

Minority Views on H.R. 2454

Summary

H.R. 2454 is proposed legislation that if enacted would impose major new costs and expansive regulatory controls over a weak and struggling U.S. economy. If implemented, this legislation threatens to lock the United States into an era of economic stagnation and global decline.

The bill would impose new greenhouse gas emissions standards and efficiency standards across the U.S. economy, create an untested and complex multi-trillion dollar cap-and-trade program, direct the Environmental Protection Agency (EPA), the Department of Energy (DOE) and other agencies to promulgate a host of new regulations on American businesses and enterprise, and authorize more than a trillion dollars of taxpayer outlays. This bill if enacted would result in a massive expansion of the EPA and other federal regulatory control over virtually all major sectors of the U.S. economy.

If enacted, the bill would impose enormous new direct and indirect costs on U.S. consumers and would have major implications for financial markets and international trade and commerce. The full costs of implementing the bill are not known and the bill was considered and reported by the Committee before cost estimates of all the titles were prepared or made available. While prices for energy and goods and services would rise for virtually all Americans, certain regions of the country will be particularly adversely affected by the legislation. All amendments offered by the Minority to suspend the bill in the event of significantly increased energy prices, including amendments offered by Representative Lee Terry (R-NE), Representative Roy Blunt (R-MO), and Representative George Radanovich (R-CA), were defeated. An amendment offered by Representative Marsha Blackburn (R-TN) that would have required that the costs of compliance be reflected in utility bills, fuel pump bills, and manufactured products and food labels, was also defeated.

Enactment of this legislation will unquestionably cause job losses in the U.S. in the manufacturing, industrial and other energy-intensive sectors, including in those industries that produce globally-traded commodities. The bill would dramatically increase energy costs for energy-intensive industries and put U.S. companies at a competitive disadvantage with foreign competitors in China, India, and other developing countries. While the proponents of the bill contend that an unspecified number of clean energy jobs will be created in the coming years, modeling done to date concludes that the number of jobs lost would far exceed any jobs created. All amendments offered by the Minority, including amendments offered by Representative Fred Upton (R-MI), Representative Tim Murphy (R-PA), Representative Mike Rogers (R-MI), Representative John Shimkus (R-IL), and Representative George Radanovich (R-CA) to protect against high national unemployment or job losses in specific industries resulting from implementation of the bill, such as job losses in the steel, coal, automotive and agriculture industries, were all defeated along partisan lines.

While imposing a massive new energy tax on American consumers and businesses, as a practical matter the bill will not be effective in reducing overall global greenhouse gas emissions. Global climate change is an international issue and the U.S. unilateral efforts will be ineffective in reducing global emissions as long as the world's major emitters refuse to undertake similar emissions reduction programs. An amendment offered by Representative Mike Rogers (R-MI)

that would suspend the bill if China and India do not adopt emissions programs as stringent as those in the U.S. was also defeated in a straight party-line vote.

Title I

Sec. 101 – Combined Efficiency and Renewable Electricity Standard

Section 101 is a combined efficiency and renewable electricity mandate which will penalize consumers in areas of the country without ample wind resources. This one-size-fits-all federal mandate requires utilities to purchase renewable electricity, even if it is considerably more expensive than the conventional sources of electricity that are currently generated. The definition of “renewable” in the base text is incredibly limited – it picks and chooses favored types of electricity even among renewable sources, declaring that all hydroelectric electricity does not qualify, and that only a limited selection of biomass would be eligible. Democrats rejected, on a 26 to 32 vote, an amendment offered by Representative Greg Walden (R-OR), which would have replaced the flawed definition of “renewable biomass,” ensuring biomass from both public and private lands would be treated equally under the act.

This section also raises the question of why there are so many different ways to try to address the same concern in the bill – if the goal of the legislation is to reduce greenhouse gas emissions, then why are we mandating certain types of electricity be purchased, instead of simply requiring that low-emitting electricity be generated? At a February 26, 2009 hearing the Energy and Environment Subcommittee held on renewable electricity mandates, a state public utility commissioner testified that “establishing a uniform national RPS focused exclusively on a limited number of sources like wind, solar, biomass or geothermal, without regard to crucial regional differences, will unnecessarily drive up electricity costs, jeopardize reliability, and divert capital that will be needed to achieve other objectives like meeting aggressive carbon targets.” Republicans offered a number of amendments to remedy this narrow standard. An amendment by Representative Greg Walden (R-OR) would have added language to the bill allowing nuclear energy, biomass, new hydroelectric power, and any other comparable low-emission source of energy to qualify for the same provisions provided under this act’s renewable energy standard. If America is to reduce carbon dioxide emissions and increase energy independence, we should encourage all sources of clean, domestic energy. This amendment was rejected as part of an en bloc vote of 22 to 36. In a similar vein, Representative Cliff Stearns (R-FL) offered an amendment to afford existing nuclear power plants the same benefits provided to new nuclear power plants under the bill. Inexplicably, Section 101 effectively gives new nuclear plants partial credit as renewable energy but does not give any credit to existing plants. Nuclear energy plants, whether they are already operating or constructed years from now, all provide the dual benefit of reducing national carbon emissions while promoting energy independence. Unfortunately, this amendment was also rejected, by a vote of 26 to 30.

Secs. 111-116 – Carbon Capture and Sequestration

Sections 111-116 (Subtitle B of Title I) of the bill seek to facilitate the commercial-scale deployment of carbon capture and sequestration (CCS) technologies and set performance standards for new coal plants. As currently drafted, however, the timeframes for widespread deployment of CCS technologies, as well as for meeting the new performance standards, are not

achievable. Notwithstanding the fact that coal currently represents approximately 50% of our national electricity, and is a domestic, low-cost and reliable source of electricity, the Minority believes that this bill is unfortunately unlikely to result in any new coal plants being built in the United States.

As an initial matter, Sections 111 and 113 would require the EPA to issue a national strategy for CCS deployment and to commission various studies and reports by academics, including reports on existing environmental federal and state laws that may apply to geologic sequestration sites for carbon dioxide, regulatory barriers to CCS deployment, and how and under what circumstances the environmental statutes for which EPA has responsibility would apply to carbon dioxide injection and geologic sequestration activities. These provisions serve to highlight the fact that currently there is not a comprehensive statutory and regulatory framework in place for carbon capture and sequestration sites and facilities, and that significant legal and regulatory uncertainty surrounds the deployment of CCS technologies. Yet, the legislation does nothing to eliminate barriers or solve problems identified by these studies and reports. We believe that if the authors want a future with coal, the bill should be strengthened in these sections to require EPA to explicitly address legal obligations and potential liabilities associated with the capture, storage and sequestration of carbon and carbon dioxide.

Section 112 would require EPA to, within two years, issue new regulations to minimize the risk of escape to the atmosphere of carbon dioxide injected for purposes of geologic sequestration. Given the significant technical and other issues involved, not the least of which is the lack of an understanding of sequestration, two years is not likely to be adequate time to complete such a rulemaking. Nor is it clear what would happen to CCS development if these new rules were not issued timely by EPA or if they were subject to prolonged legal challenges. Section 112 would also require EPA to issue, within one year of enactment, new regulations under the Safe Drinking Water Act (SDWA) for permitting carbon dioxide geologic sequestration wells and to address financial responsibilities. It is not clear whether or how such regulations would affect proposed rules already issued by EPA on July 25, 2008, under the SDWA relating to underground injection of carbon dioxide for the purpose geologic sequestration. It is also not clear whether the bill intends that the new regulations impose financial responsibility requirements to cover risks to air, ecosystems or public health associated with CCS technology deployment, which are areas for which financial responsibility mechanisms may not be available. Further consideration should be given to whether the timelines under this section for issuing the regulations are realistic, and the section should be amended to more fully address the scope of the regulations to be issued by EPA relating to financial responsibility. Further, we believe this section creates overlapping and potentially conflicting regimes under the Clean Air Act and the SDWA.

Section 114 seeks to facilitate CCS technology development by authorizing formation of an industry "Carbon Storage Research Corporation." As currently drafted, the corporation would operate as an affiliate of the Electric Power Research Institute and would be authorized to make financial assessments on deliveries of fossil fuel-fired electricity to retail consumers in the amount of between \$1 billion and \$1.1 billion annually for 10 years. The corporation would be authorized to use those funds for competitively awarded grants, contracts and financial assistance to eligible entities to accelerate commercial deployment of CCS technologies. While the legislation seeks to support at least 5 commercial-scale demonstration projects, it is not clear that the projects to be funded would in fact advance the type of large-scale, integrated projects for

capture and sequestration that would be needed for full-scale commercial deployment of CCS technologies necessary to meet the performance standards for new coal plants. The bill also does not address whether the corporation would be subject to any prior federal or state approvals before funds could be distributed and used. If the purpose was only to do demonstration projects, that is one matter, but we believe that Section 114 seeks to be the jumping off point for the future of coal. That being the case, its provisions assure that coal has a very bleak future.

Section 115 would require EPA to establish a program to distribute emission allowances to support commercial deployment of CCS in electric generation and industrial operations. The Majority's June 2, 2009, bill summary indicates that the estimated value of the allowances allocated for investment in CCS technologies is \$60 billion through 2025. While this section of the bill has been amended to provide certain eligibility criteria, this section is highly complex and would benefit from clarification and greater direction to EPA about how it should be implemented. As currently drafted this section contains a lengthy and complex set of provisions authorizing reverse auctions and/or the award of bonus allowances to the owners or operators of eligible projects, and delegates broad rulemaking and decision-making authority to EPA to administer the program. Given the complexity and importance of this section and the very significant amount of funds at issue, additional review and revision of these provisions is warranted. We are concerned that without these changes, potential fraud, mismanagement and arbitrary application will result.

Finally, Section 116 would establish performance standards for new coal-fired power plants that would require a 50% reduction for units permitted between January 1, 2009 and January 1, 2020, and a 65% reduction for units permitted after January 1, 2020. The compliance date for plants permitted between 2009 and 2020 for meeting these standards would be not later than January 1, 2025, and potentially earlier in the event the EPA Administrator were to make certain determinations relating to CCS technology availability. The compliance date for new plants permitted after 2020 would be upon commencement of operations. As currently drafted, the 2025 compliance date for any plants that would be constructed during the next decade does not appear to be achievable given that the development, demonstration and deployment of such technologies present significant technical, regulatory, legal and other challenges. To the contrary, the Department of Energy (DOE) has advised that larger-scale (near commercial scale) CCS projects take upwards of 10+ years to complete, and may require more time because they are complex in terms of site selection, characterization, carbon dioxide injection and post-injection monitoring. This section needs to be written in a less aspirational and more realistic fashion.

Given the many challenges associated with CCS technology deployment, including the technical and siting issues, the time required for necessary environmental reviews, the current lack of a comprehensive regulatory and statutory framework for CCS deployment, and the need to address with certainty both near- and long-term liability issues associated with stored carbon dioxide, the CCS provisions of the bill as currently drafted call into question whether under this legislation there is a serious desire to have any new coal plants built in the United States. If not, this would result in increased energy costs to American consumers and businesses, and significant adverse consequences for regions of the country that rely primarily on coal-based electricity.

Sec. 141-143 – Smart Grid Advancement

Subtitle E on Smart Grid Advancement establishes numerous new rulemakings and bureaucratic processes, some of which are only tangentially related to smart grid advancement. In particular, Section 144 is unclear – it establishes a new process requiring unspecified reductions in peak electricity usage. It also refers to a “National Electric Reliability Corporation” which is undefined in the bill and does not exist; perhaps this is meant to reference the North American Electric Reliability Corporation, an organization whose purview extends beyond U.S. borders and is therefore not purely a national organization.

Sec. 151-153 – Transmission Planning

Section 151, the transmission planning section, sets up a three-year regional and national planning process. This provision may actually slow transmission development; existing transmission plans could be delayed in favor of waiting for the results of this new national plan. When the new plan is developed, there is no direction that anything be done with the plan other than a report to Congress. Given the massive redesign of the national electric system which this bill’s carbon cap and renewable mandate would require, this bill should have included a transmission planning and siting proposal which would actually result in a more reliable electric system. Representative Joe Barton (R-TX) offered a substitute amendment which would have given the Federal Energy Regulatory Commission authority to site electric transmission comparable to the authority it now has over the natural gas pipeline network. This amendment was rejected by a vote of 19 to 35.

At the conclusion of Title I consideration, Rep. Roy Blunt (R-MO) offered an amendment to suspend the Waxman-Markey bill in the event of a 10 percent or greater increase above 2009 electric rates in retail residential electricity prices in one or more Census Divisions in the United States, but that amendment was defeated by a partisan vote. Rep. Fred Upton (R-MI) also offered four amendments to protect against residential electricity account arrearages but those amendments were also defeated along partisan lines.

Title II

Sec. 201 – Greater energy efficiency in building codes

Upon the date of enactment of this bill, a 30 percent increase in building efficiency is required. Effective January 1, 2014 for residential buildings and January 1, 2015 for commercial buildings, an additional 50 percent increased efficiency is required. Subsequent three-year targets of additional five percent increases in efficiency are mandated through January 2030. These targets and deadlines were established with no concern for cost and with no assessment of feasibility. Moreover, section 201 requires each state to adopt the national energy efficiency building code. Failure by the states to adopt the code results in the federal government taking over code enforcement, effectively enforcing legislation never enacted by the state. In addition, the federal government would be empowered to assess civil penalties for failure to adopt and enforce the national code. This mandate raises potential constitutional questions under the Tenth Amendment, where powers not expressly granted to the federal government in the Constitution—like zoning and building codes—are reserved to the states and local governments.

Furthermore, Congress's traditional constitutional authority to regulate industry under the Commerce Clause does not extend to housing, raising additional questions about the constitutionality of provisions of this section. Section 201 is fraught with Constitutional implications, and this section 201 was preserved by the Majority who almost unanimously voted against the amendment offered by Representative Steve Scalise (R-LA) to strike this troubling section.

Sec. 204 – Building energy performance labeling program

Real property, by legal designation, is unique. A labeling system of homes and buildings could never begin to incorporate all of the variables, preferences, and elements that make residential and commercial buildings distinct and attractive to potential purchasers. The energy profile of a home varies dramatically from one to the next depending on a range of variables for which a government agency cannot account to any degree of scientific precision when formulating the labeling system. For example, orientation of the home on its lot, number of shade trees surrounding the home, local climate, number of occupants in the home, decision of residents to use or not use the air conditioning and heat. Moreover, the other values of the home cannot be quantified in a labeling system. For example, historical character, safety features, and original fixtures. A “one-size-fits-all” numerical rating for something as diverse as housing could only serve to mislead consumers and distort the housing market.

By supporting a labeling system – and voting against the amendment offered by Mr. Cliff Stearns (R-FL) to remove Section 204 of the bill – the majority stigmatizes existing housing stock while providing no guidance and no incentives for upgrading the home.

Section 211 – Lighting efficiency standards.

Section 211 adopts consensus standards for portable lighting fixtures that would take effect in 2012. In particular, this section of the bill adopts California's portable lighting fixture standard as the national standard. The rationale is that manufacturers of lamps cannot compete with two sets of standards, *i.e.*, California's and the rest of the country.

This section would also require the Department of Energy (DOE) to publish amended standards in 2014 to take effect in 2016, or to determine if no new standards are needed. The section also provides that if California adopts any new regulations concerning portable lighting fixtures prior to 2014, federal preemption would not apply. As currently drafted, these provisions would create the potential again for two competing standards in 2014.

Section 211 should be amended to delete the provisions requiring DOE to set new standards in 2014 and the provisions exempting California from federal preemption. Such an amendment would eliminate the possibility of conflicting California and federal standards for portable lighting fixtures, provide certainty for manufacturers and avoid undue additional costs for consumers.

Sec. 213 – Appliance efficiency standards

The hit-and-miss approach to appliance efficiency standards taken when drafting this section is baffling at best. Despite nary a hearing to address specific appliance efficiency improvements, the majority has decided to hop into American hot tubs, literally. This section mandates efficiency improvements in portable electric spas, hot food cabinets, and water dispensers to name a few selected items. Three amendments were offered en bloc by Representative George Radanovich (R-CA) that would have prevented the federal government's intrusion and imposition of regulations on portable electric spas, hot food cabinets, and water dispensers. Restricting the production of these goods will damage more than just these industries. These regulations will hinder consumer choice, raise prices, and expand federal government regulation into more aspects of daily life.

Title III

Title III of this act seeks to reduce the quantity of United States greenhouse gas emissions without regard to costs to households, businesses, and industry; without regard to the availability of the necessary technology to maintain clean, inexpensive energy; without regard to effectiveness towards reducing global emissions; and without regard to whether the provisions will impede the economic growth of the United States and the future economic welfare of its citizens.

There is no safety valve or exit ramp. If household energy costs increase by hundreds of dollars or regions lose thousands of jobs because of this legislation, there are no provisions to rescind the scheme. If carbon capture and sequestration technology for the use of clean and abundant coal-fired electricity has not become widely available and fully deployable, there are no provisions to rescind the scheme's effective ban on new coal generation. There is no way out. If enacted into law, this legislation – especially as outlined in this title – is designed to raise the price of energy on American consumers, businesses, and industry. Raising energy costs is the only way this legislation can force the reduction of greenhouse emissions from the inexpensive, abundant, and reliable fossil energy Americans use to live and work. Any provisions to shield consumers from costs, merely rearrange the costs among regions or income classes, and have no effect on the overall impact on the American economy. At the same time, the increased energy costs will place the United States at a competitive disadvantage to many developing nations, losing jobs and economic opportunity overseas, as has been amply discussed before the Committee in expert and industry testimony during legislative hearings.

During the Committee markup, Republicans offered numerous amendments to suspend the cap-and-trade provisions of the bill, should it increase electricity prices to certain levels or should job losses, such as in the steel, coal, or automotive industry, reach certain levels. All such amendments were defeated.

Section 311 - Global warming provisions

Section 311 outlines the schedule for greenhouse emissions cuts, and establishes three primary programs for reducing greenhouse gases: the cap on large domestic sources, the program to reduce tropical deforestation, and the offset program. Despite the substantially higher energy

costs, it is highly questionable whether the emissions reduction programs will make enough impact on global greenhouse emissions to justify the costs.

First, it is not established that emissions reductions in the United States will have any meaningful impact on global emissions. There are no provisions in the legislation to require comparable international participation in an emissions reduction scheme. Republicans, led by Representative Mike Rogers (R-MI), offered an amendment that would require such action before the U.S. scheme took effect. The amendment was defeated by a party-line vote of 23-36.

International participation is essential if the goals are to reduce global emissions and stabilize levels in the atmosphere. Global participation is also essential to ensure the international community does not take strategic and competitive advantage of higher U.S. energy costs.

The bill currently does not require binding action from the largest and fastest growing greenhouse gas emitters, such as China and India, or the fast growing developing world, which at present emit more greenhouse gases than the developed world combined, according to the Energy Information Administration's International Energy Outlook (2009). At the current pace, the United States could cut its current energy-related emissions to zero, and by 2030 annual global energy-related carbon emissions are still projected to be nearly seven billion metric tons more than 2005 – equivalent to a doubling of all of North America's current emissions in 20 years.

In the meantime, all evidence from the developing world indicates no interest in submitting to equivalent binding emissions reductions to those required in this legislation. In point of fact, India and China have repeatedly and publicly stated no interest in binding emissions caps or emissions rationing.

The United States cannot, moreover, assess with any reliability the amount of greenhouse gases these nations emit. The emissions data China and India submitted in 2004 to the United Nations, pursuant to the 1992 United Nations Framework Convention on Climate Change, were estimates for 1994 emissions, and have yet to be updated. Indeed, the most recent emissions data reported by most large developing countries are now 12 years older than what the United States and other developed countries have reported. Moreover, as a bloc, the developing countries, including China, Brazil, and India, refuse to bring reporting regimes into closer accordance with the developed countries.

These facts form part of the international backdrop against which this legislation should be assessed. Not only would this cap-and-trade scheme be an ineffective policy if developing nations do not reduce emissions, it would weaken U.S. economic competitiveness. During legislative hearings, witnesses could provide no credible evidence that foreign nations would avoid taking economic advantage of reduced U.S. competitiveness. The United States, if this legislation is enacted, would unilaterally surrender competitiveness with no reliable assurance that it can turn back if the international community fails to take comparable action.

Second, emission reduction goals are not based on any clearly defined, realistic, or evidentiary foundation relating to impacts on world global emissions – or temperature. Indeed the only potential factual reference we find for the target of an 80% reduction of emissions from 2005 levels is in the Majority's report on this bill. This report references a handful of the most

stringent emissions “stabilization scenarios” examined by the Intergovernmental Panel on Climate Change (IPCC) -- the so-called Category I scenarios, composed of the six most extreme of some 177 model runs organized into seven categories (see the Intergovernmental Panel on Climate Change, *Climate Change 2007: Mitigation of Climate Change*, Table TS.2). These Category I scenarios require global emissions to have peaked and begun declining between the years 2000 and 2015. The reality that global emissions have been accelerating over most of this time period, and are projected to continue to increase for the next 30 years, calls into serious question the validity of these targets and their use as a realistic goal in this legislation. Taken literally, there are implausibly only a few years for proponents of this legislation to convince China, India and the rest of the developing world to adopt binding emissions caps and commence immediate emissions reductions to comport with these targets. The IPCC also reports these scenarios depend on current technology “readiness” of carbon capture and sequestration and other undeveloped technologies along with “simultaneous emissions mitigation in developing countries” – factors plainly at odds with current reality. We should add that such information about the scenarios or emissions targets was not examined in any hearing relating to this legislation.

Third, section 311 is premised on some critical findings that minimize the key uncertainties and facts about the Earth’s climate. For example, the legislation does not define global warming, although the text suggests global warming is solely the result of man-made, or anthropogenic, emissions and that any effects of global warming on climate therefore must be traced to these man-made emissions. This construct ignores the scientific consensus understanding that global warming is first and foremost a natural phenomenon and that climate change is not solely or necessarily the result of man-made emissions. Reports by the National Academies and the IPCC make clear that climate change represents the natural long-term fluctuation in regional temperature and weather patterns. It is equally clear that, over millennia, natural climate change has occurred and has threatened public health and welfare and necessitated constant human innovation and adaptation. Hearings before the Subcommittee on Energy and the Environment in the 111th and 110th Congresses provided testimony to these facts.

Reviews of scientific studies, including by the IPCC and the National Academies, and testimony before the Committee suggest that combined anthropogenic greenhouse gas emissions may contribute to a long-term global warming trend. This has also been reported at Committee hearings. However, testimony has indicated that scientists cannot quantify how much anthropogenic greenhouse gases may be effecting the natural global temperature change and how much that may be effecting climate change impacts, especially in the future. The IPCC consensus document states that “the complexity of the climate system and the multiple interactions that determine its behaviour impose limitations on our ability to understand fully the future course of Earth’s global climate.”

Given this complexity and uncertainty about man’s contribution to global warming and climate change, we recognize that prudent policy calls for taking cost-effective measures to reduce greenhouse gas emissions, but this must be done while ensuring continued United States economic growth, innovation, and industrial strength. Unfortunately, the provisions setting forth emissions reduction targets fail to acknowledge the scientific uncertainty or the economic risks. The schedule of reductions cannot be linked to any measure of effectiveness. The related reviews required by EPA and the National Academies do not provide any clear mechanisms for rescinding the reduction targets if they prove ineffective or too costly to the American public.

The costs of this legislation are too high to impose such emissions targets without sufficient factual or practical foundation.

Sec. 311 – Reducing global warming pollution

With regard to offsets, Section 311 provides for the use of a combination of domestic and international offsets that covered entities can purchase to meet emissions obligations. If not enough domestic offsets are available, up to three-quarters of offsets used for compliance may come from developing nations. Reliance on international offsets is controversial on effectiveness and cost-control grounds.

There are outstanding and difficult challenges concerning the integrity of offset markets, according to two 2008 evaluations by the Government Accountability Office (GAO). There is inherent uncertainty in certifying reductions of emissions that have not occurred. There are related challenges in measuring and validating the reductions to some acceptable standard, domestically and, especially, internationally. The GAO concluded that “the use of carbon offsets in a cap and trade program can undermine the system’s integrity, given that it is not possible to ensure that every credit represents real, measurable, and long-term reductions in emissions.” (Emphasis added.)

The larger the number, range, and geographic scope of offset projects allowed into the regulatory scheme, the more integrity of emissions reductions becomes an issue. Available evidence, as provided by GAO and other witnesses before the Subcommittee on Energy and the Environment, shows offset markets have not worked as cost-effectively as promised. The existing international offset program administered by the United Nations in particular has proved susceptible to abuse.

Analysis provided during climate policy hearings before the Committee revealed that the existing international system fails as a market because it has animated accounting tricks that allow participants to manufacture offset credits at little or no cost. The system has also promoted substantial strategic behavior on the part of developing nations aimed at manipulating baselines in order to increase the number of offsets created. And, as participation in the energy sectors of developing countries has expanded, the regulatory challenge to determine whether these projects’ emissions reductions are “additional” to what would have happened in the absence of the international offsets subsidy has increased. Meanwhile, the program has failed as a subsidy because the developed world has had to purchase the offsets emissions reductions at an extremely high premium – 10 to 100 times the cost of most of the emissions reductions.

Against this record, there is no assurance international abuse can be avoided with additional EPA or other regulatory oversight. While provisions provide for EPA determination as to the quality and additionality of domestic or international offsets, the bill continues to allow the EPA to modify or omit integrity requirements “if not feasible.” Further, while the EPA is directed to conduct random audits of offsets projects, it is not evident how the Administrator could successfully conduct random audits of international offsets. What agreements with China and other nations are there to allow audits of offsets projects by U.S. officials? Given the experience and evidence collected by the Committee with regard to international inspections of food and drug products imported into the United States, there is little assurance offset audits in China or the developing world can be any more frequent or reliable.

Any such offset subsidies from U.S. covered entities will effectively represent a substantial wealth transfer to the developing world. The EPA, in its own analysis, notes that the availability of offsets drastically affects the cost of compliance with the cap-and-trade program. In its analysis, EPA wrote that without international offsets the allowance price would increase 96 percent. Absent the availability of international offsets, or severe restriction because of strict EPA regulation and international competition for the projects, the costs imposed on Americans by the cap-and-trade scheme outlined in this legislation will be substantially higher than proponents advertise.

Section 311 also creates a mechanism to use allowances and auction revenues to support a complicated and untested international program to prevent tropical deforestation. This untested program presents reliability questions similar to those created by reliance on international offsets. Integrity issues aside, this provision, if enacted, effectively involves transferring energy tax funds generated domestically to developing countries. Whatever the merits or weaknesses of this program, the transfer of funds internationally effectively reduces what is available for domestic relief from higher energy prices.

Finally, accounting for the risk that offsets or the tropical forest program do not effectively reduce international emissions and the cost-benefit of these mechanisms for global emissions reduction is called further into question. It is upon such questionable foundation that the legislation provides for the transfer of tens of billions of dollars to international projects (and jobs) that we believe could be more effectively spent providing jobs in the United States.

Section 321 - Disposition of allowances

Section 321 provides details on the distribution of free allowances and auction revenues to utilities and other affected sectors. As it was with the Emissions Trading Scheme in Europe, special corporate interest support for caps and emissions rationing was not possible without ensuring valuable allowances were allotted to these groups. The ostensible purpose of distributing free allowances is to reduce job losses and prevent increases in consumer (commercial and residential) electricity and heating bills. Despite such goals, the funds are not necessarily distributed directly to consumers. For example, with regard to natural gas consumer allowances, the states will actually administer half the funds for natural gas energy efficiency programs rather than provide for relief on utility bills. The section does not protect consumers from higher energy costs. It is the higher costs that drive the cuts in CO₂.

All of the targeted spending of the allowances induces additional inefficiencies to the program that will raise its costs on the economy. Giving allowances to the chosen few just redistributes the economic pain to others. Moreover, every dollar of allowances given to one group is a dollar's worth that cannot be used for cutting taxes or reducing the deficit. According to the Congressional Budget Office, under both Directors Orszag and Elmendorf, even if all the allowances are allocations given away to industry and affected sectors, the cap-and-trade scheme will still lead to price increases.

Sec. 331 - Greenhouse gas standards

Representative Marsha Blackburn (R-TN) offered an amendment that would establish that carbon dioxide, water vapor, and other greenhouse gases are not air pollutants under the Clean

Air Act. This amendment would have prevented the Environmental Protection Agency from imposing intrusive regulations into all aspects of American lives. Throughout the mark-up and the series of hearings preceding the legislation's passage, Members warned that if Congress does not act on this issue, the EPA would. The Blackburn amendment acknowledged this risk and would have prevented EPA action without forcing Congress's hand before the issues were properly explored and consensus was established. The Blackburn amendment would have taken the EPA variable out of the equation and would have allowed Congress to explore the topic fully, with additional hearings and plenty of time for regular order, including a Subcommittee mark-up. This amendment failed along strict partisan lines.

Sec. 335 - State programs

As written, this bill allows states and localities to enforce their own regulations of greenhouse gases covered by the cap after 2017. Until 2012, and beginning again in 2018, states could enforce their own greenhouse gas emissions cap-and-trade programs in addition to the federal cap-and-trade program established under the Waxman-Markey bill. One major premise touted by the Majority is that the complex cap-and-trade scheme will provide industry and capital markets with certainty to invest in the green technologies of the future, the power sector, affected industries, or new clean technologies for coal or the oil industry. This certainty is compromised without a permanent preemption of state and local regulation of greenhouse gas emissions. This section should be amended to preempt states from implementing or enforcing their own cap-and-trade programs. This would avoid potentially duplicative, conflicting and inconsistent state and federal regulatory regimes that would impose additional costs, regulations and burdens on U.S. consumers and businesses.

Sec. 336 – Enforcement

Section 336 addresses enforcement relating to Title III of the bill. While the current version of the bill has eliminated the "Citizens Suits" provisions that were offered in the original discussion draft of the bill, under the current version of the bill, subject to certain limitations any person could still seek to bring a civil action against any other person for violation of the new greenhouse gas emission standards under Title III of the bill. In particular, under Section 304 of the Clean Air Act as amended elsewhere by the bill, plaintiffs could bring citizen suits to enforce the new greenhouse gas emissions standards.

This section should be amended to add a new paragraph focusing any citizen suits to enforce any of the provisions of Title III of the bill only on the EPA Administrator. If citizen suits are allowed to go forward against any person, it is likely that there would be a substantial amount of new climate change litigation brought against companies throughout the United States in all of the sectors of the economy regulated by the bill. While a windfall to lawyers, such litigation would impose significant costs and burdens on those companies in addition to the already enormous direct and indirect costs imposed by the bill. An amendment to limit citizen suits would prevent excessive or unwarranted litigation and protect U.S. companies and ultimately U.S. jobs and consumers.

Subtitle D – Carbon market assurance

The bill provides for the establishment of a regulated allowance market where market participants will engage in the trading of regulated allowances and regulated allowance derivatives. While the bill does provide a certain level of market protection comparable to the CFTC regulatory regime in the futures market, the bill does not ban speculators from participation in this market. Therefore, hedge funds, proprietary trading desks and sovereign wealth funds will be able to play the market and thus impact the price of carbon. Representative Steve Scalise (R-LA) introduced an amendment that would have limited participation in the market to covered entities, but the amendment was defeated by a vote of 20-32.

During the summer of 2008, Congress was exploring the link between speculation and the increase in food and gas prices. Speculation can lead to price volatility and ultimately higher prices in the traded contract, which will lead to higher energy costs for the average American ratepayer in this new market.

Sec. 355 – Limitation on eligibility to purchase a credit default swap

In general, it is important to note that this bill delves into the derivatives market in a far-reaching way, including by banning naked credit default swaps. The derivatives market does need regulatory reform, but such reforms should take place after extensive hearings within the Committee. Much of this language was added only to the Amendment in the Nature of a Substitute, and therefore there was not sufficient time for review and analysis, not to mention no opportunity for a hearing on this topic.

Title IV

By subjecting domestic employers to a costly regulatory system, the bill places American jobs at a double disadvantage: competitive disadvantage vis-à-vis their foreign competitors and pressure to move jobs overseas to countries that do not unilaterally disadvantage manufacturing or other energy intensive activities.

Section 401 amends section 762 of the Clean Air Act and states: “Congress finds that the purposes of this part, as set forth in section 761, can be most effectively addressed and achieved through agreements negotiated between the United States and foreign countries.” Instead of rushing this bill through Committee mark-up, including by skipping the subcommittee mark-up, international negotiations should have taken place prior to this legislation being implemented. This would ensure that unilateral actions taken by the United States would not be negated by emissions from India and China.

Section 425 and section 426 of the bill address climate change worker adjustment assistance. A far better alternative to addressing the job losses that will inevitably be caused by the enactment of this bill was proposed by several Republican amendments.

Representative Fred Upton (R-MI) introduced an amendment to protect domestic employment that would have required the Administrator of the EPA, in consultation with the Secretary of Labor, to prepare an annual report to Congress on the average national unemployment rate, and if the unemployment rate for the prior year surpassed 15% as a result of implementation of the

bill, then the bill shall sunset. The amendment was defeated by a vote of 21-34. Representative Tim Murphy (R-PA) introduced an amendment to protect the U.S. steel industry that would have required the Administrator of the EPA, in consultation with the Secretary of Labor, to prepare an annual report to Congress setting forth the number of domestic jobs that been lost in the U.S. steel industry as a result of implementation of the bill, and the bill shall sunset if the total number of job losses in the steel industry exceeded 10,000. The amendment was defeated by a vote of 20-35. Representative Mike Rogers (R-MI) offered three separate amendments that would have required the Administrator of the EPA, in consultation with the Secretary of Labor, to prepare an annual report to Congress on the number of domestic jobs in the auto parts, auto and transportation manufacturing industries, and the bill shall sunset if there were any job losses in each of these industries as a result of the implementation of the bill. This series of amendments offered en bloc was defeated by a vote of 22-32. Representative John Shimkus (R-IL) introduced an amendment that would sunset the bill if two or more coal mines were to close as a result of this bill. The amendment was defeated by a vote of 22-34. Representative George Radanovich (R-CA) introduced an amendment that would sunset the bill if the EPA Administrator determined that 43,846 or more jobs were lost in the agriculture industry in the United States in the prior year due to implementation of the bill. The amendment was defeated by a vote of 22-36.



Joe Barton
Ranking Member



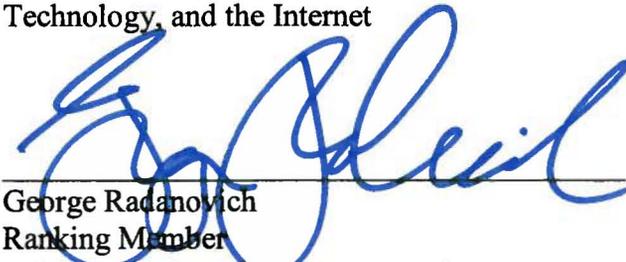
Fred Upton
Ranking Member
Subcommittee on Energy and the Environment



Cliff Stearns
Ranking Member
Subcommittee on Communications,
Technology, and the Internet



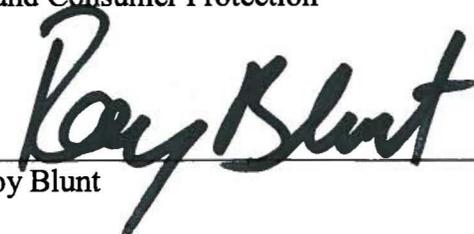
Nathan Deal
Ranking Member
Subcommittee on Health



George Radanovich
Ranking Member
Subcommittee on Commerce, Trade,
and Consumer Protection



Greg Walden
Ranking Member
Subcommittee on Oversight and
Investigations

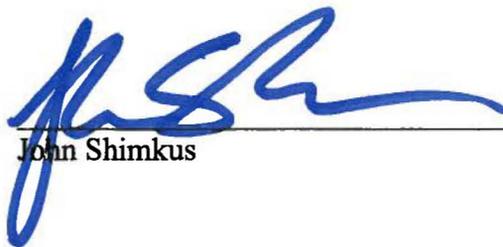


Roy Blunt

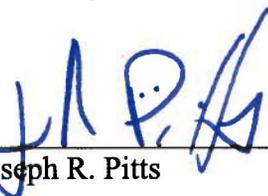


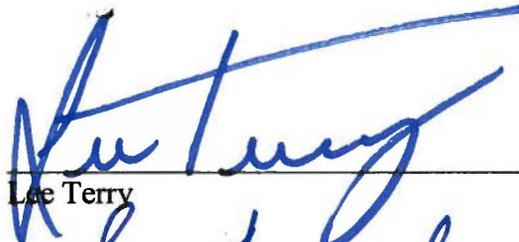
Ralph M. Hall

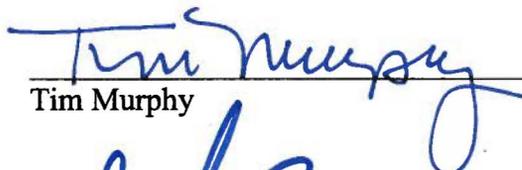

Ed Whitfield


John Shimkus

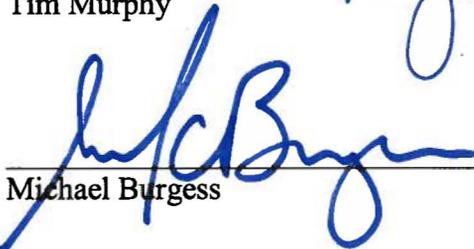

Steve Buyer


Joseph R. Pitts


Lee Terry


Tim Murphy


Sue Wilkins Myrick


Michael Burgess


Marsha Blackburn


Phil Gingrey


Steve Scalise

Dissenting Views by Representative Marsha Blackburn

I agree with the majority that drastic climate change would greatly impact developing countries, but imposing new regulations and policies will not help but only make their situation worse. These new mandates will have little impact on climate change and will only place greater costs on the developing world, hindering economic growth and leaving them in poverty and misery.

The United States, instead, should focus investment on practical, tangible solutions to climate change challenges -- diseases, malnutrition, and access to safe and clean water. Solutions that cost a fraction of proposed economy-wide climate change policy and enable developing countries to effectively adapt to any climate change, whether it is global cooling or warming. These solutions would decrease the risk of political stabilization in the developing world and reduce risk to U.S. national security interests abroad.

I also agree with the majority that electricity demand is rising faster than new supply coming online. But the majority refuses to consider more use of nuclear power due to problems in cost and disposal of nuclear waste. The problems are not technical or economic, but political.

Many nations around the world see the benefits of nuclear power and are building new plants and planning for more. But the United States could implement a recycling policy and an efficient permitting process that would solve the problems the majority often cites.

Instead, the majority would rather mandate renewable energy portfolios and spend massive amounts of taxpayer dollars to subsidize renewable energy projects. These projects cause environmental damage, cannot meet future demand, and are not viable in many geographic regions of the United States. But nuclear power has the capability to provide all future electricity needs, reduce emissions, and provide the flexibility to replace current production facilities scheduled to retire in the coming decades.