



ISRI is the voice of the recycling industry, promoting safe, economically sustainable and environmentally responsible recycling through networking, advocacy and education.



2020 ELECTION SUMMARY AND ANALYSIS

THE 117TH CONGRESS & THE BIDEN ADMINISTRATION

What it means for Recycling

THE 117TH CONGRESS

Introduction

With the 2020 elections almost completely decided, there will be many new faces in Congress and a new presidential administration coming in January that will usher in new opportunities and challenges for the scrap recycling industry. Major issues such as environmental and social justice, tax reforms, COVID-19 economic stimulus, large infrastructure spending, new regulatory proposals and stepped-up environmental enforcement will consume our attention for the next two years and beyond.

Over the past several years, there has been more attention paid to recycling than ever before. From marine plastics to residential recycling programs and international trade restrictions, many new organizations are entering the policy discussion. This development also has its opportunities and challenges that will require ever more advocacy and membership engagement to ensure that the for-profit recycling industry is well represented in Washington and state capitols.

This summary and analysis provide a snapshot of how Congress and the Biden Administration will be organized and the priority issues that each branch of government will address. ISRI is well positioned to take advantage of these challenges and opportunities based on a history of working with Congress and Presidential Administrations regardless of party control and our membership advocacy and engagement.

Election Overview

The 2020 Congressional elections did not result in the expected Congressional coattails envisioned by the polls. In fact, House Republicans netted at least 9 seats to narrow the margin to 222-208 with five outstanding seats.¹ In the Senate, the Democrats netted three seats and taking tactic control with 50-50 after the two special elections in Georgia.

¹ Two House seats remain vacant. Claudia Tenney in New York remains too close to call. One seat in Louisiana remains unfilled after the untimely death from COVID-19 of freshman Luke Letlow. The Governor will call a special election on March 20.

U.S. House of Representatives

House Speaker Nancy Pelosi (D-CA) will enjoy the thinnest majority since World War II with just a four-seat majority caused largely by many of her freshman members being soundly defeated in their re-elections. On the other hand, the Republicans elected eleven new women members. This after pollsters predicted a “Blue Wave” of 20-25 net pick-ups to enlarge her majority to where she would have the ability to shun the most Progressive voices in the Democratic Party. Instead, the Democrats’ thin majority will restrain Pelosi’s ability to craft more moderate bi-partisan legislation such as COVID-19 economic rescue and infrastructure spending packages. It also puts pressure on her more moderate sophomores, who narrowly won re-election in the exurbs and are uneasy about supporting the Green New Deal and other large spending proposals as well as raising taxes on individuals and small businesses. She needs practically every vote, leaving her vulnerable to just a handful of members who could defect on a crucial vote.

U.S. Senate

The U.S. Senate will be evenly split between the Republicans and Democrats with the next Vice President available to split any ties. This will enable the Senate to move forward with presidential nominations for cabinet posts, judicial nominations and other posts that require Senate confirmation. It also enables the Democrats to propose rule changes including eliminating or restricting the use of the filibuster that requires a 60-vote super-majority in order to pass legislation. However, certain budget measures may be decided by 51 voters under the Reconciliation rule. Over the past several administrations, reconciliation has been a routine tool for passing such budget and sending measures by a simple majority.

OUTLOOK FOR 2021-2022

Increased Awareness: Numerous pieces of recycling legislation were introduced in the last four years primarily to address the problems with residential recycling programs that largely occurred since China began implementing import restrictions. New organizations have also appeared in the recycling space from consumer brands to plastics manufacturers crowding out environmental organizations and organizations that represent the interests of recyclers. This poses an opportunity as the public and advocacy is directed at lawmakers, but it is also a challenge since these organizations and proposals often do not take into account the roles or perspectives of recyclers.

Residential Recycling: Many of the current proposals are largely spending bills that could very well disrupt existing markets for many recyclers. While these ‘residential solutions’ are aimed at only 20-30% of the nation’s recycling, they will (adversely) impact the entire recycling sector. Accordingly, these proposals will be back in the 117th Congress along with some new proposed solutions, including additional federal spending for residential recycling infrastructure, additional fees and restrictions on disposal, bans on certain materials and products, and extended producer responsibility rather than market development initiatives.

Climate and Environmental Justice: The Green New Deal and other related legislation will offer even more opportunities for recycling legislation given that recycling contributes to energy and greenhouse gas emission reductions, but they may be targeted at opportunities for large residential infrastructure spending. Additionally, an important element of the climate change movement and the corresponding legislative proposals is environmental and social justice. There is a risk that such proposals could result in additional environmental enforcement and help fund citizen suits against recycling facilities.

Tax Policy: Taxes will also be a top priority for the Biden Administration and at least the House of Representatives. Marginal and corporate income tax rates plus business expensing as well as other tax techniques in the Trump/Brady tax reforms of 2017 will be thoroughly examined with the aim of raising additional federal revenue. The business community will be advocating against much of these tax policy changes, but without a Republican-controlled Senate, most of the proposed tax increases will occur.

Infrastructure Spending: The Biden Administration and Congress both want large infrastructure spending packages to improve the nation's transportation and communications systems. These large spending packages are opportunities to insert provisions for "recycled content" for building materials as well as research and development projects to study ways to use "difficult to recycle materials" in infrastructure projects.

Major Recycling Legislation in the Last Congress

RECOVER Act

RECYCLE Act

Break Free From Plastics Act

Recycling and Composting Accountability Act (not yet introduced)

Anticipated Recycling-Related Legislation in the Next Congress

Transportation and Infrastructure spending

Tax policy changes – marginal and corporate rates, expensing/depreciation

U.S. House of Representatives – Leadership

Speaker Pelosi will remain as Speaker as will her deputies, Majority Leader Steny Hoyer (D-MD) and Majority Whip Jim Clyburn (D-SC).

Kevin McCarthy (R-CA) will remain the Minority Leader with Steve Scalise (R-LA) as the Minority Whip.

APPROPRIATIONS

Marci Kaptur (D-OH) – Chairwoman

Kay Granger (R-TX) – Ranking Member

Subcommittee on Interior and the Environment (EPA)

Betty McCollum (D-WA) – Chairwoman

David Joyce (R-OH) – Ranking Member *

*Dave Joyce will become the Republican Recycling Caucus co-chair.

ENERGY AND COMMERCE

Frank Pallone (D-NJ) – Chairman

Cathy McMorris-Rogers (R-WA) – Ranking

(Greg Walden (R-OR) is retiring and Fred Upton (R-MI) is termed out.)

Subcommittee on Environment and Climate Change

Paul Tonko (D-NY) – Chairman

David McKinley (R-WV) – Ranking *

* Not official

(John Shinkus retiring)

WAYS AND MEANS

Richard Neal (D-MA) – Chairman

Kevin Brady (R-TX) – Ranking

Subcommittee on Trade

Earl Blumenauer (D-OR) – Chairman

Devin Nunes (R-CA) – Ranking

Subcommittee on Select Revenue

Mike Thompson (D-CA) – Chairman

Adrian Smith (R-NE) - Ranking

TRANSPORTATION AND INFRASTRUCTURE

Peter DeFazio (D-OR) – Chairman

Sam Graves (R-MO) – Ranking

House Recycling Caucus

Frank Pallone (D-NJ), Co-Chair

David Joyce (R-OH), Co-Chair

U.S. Senate – Leadership

In a role reversal, Senator Chuck Schumer (D-NY) will become the Senate Majority Leaders while Senator Mitch McConnell (R-KY) will become the Senate Minority Leaders. It is expected that a power-sharing model will have all committees have an equal number of members from both political parties while making the Democrat the chairman and allowing the Majority Leader Chuck Schumer to break a tie. This was the power-sharing model that Senators Tom Daschle and Trent Lott employed the last time the Senate was evenly divided.

APPROPRIATIONS

Patrick Leahy (D-VT)
Richard Shelby (R-AL)

Subcommittee on Interior and the Environment (EPA)

Diane Feinstein* (D-CA)
Lisa Murkowski (R-AK)

* Several higher-ranking Democrats on the subcommittee are excluded from chairing the subcommittee due to other chairmanships.

ENVIRONMENT AND PUBLIC WORKS

Tom Carper (D-DE)
Shelly Moore Capito (R-WV) *

* Senator John Barasso (R-WY) cycles off as chairman

FINANCE (tax, trade)

Ron Wyden (D-OR)
Chuck Grassley (R-IA)

Subcommittee on International Trade, Customs, and Global Competitiveness

Bob Casey (D-PA)
John Cornyn (R-TX)

Subcommittee on Taxation and IRS Oversight

Mark Warner (D-VA)
John Thune (R-SD)

COMMERCE, SCIENCE AND TRANSPORTATION

Maria Cantwell (D-WA)
Roger Wicker (R-MS)

Transportation and Safety

Tammy Duckworth (D-IL)
Deb Fischer (R-NE)

Senate Recycling Caucus

Tom Carper (D-DE), Co-chair
John Boozman (R-AR), Co-chair

THE BIDEN ADMINISTRATION

Introduction

President-elect Joe Biden's Administration will focus on several environmental priorities, including climate change, clean energy, environmental justice and a renewed focus on more traditional programs such as increased regulatory enforcement. Additionally, President-elect Biden has promised to reverse many of the Trump tax reforms, renew a more activist regulatory agenda and pivot towards a more globalist trade approach. Furthermore, the Biden Administration will quickly try to advance major spending packages (as most administrations do) for transportation and infrastructure projects that will certainly include clean energy and climate solutions. Finally, the Biden Administration has indicated it will seek additional economic assistance even if Congress passes another \$1 trillion stimulus package by the end of this year that may contain business liability insurance.

Transition

The Biden transition team was quickly formed, and it consists of many former Obama/Biden aides and long-time loyal Biden aides both from his Senate and Vice-President days. The Transition Office recommends political appointments and prepares an analysis of issues for the incoming administration and delegates teams to oversee transitions in each Cabinet agency. Most notably during the initial announcements was former Secretary of State John Kerry being named as Climate Czar within the White House. Continuing Biden's emphasis on climate change, National Security Advisor designee Jake Sullivan outlined the next administration's approach to include climate and social justice and inequities in their evaluations of national security risks.

First 100 Days

Regulatory Freeze: The Biden Administration will issue a "regulatory freeze" memo similar to past administrations directing federal agencies to not send proposed or final rules to the Office of the Federal Register nor withdraw rules that have not already been published in the Federal Register, while considering postponing for 60 days the effective dates of rules that have already been published but which have not taken effect.

Internal Directives and Acting Officials: Based on past transitions, political officials will not be confirmed or otherwise in place, leaving senior career staff to be named in acting roles.² The Biden team will provide additional guidance to these acting career staff who are often reluctant to sign off on major enforcement actions or projects that do not have a statutory or court ordered deadline.

² Cabinet secretaries and other top officials are typically placed into nomination on Inauguration Day, January 20. Deputies are often not placed into nomination until the secretary is confirmed. Only a few top White House aides are required to be confirmed by the Senate such as the National Security Advisor, Chairman of the Council of Environmental Quality; Commissions and Boards such as the Surface Transportation Board enjoy bi-partisan membership with the president naming the chairman.

Executive Orders and Other Actions: Along with freezing regulations, the Biden Administration will quickly act to reverse many of his predecessor's regulatory actions through executive orders and other agency guidance. Additionally, Biden will quickly move to restore agency career staffing levels that were reduced during the Trump Administration and reverse procedural requirements that the Biden team believes distort or delay decisions. He will also seek to reverse Trump Administration orders that rolled back Obama Administration regulations and other regulatory actions including ones that directed federal agencies to suspend, rescind or revise regulations that were considered unduly burdensome, including:

- Rescinding the “2 for 1” order (EO 13771) requiring that for every new regulation issued at least two prior regulations must be eliminated;
- Adjust the estimated social costs of carbon used in cost-benefit calculations in regulations;
- Expediting National Environmental Policy Act (NEPA) environmental reviews (EO 13766) for infrastructure and energy projects; and
- Requiring agency heads to identify regulations that eliminate jobs, are outdated, impose costs that exceed benefits or are inconsistent with regulatory reform initiatives (EO 13777).

LONGER TERM

Regulatory Review: The Biden Administration will move quickly to reverse many Trump-era rules but must do so in compliance with the Administrative Procedures Act (APA) that sets forth the process for federal rulemaking. Reversing rules often requires the collection of new data and information to support such a regulatory change while also being able to withstand legal challenges. The entire process from data collection, public comments and promulgating a new or replacement rule often takes at least two years and a significant resource commitment. Therefore, the Biden Administration must be selective in choosing which rules it intends to reverse. However, climate and process rules (*e.g.*, NEPA, social cost of carbon, cost-benefit analysis, transparency in regulatory science) will top the list of rules to be attacked early. Federal permitting rules and the Federal Permitting Improvement Steering Committee created by the FAST Act to expedite permitting also will be reviewed by the Biden Administration for reforms.

In addition to reversing much of the Trump-era regulatory policies, President-elect Biden also intends to be the “most progressive” administration in history. Regardless of the outcome of the Georgia Senate races, the Biden Administration will undertake a new regulatory activism similar if not more pronounced to the Obama Administration.

Congressional Oversight: As political appointments fill federal agencies, the core initiatives of the Biden Administration will begin to come into focus. While Congress has oversight and budget authority over each federal agency, it is highly unlikely the Democratically-controlled House of Representatives will provide any resistance to Biden's initiatives. In fact, the House will likely push the Biden Administration to move quicker on climate, regulatory enforcement

and environmental justice. The U.S. Senate, even if marginally controlled by Republicans, will have little ability to interfere with Biden's administrative actions.

Environmental Enforcement: Robust enforcement and oversight will be a central tenet to the Biden Administration and legislation or further regulation is not required to execute. It can be expected that a Biden EPA will quickly begin issuing information requests under the Clean Air Act (section 114)³, the Clean Water Act (section 308)⁴, and the Resource Conservation and Recovery Act (section 3007)⁵. Furthermore, it can easily be expected that EPA enforcement will use inspections (such as for the presence of CFCs and PFAS⁶), information collection and other activities on all sources of pollution within an environmental justice framework. Supplemental Environmental Projects (SEPs) may return as an "off-budget" funding source for climate and other investments such as EV charging stations, electric bus fleets and "relief" for community environmental and social justice problems.

The often-forgotten **Congressional Review Act (CRA)** is another approach for challenging and overturning rules by providing a fast track process for Congress to reject by a simple majority vote in both chambers any major rule adopted by the Executive Branch. Once a rule is overturned or disapproved, that specific rule is no longer in force and the agency is prohibited from promulgating a similar rule without Congressional authorization. The Georgia Senate races will determine if this tool will be available to the Democrats and the Biden Administration. In either event, the Biden Administration will use federal courts to roll-back regulations.

Another anticipated change to enforcement will be reversing the Trump Administration's centralized enforcement authorities away from the regions. EPA may modify some internal agency processes such as re-delegating authority to issue enforcement orders, permits, and other administrative actions back to the regions. This could lead to more stringent enforcement as regional administrators reassert their enforcement authority. This move would also enable regions to 'test' certain enforcement techniques and scenarios focusing on certain industries, especially if there exists an environmental justice aspect.⁷

Finally, the Department of Justice will be ordered to stop defending the Trump-era regulations that run counter to the Biden Administration's priorities such as the Affordable Clean Energy rule, the Safer Affordable Vehicles rule, and the National Environmental Policy Act rule. Other rules that will not be defended include:

- Narrowing the timing and scope of CWA (section 401) state review;
- Rolling back the Obama Mercury and Air Toxics Standards rule;
- Ignoring the Navigable Waters Protection rule (WOTUS); and
- Rolling back the Obama risk management plan rule.

³ EPA's broad authority to request any information it may deem reasonable for purposes of determining compliance, investigation a potential violation or developing or modifying clean air regulations.

⁴ EPA's broad authority to request any information it may deem reasonable for purposes of determining compliance and investigating a potential violation of National Pollutant Discharge Elimination System (NPDES) permit limits.

⁵ Authorizes the EPA to conduct inspections in connection with a number of RCRA provisions.

⁶ The EPA has already begun a process for examining the possible harms from PFAS substances including designating them hazardous. The Congress also has legislation to designate PFAS as hazardous in circumstances such as Superfund cleanups, replacements of municipal water systems, and the health issues on economically disadvantaged communities and minority populations.

⁷ Regional enforcement of CFCs is a good example where a region tests its inspection, information collection and enforcement authorities and theories.

Additionally, the Biden Administration may also seek court ordered stays in several key cases to give the agencies an opportunity to withdraw certain rules or determine the Administration's litigation strategies.

Occupational Safety: The Biden Administration will make worker safety a top priority by promulgating stringent regulations and stepped-up enforcement both at OSHA and the Department of Transportation. Enforcement successes will be measured by increased fines and imprisonments. It is anticipated that Biden will chose progressives for Labor Secretary and OSHA Administrator, both of whom will identify regulations that should be strengthened with a focus on protections for workers from minority communities and industries with chronic worker safety issues such as construction and heavy industries. Biden's transportation department will be forced to decide the conflict between safety and legalization of marijuana.

Transportation & Infrastructure Spending: Early on, President Trump launched a major infrastructure initiative, but it went nowhere. Both the House and Senate proposed major transportation and infrastructure spending packages within the last two years. The Senate version passed out of Committee with full bipartisan support but was never brought to the Senate Floor while waiting for a House companion. When the House Transportation & Infrastructure Committee pass its own bill, it was more than four times the spending of the Senate version and contained many poison pills that doomed the entire process.

The Biden Administration has pledged to spend liberally on transportation and infrastructure with a distinct focus on climate initiatives, including enhanced tax policies for electric vehicles, electric bus fleets, electric moorings and truck fleets to eliminate air pollution at shipping ports and provide "relief" to nearby communities. However, he will need the Congress to pass such a spending package. Without Congressional action, the Biden Administration may only spend what is appropriated within the annual agency budgets (or Continuing Resolutions) but does retain some flexibilities towards implementing its priorities.

Recycled content requirements could be a "win-win" in any infrastructure spending package as a way to make such infrastructure projects more environmentally or climate friendly by using recyclable materials that lead to conservation of natural resources and save energy. With the focus on climate, any project should be identifying ways to demonstrate climate and resiliency benefits.

Transportation: Much of the nation's transportation system is regulated by independent commissions and boards, such as the Surface Transportation Board (STB) and the Federal Maritime Commission (FMC). Each of these agencies are governed by presidential political appointees (including from previous Administrations) with the chairmanship going to the party that controls the White House. STB Chairwoman Ann Begeman is retiring when her term ends in January, and two new appointees were recently confirmed by the Senate, leaving one opening for another Democrat. Additionally, Marty Oberman (who met the ISRI Board in July 2019) is in line to become the next STB chairman. The FMC will likely shuffle the chairmanship from the current chairman Michael Khouri to Dan Maffei. Both these agencies have been very responsive

to shippers over the last several years; that trend is expected to continue and possibly become more shipper-friendly.

Tax Policy: During the campaign, Joe Biden promised to repeal the Trump-era tax policies that favored wealthy taxpayers and corporations, including returning the top personal marginal tax rates back to the Obama era of 39.8%. This reversal would dramatically impact small- and medium-sized companies, including “Subtitle S” scrap recyclers. The corporate tax rates would also be raised from 21% to 28% while many tax avoidance “techniques” would be eliminated. Additionally, the Trump/Brady 100% depreciation allowance will automatically return to the pre-Trump levels of 50%. The Alternative Minimum Tax (AMT) also could find its way back along with raising the Social Security limits of income as well as other pre-tax personal deductions.

International Trade Policy: The Biden Administration has declared it will return to many of the global agreements the Trump Administration rejected. It is unclear whether or not the tariffs on steel and aluminum will be repealed. It is very clear, however, that the Biden Administration intends to immediately rejoin the Paris Climate Accords, reengage at the World Trade Organization and consider trade agreement negotiations with Europe and in the Asia-Pacific region. That said, President-elect Biden has made conflicting statements on China, such as favoring “Buy America” requirements and some protectionist trade policies while also making conciliatory statements.

The Biden Administration is not expected to rejoin the Trans-Pacific Partnership (TPP) since others from the Progressive wing of the Democratic Party (Senator Bernie Sanders and Congresswoman Alexandria Ocasio-Cortez) strongly dislike the agreement. It is also unlikely the TPP would survive a ratification vote in the Senate.

Post-Pandemic Recovery: The Biden Transition Team has already indicated it intends to spend heavily to “Build, Back, Better” through massive infrastructure and other spending that could include federal loan guarantees and other lending facilities created by the Paycheck Protection Program and administered by the Small Business Administration and the Federal Reserve. The Congress will resume work in early January to craft another economic rescue package. The outcome of the two Georgia Senate elections will determine whether the spending package will be more like the Pelosi or the McConnell plans. Either spending package will be between \$1 trillion and \$3 trillion.

 Vice President Kamala Harris	 State Antony Blinken	 Treasury Janet Yellen	 Defense Lloyd Austin
 Attorney General Merrick Garland	 Interior Deb Haaland	 Agriculture Tom Vilsack	 Commerce Gina Raimondo
 Labor Marty Walsh	 Health & Human Services Xavier Becerra	 Housing & Urban Development Marcia Fudge	 Transportation Pete Buttigieg
 Energy Jennifer Granholm	 Education Miguel Cardona	 Veterans Affairs Denis McDonough	 Homeland Security Alejandro Mayorkas
 White House Chief of Staff Ronald Klain	 White House OMB Director Neera Tanden	CIA Director TBD	 EPA Administrator Michael Regan
 Director of Nat'l Intelligence Avril Haines	 US Trade Representative Katherine Tai	 Small Business Administrator Isabel Guzman	 US Ambassador to the UN Linda Thomas-Greenfield

