CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce recognizes the efforts of the sponsors of H.R. 2454, the "American Clean Energy and Security Act of 2009," to craft legislation to reduce greenhouse gas emissions and incentivize new energy production and transmission. However, for the reasons set forth below, the Chamber opposes H.R. 2454 in its current form.

Despite opposition to this specific bill as currently crafted, the Chamber strongly supports comprehensive legislation to reduce emissions of greenhouse gases while providing for a strong American economy. The Chamber also supports negotiation of a global accord to reduce emissions of greenhouse gases as the best approach to tackling this global issue. The Chamber applauds the Obama administration for working toward a new international agreement.

The Chamber believes that domestic legislation should:

- Balance environmental objectives with the need for economic growth and job creation;
- Promote technology development and deployment;
- Reduce barriers to the development of climate-friendly energy sources;
- Promote energy efficiency; and
- Implement appropriate steps to address the international nature of global emissions.

H.R. 2454 would not achieve these goals. Specifically, the Chamber believes H.R. 2454 must be modified to take into account several important considerations:

- Carbon-based fuels are and will remain for decades to come the backbone of the U.S. energy system. H.R. 2454 must do a better job of ensuring that cost effective and reliable renewable and alternative energy sources are developed and deployed to smooth a transition to a low-carbon energy future. The Chamber recommends adding a provision that would streamline the siting and permitting process that would help eliminate the "green tape" that now delays energy projects, even renewable ones.

- International cooperation remains a major stumbling block to addressing global climate change. H.R. 2454 must be conditional on an international treaty that sets binding commitments for all major emitters - from both the developed and developing world - while ensuring that every nation retains the flexibility to attain those commitments however it chooses. Unconditional domestic legislation without an international agreement will remove any leverage U.S. negotiators have in international climate change negotiations, and would put domestic industries at a competitive disadvantage.

- It is expected that the Ways and Means Committee manager's amendment to H.R. 2454 will include tariffs on carbon-intensive imports. Such provisions should be rejected because they would likely be deemed to violate U.S. obligations as a member of the World Trade Organization and could spark a trade war. While the trigger dates for border measures in the bill are unclear, there is virtual certainty that after 2020 such border measures would be put in place. Absent a global agreement on greenhouse gas emissions, such a program would invite retaliation against U.S. exporters and make U.S. companies that rely on imports less competitive without any indication that emissions would be reduced. These provisions also violate the April 2, 2009 commitment of the United States and other G20 countries to "refrain from raising new barriers to investment or to trade in goods and services."

- Dangerous provisions in H.R. 2454 that could lead to widespread lawsuit abuse should be removed or mitigated. Title II of the bill contains a "state attorney general" provision that applies to a variety of manufacturers, including companies that make home appliances, lighting products, plumbing fixtures, and heating and air conditioning products. This provision could result in (1) frivolous and unnecessary litigation, imposing substantial costs on both businesses and consumers; and (2) the distortion and undermining of federal environmental policy initiatives, as non-federal actors - whose incentives and limitations vary from those of their federal counterparts - take on a substantial role in enforcing federal laws. Moreover, without adequate safeguards, this provision will promote the use of problematic contingency fee arrangements between state attorneys' generals and private plaintiffs' lawyers. In addition, the "Findings and Purposes" section of H.R. 2454 makes such broad, aggressive statements regarding injuries from greenhouse gas emissions that codification of these findings could be used to generate mass tort litigation.

- This legislation must equitably allocate credits to the refinery sector. Oil refineries bear a compliance obligation under H.R. 2454 for more than 40 percent of covered CO_2 emissions - refiners' own emissions plus the emissions generated when the fuels they refined are eventually burned by consumers - yet would receive only 2.25 percent of the allocations. Because oil refiners will be forced to pay for credits, the price of gas will rise significantly for consumers. In fact, the Congressional Budget Office estimates that cost impacts could be as much as $.77 per gallon for gasoline, $.83 per gallon for jet fuel, and $.88 per gallon for diesel fuel, all ultimately borne by the consumer.

- The renewable electricity standard (RES), along with many of the other mandates in the bill, will add costs and distort the workings of the carbon market the bill would establish. If the objective is to allow the market to work to find the lowest cost solutions, picking technology winners and losers like this bill does is not the way to go about it. Forcing adoption of one set of more expensive technologies to meet one mandate will almost certainly lead to greater compliance costs to meet the cap. There is also no recognition of the significant variance of the effects and costs of the RES on different regions.

- The bill should include nuclear energy as an "other qualifying energy resource" in the RES. There is no good reason for keeping nuclear energy, an emissions-free energy source, out of the RES. Last month, the Massachusetts Institute of Technology released a report titled *An Update of the MIT 2003 Future of Nuclear Power*, which concluded that policies that exclude nuclear and clean coal from an RES "confus[e] the objective of reducing carbon emissions with encouraging renewable energy in electricity generation." At this critical juncture in the debate over addressing climate change, common sense must prevail over baseless opposition from environmental groups on the issue of new nuclear power.

- H.R. 2454 must be revised to fully and permanently protect America's 27 million small businesses from being forced to comply with costly, burdensome New Source Performance Standards (NSPS) for greenhouse gases. Although the bill preempts the rest of the Clean Air Act's regulatory cascade, it leaves a glaring hole through which activist groups could potentially force EPA to impose greenhouse gas NSPS on CO_2 emitters below the 10,000-ton threshold. NSPS are triggered by a finding of endangerment - a finding EPA appears poised to make - and some activist groups have already promised to sue EPA to force regulation of small emitters.

- The legislation must fully and permanently preempt state and regional greenhouse gas programs. Delaying these programs for five years accomplishes very little. Compliance with the bill's federal cap and trade program would be extraordinarily complicated for businesses, which would be forced to comply with hundreds of new regulations and mandates. To tack on state or regional programs is to make an already-cumbersome cost of compliance tantamount to an incentive to relocate a business to another state, or, worse yet, another country.

- This bill will clearly have a cost, and while free allocations may keep some prices down, others will skyrocket. A May 2009 study released by the National Black Chamber of Commerce estimates annual drops in gross domestic product (GDP) of $170 billion in 2015, $350 billion in 2030, and $730 billion in 2050. More troubling is the effect on jobs, as the study concludes that 2.3 million to 3 million net jobs will be lost - a figure that accounts for all the "green" jobs created. Provisions should therefore be included in H.R. 2454 to safeguard against devastating economic losses, such as a safety valve on the price of carbon credits or lowering the overall emissions caps.

- The derivatives provisions in H.R. 2454, which as written would hinder the ability of companies to use over-the-counter (OTC) derivatives to manage risks associated with day-to-day operations, should be removed. The scope of this provision goes beyond the establishment of an oversight structure for carbon derivatives, and extends to the broader OTC and exchange-traded markets. The importance of these markets and the potential impact on the economy command consideration within the context of financial regulatory reform. In that context, the Chamber would support an approach that strikes the right balance by promoting clearing for standardized contracts where appropriate, and enhancing the transparency of customized, OTC contracts through a reporting regime that gives regulators a market-wide view. This change would improve regulatory oversight of the OTC markets, while upholding the ability of companies to customize derivatives to effectively and efficiently manage risk.

- Remove Section 356 of Subtitle E which would impose a user fee on transactions cleared through derivatives clearing organizations (DCO). This transaction tax would adversely impact liquidity on U.S. futures exchanges, because it would fall disproportionately upon the market makers who provide liquidity to the exchanges through the frequency and speed of their transactions. In addition, it would have negative competitive implications for the U.S. by driving trades to foreign or untaxed markets. Lastly, at a time when policymakers are trying to enhance transparency and encourage central clearing, this provision would create a strong disincentive to clearing through a DCO.

- Remove provisions in H.R. 2454 applying the Davis-Bacon Act, a law that in no way furthers the United States' ability to reduce climate emissions, and would result in diminished competition, shutting out many qualified minority, small, and non-union businesses from the entire market. Applying the Davis-Bacon Act to programs in H.R. 2454 would increase costs to taxpayers, who would pay more to get less. The Davis-Bacon Act has been shown to increase public construction costs by anywhere from five to 38 percent above projected costs for the same project in the private sector.

As noted, the U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, opposes H.R. 2454 in its current form. The Chamber remains committed to working with Congress to achieve meaningful climate change legislation that provides a stable and growing economy, and promotes the development of needed new sources of energy and technologies across a range of industries.

Sincerely,

R. Bruce Josten