once Congress finishes with the COVID-19 relief bill.

"It's hard to say at this point what happens after it gets out of committee," Pallone said. "Obviously, we'd like to move it through regular order. I don't rule anything out, but I'm hoping that the Republicans will participate so we don't have to go through reconciliation."

“Environment and Climate Change Subcommittee Chairman Paul Tonko (D-N.Y.) told reporters that climate bill backers are also hoping for "further engagement with the White House, and certainly in terms of technical assistance also from experts on their climate team and in their various agencies that will be involved here."

“The "CLEAN Future Act" incorporates several Republican-backed bills, said Energy Subcommittee Chairman Bobby Rush (D-Ill.). Rush also noted that Republicans have thus far avoided embracing a target of net zero by 2050.

"They've got to come to where we are, and until they do, it's hard to imagine that they would have any ideas, come up with any plans, any solutions, anything that would help us get to our goal of net-zero emissions by 2050," Rush said.

#### [Proposal for Clean Energy Manufacturing Tax Credit](#)

#### ***Senators Debbie Stabenow and Joe Manchin are proposing extending the Section 48 Investment Tax Credit to include Clean Energy Manufacturing.***

E&E Daily reporter Jeremy Dillion published on March 2, “Democrats are looking to revive a dormant clean energy manufacturing tax credit that may become a pivotal policy lever for a cohesive climate package to come together.

“Senate Energy and Natural Resources Chairman Joe Manchin (D-WV) and Agriculture Chairwoman Debbie Stabenow (D-MI) yesterday unveiled an \$8 billion renewal of the so-called 48C tax credit, an Obama-era investment tool to boost clean energy manufacturing.

“The duo had long been working on a proposal to update the credit. The legislation would set aside half of its allotment for communities near a recently shuttered coal mine or power plant. That could free up nearly \$4 billion in investment for distressed communities.

"A lot of the people who built America, whether it be the coal that we mined that made the steel and all the ingredients that made the cars, they would love to stay in their home areas if they could," Manchin said during an online press conference yesterday. "And as the transition goes on — and the transitions are going on as we talk — we want to make sure there is an opportunity."



“The 48C credit was part of the Obama stimulus in response to the 2008 financial crisis. The incentive provided a 30% credit for investments in 183 manufacturing facilities for clean energy products across 43 states.

“In total, the credit spurred \$2.3 billion in federal investment and was eventually over-prescribed 3 to 1. The program prompted nearly \$7.5 billion in private investment, according to Obama-era accounting.

“With such results, an expansion of credit has long been on Manchin's radar, especially as he looks for a policy lifeline to keep his state's energy economy afloat in a low-carbon world.

“One of his core demands when considering climate action is that West Virginia energy workers, who have long provided the natural resources to power the 20th-century defense and economic boom, would have a role in the new clean energy economy.

“As early as January, Manchin listed 48C legislation as among his priorities this Congress, even as he expressed skepticism about broader climate mandates like a carbon tax or a clean energy standard, which some Democrats see as a way to meet net-zero emissions by 2050.

"Senator Manchin has shown that he cares about advancing clean energy and has some ideas about how he wants to do that, and if people are interested in securing his interests and support for a larger package, they should be paying attention to things like 48C and other clean energy proposals that he is championing," said Ryan Fitzpatrick, director of the climate and energy program for the centrist group Third Way.

“Democratic tax writers have taken notice. An expanded 48C tax credit was among the many clean energy incentives included in the House Ways and Means Committee's "Growing Renewable Energy and Efficiency Now (GREEN) Act".

“That bill — with extensions of renewable tax credits and energy efficiency incentives — has ambitions to join the broader infrastructure effort later this year.

“Senate Finance Chairman Ron Wyden (D-OR) also remains supportive of the effort.

“Senator Wyden has included an expansion of 48C in his tech-neutral legislation in the past, and the Stabenow/Manchin legislation is consistent with Senator Wyden’s goals,” said spokesperson Ashley Schapitl.

#### Michigan as test case

“Stabenow was an original co-author of the tax credit when it first passed as part of the 2009 recovery package, and Michigan ended up being one of the program's biggest beneficiaries.

"It's not only the right time, but we know that it works because we used this 48C tax credit one other time," Stabenow said yesterday. "When we passed it, it just exploded. It was extremely successful."

"As flagged by Energy Secretary Jennifer Granholm — a former Michigan governor — during her confirmation hearing, that tax credit, along with some other incentives, helped the state become one of the world's leaders in battery technology production, with one-third of domestic supply coming from the state.

"A dozen Michigan companies received about \$242 million in 48C credits, about 10% of the total awarded and more than any other state.

"Those Michigan companies were able to build out facilities dedicated to semiconductors, battery parts and other electric vehicle components.

"Ford Motor Co. used the credit to retrofit a Wayne, Mich., plant to better meet electric vehicle needs. Hemlock Semiconductor Corp. was the third largest aid recipient at \$142 million.

"Merrill Tool and Machine in Saginaw, Mich., used the \$22 million in 48C tax credits to diversify its manufacturing capabilities into wind turbine manufacturing. That prompted a visit from Granholm in 2010.

"Later that year, Granholm joined a bipartisan coalition of governors across the country calling on the Obama administration to extend and expand the credit to help in the manufacturing recovery.

"In a March 2010 letter, Granholm and other governors called the credit essential to supporting "new waves of domestic production and innovative new jobs and careers." The Obama team responded by suggesting Congress extend the tax credit with an additional \$5 billion in incentives.

#### Republican concern

"Stabenow and Manchin think their proposal could attract bipartisan support because many districts that stand to benefit are in GOP hands.

"With shuttered mines and plants in areas spanning the Midwest, Appalachia and Rocky Mountains, the need touches Americans of all ideologies, they said.

"Working across the aisle is what we do," Manchin said. "We have a good group of people who want to work together and understand the challenges."

"Stabenow did blame Senate GOP control for the credit's lapse at the beginning of 2015. With criticisms mounting over renewable energy subsidies, Republican leadership opted to let the incentive expire.

“Getting critics on board may prove difficult. Energy and Natural Resources ranking member John Barrasso (R-WY), during Granholm's confirmation hearing, complained about misused federal monies during her governorship.

“Granholm called those reports inaccurate. She added that federal investment, while not perfect, helped the United States compete against Chinese-backed energy companies.

"States individually are bringing a knife to a gunfight, and without a federal partner in making sure that we can get these jobs in America, then we will be losing globally," Granholm said.

### [Senate Agriculture Chair Stabenow Promotes Agricultural Carbon Markets](#)

***Last week, Senators Debbie Stabenow (D-MI) and Mike Braun (R-IN) pledged to reintroduce a bill that would create a voluntary carbon capture program at USDA. The following story contains additional details.***

Marc Heller of E&E Daily wrote on March 2, “Senate Agriculture Chairwoman Debbie Stabenow promised yesterday she would reintroduce her signature climate change bill within a few weeks, picking up on efforts to promote carbon markets for farmers.

“The Michigan Democrat promoted the "Growing Climate Solutions Act" in comments yesterday to the National Farmers Union at its annual convention, held virtually.

“The legislation will be a "strong, bipartisan bill," Stabenow said. Her partner on the proposal is Senator Mike Braun (R-IN).

“Their bill would pave the way for the Department of Agriculture to create a program to measure and verify carbon sequestration, working with third-party providers. The system would lend legitimacy to carbon markets, giving farmers an incentive to sign up, according to the bill's sponsors.

“The measure as introduced last year also called for a report to Congress from the USDA on barriers to market entry and other challenges.

“While the proposals have support from the NFU, the American Farm Bureau Federation, the Environmental Defense Fund and many food industry companies, skeptics question whether voluntary carbon markets will generate the emission reductions advocates predict — especially when farmers face big up-front costs for some climate-friendly practices such as manure digesters.

"We know that this may not work for everybody," Stabenow said, adding that she's aware that carbon markets as designed so far don't work well for farmers who rent, rather than own, land. That's a predominant arrangement in some Farm Belt states.

“Still, she said, farmers can make a difference without joining carbon markets, by taking advantage of help offered through USDA programs.

"There's a lot of important work going on," she said.

“The committee's ranking member, Senator John Boozman (R-Ark.), said he supports carbon programs as long as they're voluntary and any profits from the system are shared by farmers.

"It always seems that agriculture gets squeezed," Boozman said.

“The Senate Agriculture, Nutrition and Forestry Committee is evenly divided between Democrats and Republicans, and the majority for Democrats has narrowed in the House Agriculture Committee following last fall's elections. The tight margins may require more compromise as proposals move forward.

“The House panel's ranking Republican, Representative Glenn Thompson of Pennsylvania, told the NFU he welcomes the razor-thin margins. "In terms of crafting new policy, I think that's a good thing," he said in a prepared video.”

## **Other**

### [Sustainability: Over 17% of Global Food Production is Waste, U.N. Report Estimates](#)

Greenwire published the following story on March 4, “Instead of finishing your leftovers, you let them go bad and buy takeout.

“It's a familiar routine for many — and indicative of habits that contribute to a global food waste problem that a new United Nations report says needs to be better measured so that it can be effectively addressed.

“The U.N. report estimates 17% of the food produced globally each year is wasted. That amounts to 1.03 billion tons of food.

“The waste is far more than previous reports had indicated, though direct comparisons are difficult because of differing methodologies and the lack of strong data from many countries.

"Improved measurement can lead to improved management," said Brian Roe, a food waste researcher at Ohio State University who was not involved in the report.

“Most of the waste — or 61% — happens in households, while food service accounts for 26% and retailers account for 13%, the U.N. found. The U.N. is pushing to reduce food waste globally, and researchers are also working on an assessment of waste that includes the food lost before reaching consumers.

“The authors note the report seeks to offer a clearer snapshot of the scale of a problem that has been difficult to assess, in hopes of spurring governments to invest in better tracking.

"Many countries haven't yet quantified their food waste, so they don't understand the scale of the problem," said Clementine O'Connor, of the U.N. Environment Program and co-author of the report.

“Food waste has become a growing concern because of the environmental toll of production, including the land required to raise crops and animals and the greenhouse gas emissions produced along the way. Experts say improved waste tracking is key to finding ways to ease the problem, such as programs to divert inedible scraps to use as animal feed or fertilizer.

“The report found food waste in homes isn't limited to higher-income countries such as the United States and the United Kingdom.

“Roe of Ohio State noted that food sometimes is wasted in poor countries without reliable home refrigeration. In richer countries, people might eat out more, meaning food waste is simply shifted from the home to restaurants.

“Roe said cultural norms and policies also could contribute to waste at home — such as massive packaging, "buy one, get one free" deals, or lack of composting programs.

“That's why broader system changes are key to helping reduce waste in households, said Chris Barrett, an agricultural economist at Cornell University.

“For example, Barrett said, people might throw away food because of a date on the product — even though such dates don't always say when a food is unsafe to eat. "Food waste is a consequence of sensible decisions by people acting on the best information available," he said. — *Candice Choi, Associated Press*”