



April 24, 2009

The Honorable Henry Waxman  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Waxman:

Friends of the Earth welcomes the “American Clean Energy and Security Act of 2009” as a significant step toward creating a clean energy economy and the millions of green jobs that will come with it, and toward seriously addressing the climate crisis.

We appreciate the scope and depth of this discussion draft, and are particularly pleased by the inclusion of the renewable energy and energy efficiency sections of the bill. We strongly support adopting an array of complementary policies to transition to clean energy and reduce pollution rather than relying on any single policy approach. We also appreciate your attention to the need for domestic preparation for climate change impacts and in making provisions for critical international climate finance for adaptation, technology cooperation, and forest protection. As a fundamental component of both the UN Framework Convention on Climate Change (UNFCCC) and the Bali Action Plan, such international financing is essential to securing a global climate deal and ensuring a world free of climate chaos.

However, despite our appreciation for the positive aspects, we have serious concerns and misgivings with regard to several parts of the discussion draft:

- The short-term domestic global warming pollution reduction targets are not aggressive enough. While these targets are an improvement over President Obama’s stated goal of returning to 1990 pollution levels by 2020, they are not sufficient to avoid risking severe climate destabilization.
- The discussion draft continues to rely on regulatory structures that failed to protect the economy from the current financial crisis. Although its carbon market regulations are stronger than those in previously introduced bills, we remain skeptical that the regulations in this draft will adequately contain a carbon market that could grow to more than \$2 trillion by 2020.
- The discussion draft removes greenhouse gas emissions from important provisions of the Clean Air Act. While the cap is an important mechanism for reducing greenhouse gas emissions we should not be eliminating existing protections that safeguard against increases in emissions from new and existing facilities. Just like clean energy policy is an important compliment to comprehensive global warming legislation, Clean Air Act regulations are an essential safeguard needed to make sure that we achieve the reductions required by the cap.

- The inclusion of numerous of offsets undermines the pollution reduction targets and the stability of the proposed fragile new carbon market , and will retard our country's rapid and transformative transition to a low-carbon economy.
- The discussion draft contains giveaways and regulatory loopholes to the coal industry that could usher in the new coal plants using risky carbon capture and sequestration technologies.

In addition to these points, Friends of the Earth is disappointed that the discussion draft withholds for future consideration the architecture of the allowance distribution mechanisms. We believe 100 percent of pollution permits should be sold at auction.

As discussion of this draft proceeds we encourage you to strengthen its pollution reduction targets, to eliminate offsets, to dramatically alter the carbon trading system established by the bill to make it much simpler and less prone to gaming, and to add a managed-price approach toward carbon to the bill. We also urge you to clarify and increase accountability in the transportation infrastructure section.

Moreover, we encourage strengthening of international climate finance provisions to ensure multilateral funding is under UNFCCC authority; that technology cooperation reaches developing countries that are not already major emitters; and that international adaptation receives at least seven percent of the total allowance value, technology cooperation at least five percent, and forest protection at least five percent of the total allowance value.

We provide more detailed recommendations in the following attachment, and we thank you for the opportunity to provide input. If you have any questions, please do not hesitate to contact Erich Pica of Friends of the Earth at [epica@foe.org](mailto:epica@foe.org).

Sincerely,



Brent Blackwelder  
President

# **Friends of the Earth comments on American Clean Energy and Security Act of 2009 discussion draft**

## **Title I - Clean Energy**

### *Subtitle A Renewable Electricity Standard*

Friends of the Earth thanks the committee for its inclusion of the Renewable Electricity Standards in the discussion draft. While we support the goal of generating 25 percent of our electricity from renewable sources by 2025, we feel that the goal can and should be more aggressive.

- *Forests should not be a renewable energy source.* Friends of the Earth commends Representative Waxman for adopting a relatively strong definition of biomass in the draft. Although we appreciate the fact that the biomass definition includes some forest protections, Friends of the Earth recommends that forests not be considered a 'renewable energy source.'
- *Municipal waste is not renewable.* Friends of the Earth thanks the committee for not including municipal solid as a renewable energy source.
- *No energy efficiency carve-out.* Friends of the Earth believes that if there are additional energy efficiency gains to be made beyond those in the energy efficiency standards in the Title II of the discussion draft, then the energy efficiency standards should be strengthened.

### *Subtitle B Carbon Capture and Sequestration*

Friends of the Earth believes that no new coal plants should be built, and current plants should be phased out.

- *Do not force consumers to pay for CCS.* Section 114 authorizes and funds a program to promote research, development, and deployment of CCS technologies with between \$1 billion and \$1.1 billion annually. This money comes from a wires charge where distribution utilities are charged a fee which would then be passed down to consumers. Friends of the Earth does not believe that rate payers should be forced to pay for the development of CCS technology that is decades away and will not be a solution for global warming.
- *Eliminate federal dollars for CCS.* Over the past two-decades, the federal government has spent billions of dollars in a failed attempt to clean up coal emissions. Sec. 115 is yet another attempt to subsidize this highly polluting industry. Regardless of the disposition of coal emission, coal mining remains a highly destructive activity.
- *Eliminate the regulatory and financial streamlining.* As currently written, Sec. 112 of the discussion draft sets in motion a series of processes with the end goal of providing financial and legal assurances for the development of geological storage sites for carbon dioxide. The discussion draft sets out to identify "any barrier or potential barrier" that

would impact the development of carbon sequestration. This section should be removed.

### *Subtitle C Clean Transportation*

#### *Low Carbon Fuels Standard*

The Low Carbon Fuels Standard, Section 121, is an important compliment to the cap but it could be greatly improved with a few key changes and clarifications:

- *Create a pathway towards complying with the LCFS.* The LCFS in the bill reduces carbon intensity for fuels from a 2005 baseline by five percent in 2023 and 10 percent in 2030. For the years 2014-2022 the LCFS serves as an anti-backsliding provision for all fuels except for biofuels, keeping carbon intensity at no higher than the 2005 baseline. As drafted the bill can be interpreted as allowing biofuels that have a lower carbon intensity than the 2005 baseline to opt into the LCFS starting in 2014 while keeping biofuels that have a higher greenhouse gas intensity from out of the cap until 2023, allowing the carbon intensity gains achieved from these fuels to be offset with additional high carbon fuels. It needs to be clarified that this is not the case. Otherwise this would create a structure where in 2023 there is a significant shock to the system as reductions are mandated for the first time and no steps have been taken to get these gains. This could create significant pressure for the targets under the LCFS to be pushed back or eliminated. Furthermore, there is a chance that there will not be a large enough volume of biofuels to put us on the path to achieving the 2023 reductions. Congress should mandate EPA to study the reductions in the interim years to determine if producers are on a path towards compliance in 2023, and if EPA determines that we are not on a path, they should lay out a compliance pathway that ensures that reductions are achieved.
- *Implement the LCFS sooner.* The LCFS outline reduces carbon intensity for fuels from a 2005 baseline by five percent by 2023 and 10 percent by 2030. For the years 2014-2022 the LCFS serves as an anti-backsliding provision for all fuels except for biofuels, keeping carbon intensity at no higher than the 2005 baseline. This means that the LCFS will do nothing to stop the spread of high carbon fuels (such as liquid coal, tar sands, and oil shale) prior to 2014. If these fuels are brought online before the standard comes into effect it will be impossible to meet the requirements the standard mandates for the future.
- *Include fuels for aviation and marine vessels in the LCFS baseline and the reduction goals.* Friends of the Earth commends Chairman Waxman for including aviation fuels in the LCFS, but recommends that aviation, as well as marine vessels, should be placed in the same cap with the whole transportation sector. If reductions cannot be made by these parts of the transportation sector must make larger emissions reductions to compensate.
- *Eliminate grandfathering for corn ethanol.* Friends of the Earth recommends that all fuels, including those from the RFS, be subject to the LCFS from the beginning, rather than allowing for carbon-intensive corn ethanol to be dropped into the cap in 2023. The sudden end in 2023 to the corn ethanol grandfathering could be problematic for a few reasons. First, it allows corn ethanol to grow until 2023, despite the fact that corn ethanol poses a significant threat to the climate and environment as a whole. Second, although the grandfathering provision is supposed to stop in 2023, it is unlikely that this sharp cut off would be technically or economically possible and could raise significant push-back

from the corn ethanol industry.

- *Ensure life-cycle analysis for all biofuels, including corn ethanol.* If corn is grandfathered, the EPA must ensure that a proper life cycle analysis be done. LCFS allows biofuels produced under the RFS to obtain credits, or renewable identification numbers, generated under the RFS for the LCFS. Because the LCFS does not require a life cycle analysis for 15 billion gallons of grandfathered corn ethanol it will be essential that EPA does a proper life cycle analysis, including indirect land use change, when determining the emissions factors for these grandfathered corn, and does not give out credits where they are not warranted.
- *Incorporate broader sustainability metrics.* Friends of the Earth recommends that broader sustainability metrics be incorporated into the policy to assure that unintended ecological harms do not occur. Aside from the biomass sourcing provisions, there are very little environmental protections in the RFS, such as biodiversity loss issues, air pollution and water pollution (and use) in the LCFS. Friends of the Earth appreciates the fact that the draft provides for a study to be done two years after the regulations are promulgated to examine at the environmental and resources conservation impacts of the LCFS, including air and water quality.
- *Prevent double-counting.* The LCFS contemplates allowing credits for electrification to manufacturers as well as electric utilities. This is an interesting approach because it is the automobile manufacturers that will be able to put electric vehicles into the marketplace. It is important, however, that not more than one entity is given credit for the same reduction in carbon intensity. The LCFS structure may also allow automobile manufacturers to count both LCFS and Corporate Average Fuel Economy (CAFE) credits. This will double count the reductions that are achieved from electrification and could serve as a windfall profit to manufacturers while hindering real gains.
- *Ensure that synthetic fuels receive unique emissions factors.* The LCFS is silent about how to conduct a life cycle analysis for high carbon fuels. To ensure the integrity of the LCFS it is essential that heavy crude, as well as high carbon synthetic fuels such as tars sands, liquid coal and oil shale have different emissions factors than conventional gasoline. The LCFS does not specify that international emissions are included in the life cycle analysis. This is an important clarification that is needed to make sure that we do not go in the wrong direction on dirty fuels.

## **Title II – Energy Efficiency**

Friends of the Earth supports and thanks the committee for including energy efficiency standards in the discussion draft. We suggest the following changes.

### *Mobile Sources*

Friends of the Earth is pleased to see the committee addressing the serious climate impact of vessels by including them in the greenhouse gas emission standards for mobile sources. However, we do have some suggestions for improvement to ensure that there is adequate regulation of such a significant source of greenhouse gas emissions:

- *Tighten up reporting requirements.* This section should include a timeline for the revision of standards and for the reporting requirement to Congress. Current language provides that standards must only be revised and a report must only be submitted, “from time to time.” The language should be revised to incorporate a requirement to revise the standards no later than seven years after passage and no more than every seven years thereafter. For the report, the language should be revised to incorporate a requirement to issue a report every two to five years.
- *Adopt clear definition of “marine vessels.”* This definition should include all types of vessels from commercial to recreational.
- *BACT should be adopted.* This section should be revised to incorporate the use of Best Available Control Technology, not just technology available at the time the standards take effect. Otherwise, the current draft creates a large loophole allowing the use of lesser technology with consideration given only to availability, cost, energy, and safety.

#### *Planning Requirements Transportation Infrastructure/ Efficiency*

Although Friends of the Earth welcomes the inclusion of transportation in this draft, the way that it is currently written is inadequate and intensive reform is necessary.

- *Provide much more clarity on this section.* The GHG reduction goals of this section should be clearly defined, as should details about the planning process. For example, although the section requires that states set goals for GHG reductions, there is no standard or guideline for what the reduction goals should be or that reductions are even mandatory.
- *Ensure funding.* The bill should ultimately provide money for data collection and modeling based on formula incentives, insert accountability mechanisms where performance based incentives are allotted by EPA, and also clarify that a specific percentage of money is actually associated with the program as a whole.
- *Ensure accountability.* For example, the draft instructs Metropolitan Planning Areas and regions to develop plans to achieve state goals, but there is little accountability if Metropolitan Planning Organizations (MPOs) do not submit plans, except if the EPA and DOT agree that enforcement is necessary. Even then, the only recourse is that MPOs can lose some flexibility with highway transportation funding. There should be greater and more solid penalties for failing to reduce emissions. Finally, if a GHG reduction plan is prepared, it is submitted along side broader transportation plans rather than integrated into them. The GHG reduction plan as well as the transportation should be integrated from the start.

Overall, Friends of the Earth recommends amending this section by striking it and inserting H.R. 1329, The Clean Low-Emissions Affordable New Transportation Equity Act, also known as CLEAN TEA.

### **Title III - Reducing Global Warming Pollution**

#### *Global Warming Pollution Reduction Goals and Targets*

Human-generated greenhouse gases have already thrown our climate out of balance, and due to

growing fossil fuel use and other human activity, atmospheric concentrations of greenhouse gases continue to increase rapidly, posing the threat of severe climate destabilization that is catastrophic for human civilization.

In order to avoid the most dangerous climate impacts, the vast majority of global greenhouse gas emissions must cease immediately so atmospheric carbon dioxide concentrations can return to a safe level of 350 parts per million or below. Such a dramatic, immediate halt to emissions may not be practicable. A still ambitious, yet perhaps more achievable, goal would be to aim to limit total future CO<sub>2</sub> concentrations to 450 ppm. Scientists have estimated that this goal would offer humans perhaps a 50 percent chance of limiting warming to 2°C -- a level at which many harmful impacts would be felt, but at which some of the most catastrophic potential impacts could be avoided.

Unfortunately, it appears likely that unless all other industrialized countries undertake far more ambitious action than the United States, the greenhouse gas emission reduction targets envisioned by the “American Clean Energy and Security Act” discussion draft would be too weak to keep atmospheric CO<sub>2</sub> concentrations below 450 ppm, and could eliminate for hundreds of years or more any hope of returning 350 ppm. Concentrations above 450 ppm would pose large, unacceptable risks for our planet and its people.

Friends of the Earth strongly believes that a global solution to the climate crisis -- which is, after all, a planet-wide problem that cannot be solved without international cooperation -- will only be achieved if the United States lives up to its responsibility as the world’s largest historical global warming polluter and leads the way in reducing emissions. The United States should commit to emissions reductions that are at least as strong as the reductions other industrialized nations are expected to embrace. Substantial reductions must begin immediately.

#### *Economy-wide Reductions Goals*

Friends of the Earth recognizes that this bill goes farther in emissions reductions goals than previous bills, but the levels of emissions reductions in the bill are not sufficient to avoid a climate crisis.

- *Strengthen the emissions reduction targets.* The United States must commit to reducing its global warming pollution to at least 40 percent below 1990 levels by the year 2020 in order to make an international solution to the climate crisis possible. The global warming pollution reduction target in the “American Clean Energy and Security Act,” which currently aims to reduce U.S. emissions to about seven percent below 1990 levels by 2020, must be substantially strengthened.

#### *Scientific Review and Presidential Response to Recommendations*

Friends of the Earth appreciates the inclusion of the scientific review provisions in the discussion draft. It is important that Congress and the administration have the best available data to determine and fine tune our efforts to reduce global warming emissions. The provisions in the bill could go farther.

- *Maintain the authority of EPA to strengthen emission reductions targets.* It is imperative that Congress set strong reduction goals for the EPA to implement, while also allowing

the EPA to strengthen the goals if necessary. Friends of the Earth recommends that Congress allow the Environmental Protection Agency to maintain its authority under the Clean Air Act to strengthen the emission targets according to the best available data.

#### *Supplemental Pollution Reductions*

Friends of the Earth appreciates the recognition that protecting forests internationally is critical to addressing climate change, but we are concerned about using forest carbon reductions in other countries to achieve emissions reductions goals.

- *Delink forest protection in developing countries with additional emissions reductions in the United States.* U.S. emissions reductions must come from the United States to ensure a rapid transition to a low carbon economy. While funding international forest protection is critical, using it to equate to U.S. emissions reductions is not acceptable, particularly in light of the problems of measuring and verifying forest emissions.

#### *Program Rules*

##### *Cost Containment (Banking, Borrowing and Strategic Reserve)*

Friends of the Earth recognizes the importance of ensuring that global warming legislation creates a strong and stable long-term price trajectory. Volatile price swings pose a serious threat to the economic viability of the capital investments needed to solve the climate crisis. Friends of the Earth believes that price volatility is both a function of unknown aspects of the price discovery process in a new carbon market, but could also be a result of price manipulation.

We are concerned, however, that the banking, borrowing and strategic reserve programs are overly complex instruments to tap down on volatility. We are concerned that unlimited banking with no time expiration on the banked allowances provides opportunity for hoarding.

- *Limit banked allowances.* While the discussion draft allows EPA to set an expiration on banked allowances, we would recommend placing the limit in legislation. We also recommend setting a limit on the amount of banked allowances that can be used for annual compliance. In addition, we are concerned that firms can meet up to 15 percent of their compliance obligation by borrowing from future years. While borrowing is limited to 5 years in the future, there are no provisions preventing the rolling borrowing of allowances.

Finally, we believe that the strategic reserve is flawed. First, the potential release of allowances from the strategic reserve time shifts allowances from the future to the present, hampering the ability of achieving the short-term interim targets. Second, we are concerned that the refilling of the strategic reserve with international offsets allows yet more pollution loopholes into the system. Our comments on the offsets section (Part D) apply to the offsets bought for the reserve program. In addition to this overarching critique, we are alarmed that the reserve essentially converts the offsets from international offset credits into allowances to be used for compliance. While there is a 20 percent discount in the conversion, we strongly feel that it is highly unwise to use unproven international offsets credits for compliance.

- *Use managed price system as an alternative to banking, borrowing, and the strategic reserve.* Friends of the Earth recommends that the Committee review and adopt the managed price system as presented by the Congressional Budget Office. A managed

price approach is a hybrid strategy that combines the environmental certainty of a cap with the price certainty of a carbon tax. Price certainty creates substantial cost savings and provides business with predictable price signals for making early investments in breakthrough technology and infrastructure, benefits usually ascribed to a carbon tax. But it would also include an emissions cap, benefits usually ascribed to a carbon trading system. Also, publishing a stable and predictable price for carbon would eliminate the basic incentive for speculation and prevent carbon bubbles. This in turn would largely prevent the development of subprime assets, the creation of complex and opaque products, and excessive risk-taking. According to the Congressional Budget Office, “Under this approach, legislators would set a cap on cumulative emissions over a period of several decades but would not set annual caps. Regulators, in turn, would be charged with setting allowance prices for each year of the policy—with the objective of choosing prices that would minimize the cost of achieving the multidecade cumulative cap.”<sup>1</sup>

### *Offsets*

Of all the aspects of the draft, Friends of the Earth believes that the offsets provisions of Title III are among the most worrying and that they exacerbate the challenges posed by the bill’s already-too-weak emissions reduction targets.

Friends of the Earth strongly opposes the inclusion of offsets in a carbon trading program. One major concern relates to additionality, a universal problem which undermines the integrity of offsets as a viable substitution for actual emissions reductions. The ACESA seems to fully recognize the manifold problems with offsets, as the bill goes to some effort to minimize what will be an unavoidable, and likely significant, level of fraud, non-performing credits, and questionable methodologies. However, far from providing comfort, the fact that the discussion draft recognizes that offsets are extremely problematic, yet allows for their creation, creates significant concern.

### *Level of offsets*

In particular, we are dismayed to find that the draft allows up to two billion tons of offsets to enter the system, a proportion which would represent more than 25 percent of U.S. total emissions (in 2005). The level of offsets would exceed the emissions reductions which are supposed to occur in the first twelve years of the program, meaning that if all the offsets were used, regulated entities could keep polluting at the same or higher rates until 2026. This extremely high level of offsets allows regulated entities to avoid making emissions reductions, instead of quickly making investments in low-carbon technologies.

### *Offsets Advisory Integrity Board*

The draft attempts to address problems of additionality and offset quality by creating an Offsets Advisory Integrity Board, but the board, as well as the methodology for verifying and issuing credits, is largely modeled after the Clean Development Mechanism (CDM) process, which is proven to have serious flaws. In addition, the volume of offsets that could come before the

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<sup>1</sup> Testimony of Douglas Elmendorf, Congressional Budget Office, before the House Ways and Means Committee, U.S. House of Representatives, March 26, 2009 at [http://www.cbo.gov/ftpdocs/100xx/doc10020/03-26-Cap-Trade\\_Testimony.pdf](http://www.cbo.gov/ftpdocs/100xx/doc10020/03-26-Cap-Trade_Testimony.pdf)

Board would probably result in as many, if not more, problems experienced by the CDM.

#### *Offset reserve*

The draft also provides for the creation of an offset reserve and/or insurance as another way to deal with "carbon default." However, Friends of the Earth believes the reserve is inadequate to solve these problems. In fact, the rate of environmental failure could be so high with offset projects that it may simply spur the demand for more offsets to take their place. This could create a bubble in the offset market, sparking excessive risk taking and encouraging even more "subprime carbon" to enter the system. Also, as more capital flows to offset projects, it could deter financing for needed reductions at home.

#### *International offsets*

The draft provides for a new sector-based credit program that would allow countries like China to generate sector-based offsets to sell them to the United States. But sector-based credits would likely face a similar suite of problems that are common among all offsets. Also, even if eligible countries were to agree to such a program, they may not want to sell away their early emissions reductions, since it will put them on the road to binding targets, while simultaneously making it harder to achieve those targets when the time comes. The bill also allows for credits issued by international bodies to enter the system. This provision opens the door to CDM credits, which have been widely proven to be ineffective.

#### *International Offsets from Reduced Deforestation*

While mitigation in the forest sector is crucial to the program's overall goals of stabilizing the climate, forest offsets are highly unlikely to result in permanent emissions reductions. In addition to our broad concern that offsets delay transformational investment in clean energy domestically, forest carbon stocks are notoriously difficult to reliably measure and few, if any, tropical forest countries currently have the capacity to enact adequate measurement systems. Moreover, forest carbon sequestration or avoidance is inherently impermanent and highly vulnerable not only to natural disturbances, like forest fires, but to political and economic volatility, like shifts in domestic subsidy priorities or shifts in international commodity markets, as well.

Friends of the Earth recommends the following:

- *Prohibit the use of offsets.* The use of offsets, particularly those that are sourced internationally from countries with relatively weak regulatory regimes, should not be used to achieve domestic emissions reductions targets. Project-based, sectoral, and forest offsets all have problems as raised above and detract from a transition to a low-carbon economy in the United States. Friends of the Earth supports a prohibition on the use of international or domestic offsets.

#### *Supplemental Emissions Reductions from Reduced Deforestation*

While we appreciate and support many of the provisions aimed at reducing deforestation, efforts to reduce emissions from deforestation and degradation will only be successful if we simultaneously adopt coherent policies and programs to manage and reduce the demand-side drivers of forest loss/ deforestation. Efforts to reduce the demand for and trade in products derived from converted or degraded natural forests, and other natural ecosystems, such as

peatlands and wetlands, are essential to achieve permanent reductions in deforestation and degradation and to avoid international leakage. The US imports over \$19 billion in palm, soybean, beef and wood products directly from the world's 20 top tropical deforestation-emission countries (without including the billions in wood products of tropical origin that are processed through China). These international commodity trade streams are worth hundreds of billions of dollars annually are both an immediate and proximate driver of the tropical deforestation and forest degradation.

- *Support demand-side management.* Reducing and reshaping these drivers to promote protection of tropical forests carbon will require more than money. It will be necessary to reform agricultural and forest product trade policies, as well as providing resources for technical support and land use planning more consistent with climate protection goals in tropical countries, will be necessary. The newly amended Lacey Act, which prohibits trade in illegally sourced wood products, is one example of such policy consistency for the timber sector.

We strongly support the provision of resources to enable forest governance reforms in developing countries. Too often, the focus on generating funding has distracted attention from the fundamental issues at the heart of the problem of deforestation and forest degradation - control of land and resources and forest governance. Over the past several decades, there have been numerous initiatives that aimed to stop deforestation, many of which were well-financed. If they failed, it wasn't for lack of money, but rather lack of political will and persistent forest governance challenges.

- *Include forest tenure reforms in supported activities.* While we appreciate the provisions supporting forest governance reforms, the bill should explicitly support the implementation of forest tenure reforms including: legal reforms to recognize the tenure rights of indigenous peoples and forest communities; mapping and delimitation of lands; formal recognition of local peoples' rights to their lands, territories and resources. Indigenous peoples and forest communities are critical actors in maintaining forest cover and carbon, and they will provide increased climate benefits to the world when their tenure rights to land and forest resources are secure. Instituto Socioambiental (ISA) has shown that Indigenous territories in the Brazilian Amazon are virtually free from deforestation. In these territories, deforestation is only 1%, compared to an average of 2% in all protected areas, 8% in State level sustainable use protected areas, and 19% outside the protected areas.
- *Baselines.* We strongly support the bill's requirement that a country receiving funds under this act establish a trajectory to achieve zero gross deforestation. However, as currently written, the provisions provide unacceptable loopholes and must be strengthened. The bill currently states that national baselines be designed to account for all emissions from deforestation in the country. However, (as stated in greater detail below) the bill does not employ a consistent definition of deforestation, and in many countries, significant emissions are generated from forest degradation. This section must be strengthened to ensure national baselines reflect all emissions generating activities, including degradation, and are based on consistent definitions.

- *Ensure rights are protected.* While we appreciate the inclusion of provisions related to the rights and interests of indigenous peoples and local communities, the current language in the bill does not provide adequate protections for indigenous peoples and local communities and must be strengthened in all forest-related provisions of the Act. Indigenous peoples and forest communities play a vital role in maintaining forest and have been shown to provide greater protection, and therefore increased climate benefit, when their rights to land and resources are secure. Moreover, because indigenous peoples and local communities occupy the majority of the world's remaining forests, ensuring their rights will be necessary to ensure the sustainability and environmental effectiveness of the program. Similarly, past conservation and reform efforts demonstrate that indigenous peoples and local communities are at the greatest risk from new initiatives to address deforestation. In particular, without adequate social safeguards, they are at risk of expulsion from their lands and impoverishment if their traditional livelihoods are not recognized and upheld.

#### *Carbon Market Assurance*

Friends of the Earth believes that the carbon regulation provisions in this draft represent a significant improvement over previous climate bills in the 110th Congress. Although Friends of the Earth strongly supports robust derivatives and commodities regulations, we believe that a more prudent approach is to also fundamentally design carbon markets to be less prone to excessive speculation and manipulation in the first place.

Friends of the Earth recommends that the legislation:

- *Minimize gaming through carbon market design.* Carbon markets can be designed to minimize opportunities for fraud, gaming, and manipulation. This could be achieved by prohibiting offsets, particularly the ones at highest risk of not delivering GHG reductions (such as international offsets), as well as borrowing, and trigger prices/ strategic reserve and limit banking.
- *Adopt a managed price approach.* To prevent excessive manipulation, a managed price approach should be adopted. The benefits of such an approach have been elucidated in recent in Congressional Budget Office testimony offered to the Ways and Means Committee on March 26, 2009, and are encompassed in the "Safe Markets Act of 2009," introduced by Congressman Doggett and the "Clean Environment and Stable Energy Market Act of 2009," introduced by Representative McDermott. Aspects of these bills could be added to the American Clean Energy and Security Act of 2009. A managed price approach would eliminate the basic incentive for speculation, while maintaining a carbon cap. This would not only provide business with predictable price signals for making early investments in breakthrough technology and infrastructure, but it would also minimize potential market and regulatory failures.

#### *Disposition of Allowances*

Friends of the Earth is disappointed that the discussion draft fails to describe the method for auction and allocation of allowances. One hundred percent of allowances should be auctioned from day one. Giving away permits for free, also known as "grandfathering," is a perverse

incentive that actually awards polluters for their previous harmful activities, and in fact can create windfall profits. According to Robert N. Stavins of The Brookings Institute:

In a competitive market the benefits of free allowances generally accrue only to their recipients, increasing their profitability or wealth, and generally do not benefit the consumers, suppliers, or employees of those recipients. Hence, although the cost of allowance requirements can be expected to ripple through the economy, the benefits of free allocations will not.<sup>2</sup>

The Congressional Budget Office also added, “giving away allowances could yield windfall profits for the producers that received them by effectively transferring income from consumers to firms’ owners and shareholders.”<sup>3</sup>

Furthermore, the 100 percent auction of global warming pollution permits does not create political winners and losers. If permits are given away for free, Congress and not the “market” will decide who gets the free permits. This opens the door to intense political lobbying and creates a political slipper slope that plays to the polluting industry strengths.

- *Auction 100 percent of allowances.* We recommend that the committee auction 100 percent of the allowances from day one.

#### *Additional Greenhouse Gas Standards Stationary Source Standards*

A cap is an important mechanism for reducing greenhouse gas emissions but it should not be implemented at the expense of existing protections that safeguard against increases in emissions from new and existing greenhouse gas emitting sources. Strong air regulations are an essential safeguard needed to make sure that we achieve the reductions required by the cap. Unfortunately, the discussion draft eliminates much of the existing regulatory structure that could be used to curb global warming pollution from individual sources and replaces it with provisions that are less protective in the near term. The draft eliminates the ability of EPA to regulate either new or existing stationary sources that are capped under the bill, meaning that new or retrofitted coal fired power plants would not be required to use the best technology. It then replaces these with provisions that could allow coal plants obtaining final permitting between 2009 and 2015 to have no specific technology requirements until 2025. We cannot rely just on the cap to get the reductions we need, and we should not be weakening protections that already exist.

#### *Black carbon*

Friends of the Earth is pleased to see this section in the draft. However, we recommend the following:

- *Explicitly include marine vessels.* While shipping would be covered by Sec. 333 and other sections addressing black carbon, Sec. 333(b)(1)(B) of the study component could

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<sup>2</sup> Stavins, Robert N. “A U.S. Cap-and-Trade System to Address Global Climate Change.” The Brookings Institute, October 2007. [http://www.brookings.edu/~media/Files/rc/papers/2007/10climate\\_stavins/10\\_climate\\_stavins.pdf](http://www.brookings.edu/~media/Files/rc/papers/2007/10climate_stavins/10_climate_stavins.pdf)

<sup>3</sup> *Trade-Offs in Allocating Allowances for CO<sub>2</sub> Reductions*. April 25, 2007. Congress of the United States Congressional Budget Office.

be modified to explicitly add “marine vessels” as they are a known source of black carbon. According to NOAA, shipping is responsible for a global black carbon contribution of 133,000 metric tons per year or about 1.7% of global black carbon.

## **Title IV - Transitioning to a Clean Energy Economy**

### *Consumer Assistance*

Friends of the Earth is disappointed that the consumer assistance program was not described in the discussion draft. Friends of the Earth believes that any government response to climate change must fully protect our nation’s most vulnerable populations both from the devastating impacts of climate change and the impacts of higher prices for energy and basic goods and services. Policies addressing climate change must take special care to hold lower income populations harmless and protect people who may already be on the edge from sinking deeper into poverty. Friends of the Earth is highly skeptical of using load distribution companies (LDC) to provide consumer relief.

Among the options we believe should be considered are:

- Provide a base, flat rebate that does not exceed the costs that consumers in the least-affected geographic regions will bear.
- Use state grant mechanisms to direct incremental income support resources through direct income transfers in highly impacted states.
- Design geographically targeted tax credits for rural consumers.
- Add funding to the state LIHEAP programs to assist highly-impacted households in every state.

### *Exporting Clean Technology*

Friends of the Earth is pleased to see international clean technology cooperation addressed in the draft. As a fundamental component of both the UN Framework Convention on Climate Change and the Bali Action Plan, clean technology financing is essential to secure a global climate deal and to help ensure a world free of climate chaos. Our recommendations to strengthen this subtitle include the following:

- *Prioritize clean energy access.* Clean energy access in developing countries that are not currently major emitters should be a key purpose of Subtitle D. This will enable countries to avoid future emissions, reduce energy poverty, and promote sustainable development. *At least 30% of funds should be designated for countries responsible for less than 0.5 percent of global emissions.*
- *Ensure eligibility for the poorest countries.* Subtitle D should ensure that the poorest countries are eligible to receive clean technology funding. Rather than restricting assistance to countries eligible to receive IBRD financial assistance – which would exclude many developing countries -we recommend that countries eligible to receive official development assistance according to the income guidelines of the Development Assistance Committee of the OECD be eligible to gain access to the International Clean Technology Fund. Furthermore, the existing “co-financing” requirement – which is very burdensome for impoverished countries and often bars them from accessing needed funds - should not be applied to countries responsible for less than 0.5% of global emissions to

avoid adding to the already crippling debt burdens of the world's poorest countries. To allow funds to be equitably distributed to countries, we suggest that the limit of 20% of funds going to a single country be lowered to 10%.

- *Place multilateral funds under UNFCCC authority.* It is crucial that all multilaterally-directed funds, including those distributed via international development banks and institutions, come under the authority of the UNFCCC and be guided by its policies, program priorities and eligibility criteria. This will build trust and credibility with developing countries, ensure coherence and improve effectiveness of funds. We urge that the specific reference to the World Bank be removed.
- *Include a robust definition of clean and efficient technology.* To ensure that funds for the International Clean Technology Fund are used most effectively and appropriately and are not diverted to fossil fuel-based or nuclear technologies, a robust definition of clean technology should be included in the draft legislation. We urge the inclusion of the footnoted definition of “clean and efficient energy technology.”<sup>4</sup> We also urge that the reference to “technologies to capture and sequester carbon dioxide emissions” be removed from Subtitle D.
- *Include funding for capacity building.* Capacity building is a necessary prerequisite for successful deployment of clean technologies in developing countries. Capacity building is needed, for example, to assist countries in developing and implementing methodologies to measure and quantify emissions and verify mitigations. Funding for clean technologies should include the transfer of knowledge as to their use and maintenance and adaptation to local conditions. Funded projects should also be part of an overall national, regional, or local strategy for clean technology deployment.
- *Consider the full technology cycle.* Technology deployment is fundamental, but it is only one component of the full technology cycle, which also includes research, development,

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<sup>4</sup> We urge Congress to adopt the following definition of “clean and efficient energy technology”:

- a) a renewable energy supply; or
- b) an energy supply that, compared over its life cycle to coal or petroleum-derived fuels used for similar applications in widespread commercial use in a recipient country, will reduce by at least 85% the emission of greenhouse gases, when measured on a full life cycle basis, including all stages of production, distribution, and direct and indirect emissions from land use change; or
- c) an end-use technology that, compared to a similar technology already in widespread commercial use in a recipient country, will reduce primary energy use by at least 33%.

Renewable energy supplies include wind, solar photovoltaic, solar thermal, sustainably-sourced biomass that meets the criterion in b) above, up to 10 MW hydropower, wave, tidal, and geothermal.

Clean and efficient energy technologies do not include:

- a) those that are major sources of greenhouse gas emissions, including coal, oil, natural gas and unconventional fossil fuels such as tar sands, oil shale and coal-to-liquids;
- b) hydropower over 10 MW; and
- c) those that use or produce fissile materials, such as uranium-235, plutonium-239 or uranium-233, in the course of their operation.

diffusion, and transfer. These other stages should be taken into consideration by the draft legislation, as should the accessibility, affordability, appropriateness, and adaptability of clean technologies.

- *Establish expert technical panels.* We recommend that the draft include expert panels to provide guidance to the International Clean Technology Fund. Panels would include representatives of leading academic institutions, civil society, government agencies, and the private sector in the U.S. These panels would also be complemented by recipient country counterparts, as well as UNFCCC National Climate Change Focal Points – to ensure projects are designed effectively to meet local needs.
- *Adjust reporting requirements.* In addition to the reporting requirements included in ACESA, we further suggest reporting consistent with the capacity building and clean energy access recommendations above. We also encourage the addition of a reporting requirement on any adverse effects on human health, safety, or welfare; the environment; or natural resources. Projects with such adverse impacts should not be funded.
- *Ensure at least 5 percent of emissions allowances value are dedicated to international clean technology.* We recommend that at least 5 percent of the allowance value under the bill be directed to the International Clean Technology Fund. UNFCCC and UNDP estimate that developing countries will need approximately \$65-\$120 billion annually in public funding to mitigate greenhouse gas emissions through clean technology development and reduced deforestation. Based on historical emissions and using the low end of these estimates (based on a risky stabilization scenario well above 450 ppm), an equitable annual U.S. contribution to developing country mitigation costs would be approximately \$16 billion or some 16% of auction revenue. Although falling short of even the low end of what is needed or equitable, we are asking for at least 5 percent of auction revenue in order to provide at least a good faith down-payment on clean technology financing.

### *Adapting to Climate Change*

#### *Domestic Adaptation*

Friends of the Earth commends Congressman Waxman for a very strong domestic adaptation section. For example, we strongly support the provisions to conduct regular vulnerability assessments, and for the creation of a national, individual states, and federal agency level adaptation plans. Friends of the Earth also supports transition assistance, training, and green jobs. However, we suggest that the draft:

- *Include specific language to identify and prioritize vulnerable communities.* Such communities include low income families, communities of color, inner-city, the young and the elderly, the disabled, immigrants, and tribal communities, which often suffer an unfair burden from the impacts of climate change. All vulnerability assessments and state, federal agency, and national adaptation plans should include sections dedicated to highlighting the unique needs and solutions necessary for vulnerable populations. The proposed National Climate Change Adaptation Council should include representatives from civil society who can advocate for the needs of vulnerable communities. Emergency response planning, evacuation planning, and emergency shelter planning

should be revamped to better incorporate the needs of those most vulnerable to the impacts of climate change.

- *Clarify the mechanisms used to respond to climate change impacts.* Currently, the draft is unclear on how regional and other jurisdictional issues will be addressed. As drafted, the federal government mostly “makes recommendations” but clear lines of authority are essential and mechanisms should be established to ensure adequate responses to climate change impacts that span across several states and/or those impacts where jurisdiction is unclear or in dispute.
- *Incorporate climate change impacts into state and local planning.* The bill does a commendable job of requiring federal agencies to demonstrate that they are taking climate change into all decision-making processes. It is essential that the federal government also promote the mainstreaming of climate change into decision making at the state and local level. States should also be required to demonstrate how current and future impacts are being integrated into decision making and planning in their adaptation plans. Climate impact assessments should be required for all federally funded state project requests. Include mechanisms to ensure that Federal aid and technical support are not bottle-necked at the state level. Consider establishing a minimum level of support that goes directly to local governments.
- *Consider establishing an inter-agency management structure.* The bill proposes to establish NOAA as the head of the National Climate Change Adaptation Council that would oversee the national adaptation program. Historically, NOAA has not had much success in leading similar structures and it is unclear how NOAA will have the necessary authority to direct efforts and budgets of other federal agencies. The bill also proposes to place a national climate service under the control of NOAA. Given the breadth of services and activities that fall under this mandate, it is unclear how NOAA will have the capacity and weight of authority to ensure that other agencies comply with established priorities and policy. The inter-agency structure used by the US Global Change Research Program has been successful in meeting a similar function and may offer a viable template for such a structure. Insights on these issues can be drawn from a variety of sources including, “Options for Developing a National Climate Service (February 2009),” a report from the independent NOAA Science Advisory Board Climate Working Group, and also from National Academy of Sciences reports. Lastly, re-examine if it is necessary to assign NOAA the task of conducting the national vulnerability assessments given that USGCRP already has the requisite authority to carry out such assessments under the Global Change Research Act of 1990 and USGCRP’s inter-agency structure may be better suited to oversee this task.
- *Strengthen and streamline the management structure.* Establish a domestic adaptation position at the white house to ensure adequate political support for the program that can promote a common shared vision, and that can ensure integrated programming throughout the structure. Consider merging the natural resource climate change program with overall national adaptation program to promote inter-agency planning and collaboration and minimize redundancy and duplication of effort. If the structures are maintained as separate consider adding mechanisms that will ensure information, budget

planning and decision making are tightly integrated between the two programs.

- *Ensure adequate funding for domestic adaptation.* Currently, it is unclear whether adequate funds will be provided for domestic adaptation. The funding for domestic adaptation should be commensurate with the amount needed for the program.

#### *International Climate Change Adaptation Program*

Friends of the Earth is pleased to see provisions for international adaptation, and we applaud the bill's support for the UNFCCC adaptation funding mechanism. Our recommendations to strengthen this subtitle include:

- *Focus resources on the most vulnerable communities in the developing world:* While the bill does target developing countries, we recommend that the bill highlight that within countries some communities and populations are at greater risk to the impacts of climate change than others. The bill should clearly prioritize resources for the most vulnerable communities first, such as women, communities that are especially impoverished, indigenous peoples, and populations uniquely at risk due to geographical location.
- *Ensure at least 7 percent of emissions allowances value are dedicated to international adaptation.* It is estimated that developing countries will need \$28 to \$86 billion per year to build resilience to the impacts of climate change. Seven percent of emissions allowances would translate to roughly \$7 billion/year to support international adaptation. The US should contribute at least \$7 billion per year toward this amount given our historical role in causing global warming. This investment will advance our nation's international development goals and strengthen US national security interests.