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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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October 7, 2008

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M E M O R A N D U M

TO: Members, Committee on Energy and Commerce

FROM: Rick Boucher, Chairman
Subcommittee on Energy and Air Quality

John D. Dingell, Chairman
Committee on Energy and Commerce

SUBJECT: Climate Change Discussion Draft Legislation

Today we are pleased to release a discussion draft of climate change legislation. This draft is the culmination of nearly two years of intensive work on climate change by the Committee and marks an important step in our ongoing efforts to address this increasingly serious problem.

Since the Committee began its examination of the issue in January 2007, our work has been predicated on the belief that a thorough, deliberative, and purposeful examination of the facts would yield the best result. To that end, we have held 27 hearings, released four white papers on different aspects of climate policy, conducted numerous workshops, and received thousands of pages of written responses to our letters and questions for the record. It must be noted that in the midst of this activity, the committee also took the lead in drafting and passing energy legislation that greatly aids our task on climate change. We enacted a landmark 40 percent increase in Corporate Average Fuel Economy (CAFE) standards; passed energy efficiency measures that will remove 10 billion tons of carbon dioxide from the atmosphere by 2030; and passed a sweeping overhaul of the Renewable Fuels Standard (RFS) that will speed the development of low carbon biofuels while lessening our dependency on foreign oil.

Since January 2007, the debate over climate change has evolved dramatically, beginning with groundbreaking reports released by the International Panel on Climate Change, which affirmatively settled the question of whether human activity is contributing to global warming. In addition, in the absence of Federal action, some 24 states and several regional organizations

have moved towards regulation of greenhouse gases. While the States should be lauded for their progressive stance in addressing the problem, their actions, if not properly coordinated and directed and accompanied by Federal action, could be disruptive to interstate commerce and counterproductive to the goal of limiting national greenhouse gas emissions. Finally, the Supreme Court added another layer of complexity and urgency to our task when it ruled in *Massachusetts v. EPA*, that CO₂ is a pollutant, with the almost certain consequence that the Environmental Protection Agency (EPA) will in the near term regulate CO₂ emissions under the existing Clean Air Act (CAA), unless Congress enacts a regulatory statute.

Politically, scientifically, legally, and morally, the question has been settled: regulation of greenhouse gases in the United States is coming. We believe that elected and accountable representatives in the Congress, not the Executive Branch, should properly design that regulatory program. The only remaining question is what form that regulation will take.

The discussion draft begins to answer that question with a deliberate, thoughtful policy that will preserve economic growth while protecting our environment. The discussion draft would establish an economy-wide cap on emissions of greenhouse gases. In the early years of the program, caps would be set at a level that is realistically achievable to ensure that firms are able to adjust gradually. By 2050, emissions from covered sources would be reduced to 80 percent below 2005 levels, ensuring the substantial reductions necessary to contribute to stabilizing global concentrations of greenhouse gases. The program's trading mechanisms provide firms with maximum flexibility and establish incentives for the development of new energy and abatement technologies. Costs to firms and consumers are managed in several ways, including: the availability of cost-effective, high quality offsets; the ability of firms to access a special "reserve" of emission allowances when prices rise; and an aggressive program to improve energy efficiency and deploy clean technologies, including carbon capture and sequestration. The discussion draft presents four options concerning how emission allowances might be allocated to firms, States, consumers, and other areas. Provisions for strong market oversight and the protection of American jobs are also included. Further details on the discussion draft are attached.

The Committee on Energy and Commerce brings to this discussion a useful and unique perspective. The Committee authored the sulfur dioxide, or acid rain, emissions trading program contained in the 1990 Clean Air Act Amendments that is the model for current and proposed cap-and-trade programs for greenhouse gas emissions. For example, the European Union in major respects modeled its CO₂ Emissions Trading System on our SO₂ cap-and-trade program. The Committee also has extensive expertise in developing and overseeing auction programs that generate revenue for the taxpayer, such as telecommunications spectrum auctions.

It is noteworthy that the Committee drafted and took the lead in passing the first three significant clean air statutes which became law in 1970, 1977, and 1990. These measures resulted from bipartisan cooperation and enjoyed broad bipartisan support in both Houses of the Congress. They also resulted from an extensive consultation with clean air advocates and the

industries proposed to be regulated by the legislation. We seek to follow that successful model in constructing a climate change regulatory bill.

Our goal is to craft a bill that can be enacted quickly and lead to regulations that can be implemented with a minimum of administrative or legal impediments. Achieving that goal will require us to assemble a bipartisan coalition that bridges legitimate policy disagreements rooted in regional economics and other factors that cross party lines. To that end, we welcome the active participation of all of our colleagues in both parties. Regrettably, the Bush Administration and the Committee's Republican leadership have yet to engage in a constructive dialogue on how to structure a mandatory greenhouse gas reduction program. We would prefer to have the benefit of their good ideas, their active work in refining the legislation, and their cooperation in passing it into law. The demise of the climate change bill in the Senate earlier this year underscores the need to reach a broad bipartisan consensus.

What we are releasing today is a *discussion* draft. It contains clear policies in areas where we have learned enough to set forth recommendations, though those recommendations will certainly benefit from additional refinement based on comments from Members and interested stakeholders. In other areas we believe we need further deliberation. Reaching a consensus on a national approach to addressing climate change will be difficult under the best of circumstances. Reaching consensus if people are unwilling to engage in discussion of difficult issues will be impossible. For that reason, this discussion draft acknowledges different views by presenting options representing a range of potential ways to address issues such as allocations and treatment of state motor vehicle standards.

The discussion draft is guided by several core principles:

1. Emission levels and timetables should be realistic and scientifically-driven.

Emission caps in the program's early years, which are set at the upper end of the ranges recommended by United States Climate Action Partnership (USCAP) in its Call to Action, would allow the economy to adjust to new prices for carbon while simultaneously creating marketplace incentives to reward innovations in technology and greenhouse gas mitigation. The draft follows the upper USCAP range in the years between program implementation and the time we anticipate that carbon capture and sequestration technologies will become available for wide deployment. Thereafter, the reduction requirements become much more stringent and track quickly to the lower end of the ranges recommended by USCAP. In doing so, the discussion draft would require the substantial reductions necessary to contribute to stabilizing global concentrations of greenhouse gases. We have worked within the bounds of USCAP's proposal because it represents a consensus among business, environmental, and other groups.

2. Energy efficiency and development of clean energy technologies are vital greenhouse gas reduction strategies that also have economic benefits for the Nation. A substantial number of allowances are directed to programs to improve energy efficiency and deploy low, or zero, carbon technologies. The discussion draft would also drive increases in

building and appliance efficiencies. Firms and consumers stand to gain substantial savings from further improvements in energy efficiency, which would reduce the overall cost of the program. The discussion draft's bonus allowance provisions would encourage the deployment of advanced technologies like carbon capture and sequestration, along with zero-carbon generation from wind, solar, and other renewable resources.

3. Limiting the cost of the program will protect U.S. jobs, consumers, and industry. The discussion draft relies on a cap-and-trade program, improvements in energy efficiency, and the use of offsets as the primary mechanisms to reduce the cost of greenhouse gas reductions. In addition, firms would be able to bank and borrow allowances, and a "strategic reserve" would release additional allowances should prices rise too high. Finally, the discussion draft would provide for strict oversight of the carbon market to ensure its efficient operation without market manipulation.

4. Everyone must do their fair share to reduce emissions, and all levels of Government have a role to play. The discussion draft would create an economy-wide program to reduce greenhouse gas emissions. It would rely on Federal-State-local partnerships to reduce emissions by providing allowances and preserving authority for many State and local regulatory programs.

5. Proper allocation of allowances is critical to a cap-and-trade program, but broad consensus is lacking. The discussion draft contains four options for allocating allowance value. All would provide substantial allowance value for energy efficiency, clean technology deployment, and low income protection. The options differ in the amount of allowance value they give to covered sectors, to other programs for reducing greenhouse gas emissions, to programs to adapt to climate change, and to consumers. In recognition of the impossibility of allocating allowances now for the next four decades, the draft bill would auction all of the allowances from 2026 on and send the fees paid on a per capita basis back to American citizens unless Congress reauthorized the bill. The insertion of this provision is designed to motivate a Congressional reauthorization prior to 2026.

6. Implementation matters. Throughout the discussion draft, provisions have been added to simplify the administration of, and compliance with, the program. Particular care was given to crafting various provisions to minimize the creation of new institutions, streamline regulatory development and program implementation, and build upon existing institutional expertise. In addition, rather than layering a program to reduce greenhouse gases on top of the existing Clean Air Act, the draft bill directly modifies existing authority so there would be one sensible, comprehensive program.

We want to acknowledge the efforts of several members of the committee who contributed valuable policy ideas that are reflected in this draft: Representative Baldwin for her work on a greenhouse gas registry, Representatives Inslee and Doyle for their ideas on protecting energy intensive industries, Representative Markey for his ideas on carbon market oversight,

Representative Inslee for his work on black carbon, and Representative Solis for her suggestions for protecting low-income consumers.

Finally, in presenting this discussion draft, we would offer two observations.

While this draft presents a regulatory framework for reducing greenhouse gas emissions, regulation alone will never achieve our reduction targets. We will need massive and unprecedented investments in both existing and innovative technologies that do not contribute to climate change. For example, we will need rapid development and deployment of carbon capture and sequestration (CCS) technology and increased production of electricity from nuclear, wind, solar, tidal, geothermal, and other sources of power to help meet our projected electricity load growth and permit economic expansion. To that end, we expect to quickly pass the bipartisan "Carbon Capture and Storage Early Deployment Act" offered earlier this year.

Second, we do not pretend or guarantee that a successful climate change policy will be without cost or adjustment. Our task as legislators is to see that it is accomplished in the most effective and minimally disruptive fashion.

With regard to climate change mitigation, we have known for some time where we want to go: a reduction in greenhouse gas emissions of 80 percent below 2005 levels by 2050. With this discussion draft we propose some ways to get there. We hope that all interested parties will take the time to review the draft and provide us with detailed commentary so that we may begin the next session of Congress more informed and better able to move legislation quickly.

We look forward to receiving your comments and working with you.