

# Future Efforts to Combat Climate Change

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In December 2015, the countries party to the United Nations Framework Convention on Climate Change overwhelmingly adopted the Paris Agreement (the agreement). Effective on Nov. 4, 2016, the agreement aims to combat global warming by reducing greenhouse gas emissions through nonbinding national efforts and mandatory emissions reporting. The Obama administration strongly supported the agreement.

## Withdrawal From the Paris Agreement

What a difference an election makes. On Aug. 4, the U.S. representative to the United Nations delivered a letter to the secretary general stating the intent of the United States to withdraw from the agreement. This letter came as no surprise. During the presidential campaign, then-candidate Donald Trump labeled climate change a hoax. In June, the president announced that the United States would withdraw from the agreement, characterizing its emission reduction targets as unfair to U.S. businesses and workers. The Aug. 4 letter reiterated that policies and pledges of the Obama administration to reduce emissions of greenhouse gases will not bind the United States.

The letter did not, however, go as far as the president's campaign statements in questioning whether human activities are changing the climate, nor did it foreclose the possibility that the United States may at some point re-engage in the international process. To the contrary, a State Department press release listed mechanisms by which the United States would seek to secure greenhouse gas reductions, such as development of new technologies, cleaner use of fossil fuels and deployment of renewable energy sources.

The press release further explained that the United States may re-engage in the agreement if it obtains more favorable terms, and clarified that the United States will continue to participate in international meetings regarding climate change to protect its interests. Given these qualifications, the letter seems to advance a negotiating position, not to reject absolutely the agreement or the underlying climate change science. Nevertheless, the letter carries a strong message to the international community that the administration intends to renegotiate existing agreements, will not accede to international demands and places little value in maintaining an international leadership role.

The absence of any legal deadlines compelling issuance of the Aug. 4 letter reinforces the conclusion that withdrawal was not its primary goal. The agreement precludes delivery of formal notice of intent to withdraw until 2019, and the withdrawal cannot become effective until Nov. 4, 2020, immediately after the next presidential election. Hence the letter is not an official notice of withdrawal, but only an expression of the administration's intent to submit formal written notification of withdrawal "as soon as it is eligible to do so." In any event, even if the U.S. remains a party to the agreement, the emission reduction provisions of the agreement are nonbinding targets rather than enforceable requirements.

## The Clean Power Plan

The administration's aggressive attempts to bolster its international negotiating position on greenhouse gas emissions fits with its domestic political agenda supporting use of coal and other fossil fuels. On March 28, 2017, the president issued an executive order requiring all

executive departments and agencies to review immediately existing regulations burdening the development or use of domestically produced energy resources. The executive order expressly instructed the EPA to review the Clean Power Plan regulations requiring electric power generators to reduce their carbon dioxide emissions. The plan is currently subject to a stay issued by the Supreme Court and litigation, on hold, in the U.S. Court of Appeals for the District of Columbia.

Emissions from electric utilities comprise nearly one-third of the total domestic greenhouse gas emissions. Both the executive order and Aug. 4 letter reassured a pro-fossil fuel constituency of the president's commitment to reverse the Obama administration's stringent regulation of these emissions.

Whether the U.S. will actually meet its goals under the agreement depends in large part on how EPA revises the plan. Several approaches for doing so have been discussed. In *Massachusetts v. Environmental Protection Agency*, the Supreme Court held that carbon dioxide is a "pollutant" under the Clean Air Act. After a review of the substantial scientific evidence, the EPA found that greenhouse gases threaten the public health and welfare of current and future generations. This endangerment finding serves as a foundation for the plan. The EPA may seek to revoke it, notwithstanding the difficulty of defending the resulting litigation challenging its scientific grounds for doing so.

Alternatively, the EPA could reverse its position that it has authority to regulate greenhouse gas emissions from electric utilities under Section 111(d) of the Clean Air Act. The EPA also regulates toxic emissions from these utilities under Section 112. The question of whether the EPA may simultaneously use both of these provisions, unresolved by the courts, arises from the unusual situation that the House and Senate bills amending the Clean Air Act contain slightly different wording that Congress failed to reconcile. Any EPA action revoking the plan would preclude the United States from attaining the agreement's goals in the near future.

Most likely, however, the EPA will revise the Plan to reduce the utilities' cost of compliance. For example, instead of requiring strict pollution controls or setting emission limits, the EPA may encourage operational efficiencies. The resulting emission reductions, however, would be less than those mandated under the plan and probably inadequate to meet the agreement's targets.

### **Future Options**

Although opponents of vigorous action to combat climate change may currently have the upper hand, science suggests that weather events will ultimately cause that position to be politically untenable. The scientific consensus embodied in reports of the Intergovernmental Panel on Climate Change predicts that greenhouse gases from human activities will result in increased temperatures, intensified precipitation events, increased fires and drought in the western United States and other calamities.

U.S. scientists agree. On Aug. 6, the New York Times published the results of an unreleased draft of a climate change report authored by scientists from 13 federal agencies. The draft report documents the rise in temperature and frequency of extreme weather events in the nation and attributes the increase to human influence. The scientists express a sense of urgency to take mitigation measures that the administration does not share.

The administration's antipathy to vigorous steps to reduce greenhouse gas emissions creates a vacuum that others have started to fill. In an article authored by two cabinet members in previous Republican administrations, James A. Baker III and George P. Shultz, the Climate Leadership Council proposed enacting a gradually increasing carbon tax on carbon dioxide emissions, with tax proceeds returned to all citizens as carbon dividends. The tax, starting at \$40 per ton, would rely on market forces rather than regulations to reduce carbon dioxide emissions. Existing regulations including the Clean Power Plan would be repealed.

The proposal seeks to actualize the emission reductions sought by Democrats by employing a market-based, nonregulatory, revenue-neutral approach attractive to anti-regulation Republicans. In this manner, the carbon dividends plan has developed some bipartisan support and endorsement by various businesses. Although continued opposition by some members of the business community and certain members of Congress makes its adoption challenging, it may unfortunately take damage from a future major hurricane, drought or floods to spur Congress into action.

In the absence of federal leadership, some states have filled the void, for example by implementing a cap and trade program in which government approval of emissions exceeding an entity's greenhouse gas allocation may be issued only by purchasing emission credits. Various mayors, governors, universities and businesses have committed to reducing their greenhouse gas emissions to support the agreement's goals notwithstanding the current administration's position.

Even absent government action, market forces will shape the energy sector in powerful ways. Natural gas is replacing coal as the most economical fossil fuel for electric generation, and renewable energy is replacing both. As solar and wind sources proliferate and energy efficiency increases, greenhouse gas emissions are reduced. New and ongoing state and private initiatives create a basis for optimism that in the long run the agreement's greenhouse gas reduction targets and limits on global warming will be met. Future generations will evaluate us on how quickly we mitigated our greenhouse gas emissions, and what steps we took to adapt to the climate disruption that our emissions caused.

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