

Paris Climate Accord Implementation: United States

Law360, New York (March 11, 2016, 1:35 PM ET) --

In December 2015, nearly 200 countries reached a historic agreement in Paris to limit greenhouse gas emissions in hopes of curbing global warming. Over the next two weeks, Law360's Expert Analysis special series will look at the impact the agreement will have on policies in various regions and countries.



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On December 12, 2015, the United States was one of 195 countries to approve the Paris agreement at the Paris summit (or COP21), a global effort to reduce emissions of greenhouse gases and to mitigate the anticipated effects of climate change. The Paris agreement, which becomes effective once adopted by 55 countries that account for at least 55 percent of global greenhouse gas emissions, creates binding procedures and nonbinding emissions targets for each of the participating nations. The COP21 reaffirmed a goal of limiting global temperature increase well below 2 degrees Celsius, and it binds all parties to establish country-specific commitments to reduce emissions and to submit new commitments every five years.



Jeff Salinger

It is important at the outset to understand what “binding” means with respect to the United States. The Paris agreement was, in part, structured to avoid the need for Senate ratification. Instead, the procedurally oriented provisions within the agreement will be legally binding within the United Nations Framework Convention on Climate Change (UNFCCC), a treaty which the U.S. ratified in 1992. Under COP21, the U.S. will establish its own, national commitment to reduce emissions and to report on the country’s progress. How the U.S., or other countries, choose to reduce emissions will be entirely determined by the participating nations.

Even before an agreement was reached in Paris, some members of Congress expressed opposition to both the COP21, and the Obama administration’s approach to negotiations. It remains to be seen whether and to what extent Congress would cooperate in enacting legislation aimed at achieving the summit’s agenda. However, the Paris agreement is not a treaty; accordingly, it will not have a binding effect on all future presidents, and subsequent administrations may back away from the commitments made in Paris by the current administration. Consequently, the long-term durability of the Paris agreement in the U.S. will largely depend on national will and international pressure.

In some respects, from a U.S. perspective, the Paris summit could be seen as a reflection of the Obama administration's commitment to and policy agenda toward reducing greenhouse gases and promoting renewable energy.

This policy agenda could be seen early in the Obama presidency with the passage of the American Recovery and Reinvestment Act (ARRA) in February 2009. After being subject to robust partisan debate, the ARRA provided benefits to subsidize investments in green energy, including projects related to wind, solar and biomass electricity generation facilities. One of these benefits included a cash grant in lieu of an investment tax credit for certain renewable projects, which assisted in replacing the use of such tax credits during the recession.

President Barack Obama's commitment to addressing climate change has also been reflected in a number of rule-making decisions of the Environmental Protection Agency. For example, on Oct. 30, 2009, the EPA published a rule mandating the reporting of greenhouse gases from sources that emit significant amounts of carbon dioxide per year in the U.S. This greenhouse gas reporting rule affects an estimated 8,000 facilities, including large stationary sources, that produce roughly 85 to 90 percent of the total greenhouse gas emissions in the country. The reporting program collects data from 41 source categories, targeting the oil and gas industry as well as solid waste landfills. The rule was amended in January of this year to streamline the reporting process, but it is unclear whether this update will affect a legal challenge currently pending before the D.C. Circuit.

More recently, in August 2015, the Obama administration published the Clean Power Plan (CPP), which established the first-ever national standards to address carbon dioxide pollution from existing power plants. The CPP included interim and final statewide goals for carbon dioxide emissions. Uncertainty surrounding the CPP does persist, however, in large part due to the U.S. Supreme Court's decision in February to stay implementation of the program pending legal challenges. Nevertheless, the EPA had previously imposed an emissions limit on new, modified and reconstructed fossil fuel-fired power plants, and this rule has not been affected by the Supreme Court's ruling.

In addition to efforts by the EPA, the U.S. Department of the Interior has played a role in seeking to reduce the country's carbon emissions. In January 2016, the secretary of the interior declared a three-year moratorium on coal leases on federal land. During this time, the agency will review the federal coal program, evaluating what it charges as royalties as well as the program's overall effect on climate change. This marks a significant development because roughly 40 percent of coal in the United States is mined on federal land.

Despite certain public congressional opposition to the COP21, Congress, too, has played a role in supporting green initiatives. In December 2015, Congress extended the production tax credit (PTC) and the investment tax credit (ITC), thereby incentivizing the development and production of wind and solar energy. One initial estimate by Bloomberg New Energy Finance suggested that the net result of the extensions could be to spur on \$73 billion in new investments and to provide access to renewable energy to more than 8 million additional households.

Even with uncertainty in the implementation of the Paris agreement and continued challenges regarding federal programs, such as those directed at the CPP, there have been significant signs that U.S. states and businesses have begun to take matters into their own hands. In so doing, states and business activities have forwarded many of the same goals and aspirations reflected by the Paris agreement.

States continue to push ahead with renewable portfolio standards to encourage the development of renewable energy. Just this month, the Oregon Legislature passed a bill that will phase out coal-fired power

in the state by the end of 2035 and also require that by 2040, half of the state's electricity come from renewable sources. In 2015, California and Hawaii passed legislation that continues to ratchet up their renewables mandates. Similarly, New York Gov. Andrew Cuomo pledged that the state would eliminate use of coal-based power completely by 2020.

Meanwhile, the business community has shown its commitment to fund efforts to tackle climate change. Green bonds, which fund projects specifically to produce environmental or climate-related benefits, have seen a dramatic increase in use since 2013. According to the Climate Bond Initiative, in 2015, \$41.8 billion of green bonds were issued, up from the \$4 billion figure in 2010 cited in a World Bank report on green bonds. Reflecting a growth in demand from investors, this trend appears to be continuing, as in the first two months of 2016, \$11.83 billion of green bonds have already been issued. Apple issued its first-ever green bond, a \$1.5 billion offering issued in February, which will be used to finance renewable energy, energy storage and energy efficiency, as well as green buildings and resource conservation efforts.

Taken as a whole, there is evidence that the U.S., whether via federal regulation, state action or industry efforts, is on a path to address many of the same issues that the Paris summit seeks to affect. Whether the Paris agreement has a long-term effect on the United States and how aggressively these green trends continue will depend largely on the political winds.

Without waiting for the political winds of change, the Obama administration is already working to implement some elements of the Paris agreement. On March 10, 2016, Obama and Canadian Prime Minister Justin Trudeau agreed on measures to curb methane emissions from the oil and gas industry, and the EPA followed suit by pledging regulation of such measures. It is hard to imagine, however, a long-term commitment to climate change without significant congressional support, even if the Paris agreement did not require it. Nevertheless, businesses in the U.S. seem poised to continue to act in a new and sustainable way, in part because businesses anticipate further constraints on emissions and because corporate social responsibility continues to grow in importance to consumers, shareholders and investors.

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