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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
FACSIMILE (202) 225-4784  
MINORITY (202) 225-5074

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May 2, 2008

The Honorable Carl Levin  
Chairman  
Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510

The Honorable John McCain  
Ranking Minority Member  
Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Levin and Ranking Member McCain:

I am writing to correct some misinformation that has been circulated regarding section 526 of the Energy Independence and Security Act of 2007. Section 526 addresses government contracts to purchase alternative fuels. As the author of this provision and Chairman of the committee of jurisdiction in the House, I would like to share my views on the purpose and effect of this provision.

Section 526 provides:

No Federal agency shall enter into a contract for procurement of an alternative or synthetic fuel, including a fuel produced from nonconventional petroleum sources, for any mobility-related use, other than for research or testing, unless the contract specifies that the lifecycle greenhouse gas emissions associated with the production and combustion of the fuel supplied under the contract must, on an ongoing basis, be less than or equal to such emissions from the equivalent conventional fuel produced from conventional petroleum sources.

This provision ensures that federal agencies are not spending taxpayer dollars to promote new fuel sources that will exacerbate global warming. It was included in the legislation in response to proposals under consideration by the Air Force to develop coal-to-liquid fuels, but applies to all federal agencies. As you may know, absent application of advanced control

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technology, coal-to-liquid fuels are estimated to produce almost double the greenhouse gas emissions of the comparable conventional fuel.<sup>1</sup> Also, as discussed further below, section 526 applies to fuels derived from unconventional petroleum sources such as tar sands, which produce significantly higher greenhouse gas emissions than are produced by comparable fuel from conventional petroleum sources.<sup>2</sup>

The development and expanded use of these fuels could significantly exacerbate global warming, with highly dangerous effects. Expansion of these fuels would also make it much more difficult and expensive to significantly reduce U.S. greenhouse gas emissions in the future. Thus, it is important to ensure that the federal government does not subsidize or promote the expanded use of these fuels through government purchasing decisions.

Contrary to claims that have been made, section 526 was adopted into law following regular order. The text of this provision was included in the Carbon Neutral Government Act, which I introduced on June 7, 2007. The bill was marked up and reported by voice vote by the Committee on Oversight and Government Reform, with no changes to this provision. The provision was then incorporated unchanged in the energy bill that was brought to the House floor and passed by the full House on August 4, 2007, and was retained in the bill passed by the Senate on December 13, 2007, and passed by the House on December 18, 2007, after negotiations between the House and Senate.

Throughout the seven-month legislative process, there were no objections to this provision from House Members, Senators, or the Administration. Prior to markup in Committee, the Carbon Neutral Government Act was provided to the Department of Defense and other federal agencies to provide technical comments or note any concerns. The Department of Defense declined the opportunity to comment, and other agencies did not identify any concerns with section 526. Additional details are included in the attached timeline.

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<sup>1</sup> See Robert H. Williams, Eric D. Larson, and Haiming Jin, *Synthetic fuels in a world with high oil and carbon prices*, Table 1., prepared for the 8<sup>th</sup> International Conference on Greenhouse Gas Control Technologies, Trondheim, Norway, June 19-22, 2006 (estimating that coal-to-liquids fuel produces 1.8 times the greenhouse gas emissions of conventional fuel on a lifecycle basis).

<sup>2</sup> See Adam R. Brandt and Alexander E. Farrell, *Scraping the Bottom of the Barrel: Greenhouse gas emission consequences of a transition to low-quality and synthetic petroleum resources*, forthcoming in *Climatic Change* (estimating that fuel from tar sands produces 1.14 to 1.4 times the greenhouse gas emissions of fuel from conventional petroleum sources on a lifecycle basis).

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The provision was uncontroversial because it makes sense. This is a simple, do-no-harm provision to ensure that government agencies do not waste taxpayer dollars on costly new fuel projects that make global warming worse.

Unfortunately, certain unfounded claims are now being made about the effects of section 526, and you have been asked to include a repeal of this provision in the FY 2009 National Defense Authorization Act. The following information may be helpful as you consider such requests.

Air Force officials have stated repeatedly that the Air Force does not intend to pursue the development of coal-to-liquids fuels with higher greenhouse gas emissions than conventional fuel.<sup>3</sup> Section 526 does no more than hold them to their promise. Earlier this week, Air Force Assistant Secretary William C. Anderson told my staff that coal-to-liquid fuel can be produced right now using carbon capture technology that will meet the requirement of section 526.

Section 526 is a contracting provision, not a regulatory provision. Nothing in the text suggests that an agency must adopt a regulatory standard for greenhouse gas emissions from fuel. EPA and DOE have already estimated the lifecycle greenhouse gas emissions for conventional petroleum products, coal-to-liquids fuels with and without carbon capture, and tar sands.<sup>4</sup> Agencies can reference existing estimates to determine whether the lifecycle greenhouse gas emissions from a given project, such as a proposed coal-to-liquid plant with specified carbon capture technology, will exceed the emissions from the comparable conventional fuel. Absent application of control technology, coal-to-liquids fuels clearly have substantially higher lifecycle greenhouse gas emissions than conventional petroleum products, and no further analysis would be necessary to implement the section 526 bar on contracts for purchases of such fuels.

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<sup>3</sup> See, e.g., U.S. Air Force, *Energy Leadership Today and Tomorrow; Aviation Operations* (undated fact sheet provided to Committee staff on Apr. 28, 2008) (“The Air Force intends to only buy alternative jet fuels in commercial quantities that have a greener overall environmental footprint than currently available petroleum based fuel.”); *Air Force Synth-Fuel Policy Unaffected by Controversial Energy Law*, Inside the Air Force (Apr. 18, 2008) (“We said back in January of 2006, that we would not accept commercial quantities of this [coal-based] fuel unless it is greener [than standard jet fuel] across the board, not just [carbon], but everything’ . . . [assistant secretary of the Air Force William] Anderson told Inside the Air Force . . .”).

<sup>4</sup> See U.S. EPA, *Greenhouse Gas Impacts of Expanded Renewable and Alternative Fuels Use* (Apr. 2007) (EPA420-F-07-035) (fact sheet) (online at [www.epa.gov/oms/renewablefuels/420f07035.htm](http://www.epa.gov/oms/renewablefuels/420f07035.htm)); U.S. DOE, Argonne National Laboratory, *The Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) Model*, GREET 1.8b (Mar. 17, 2008) (online at <http://www.transportation.anl.gov/software/GREET/>); U.S. EPA, *Regulatory Impact Analysis: Renewable Fuel Standard Program* (Apr. 10, 2007) (EPA420-R-07-004) (online at <http://www.epa.gov/OMS/renewablefuels/420r07004.pdf>) (support document for final rule).

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With respect to tar sands, section 526 does not bar federal agencies from purchasing generally available fuels that may contain incidental amounts of fuel from tar sands. The provision would block a federal agency from using government contracts specifically to promote or expand the use of fuel from tar sands. I am not aware of any agency seeking to use its contract authority in this manner.

Section 526 is a common sense government contracting requirement that prohibits federal agencies from wasting taxpayer dollars to exacerbate a problem the country is trying to address. I have confidence that the Department of Defense, as well as every other federal agency, is fully capable of complying with this provision. I am also confident that EPA and DOE, the federal agencies with technical expertise in this area, will willingly share the relevant technical information they have already developed and made available to the public, which should provide a sufficient technical basis for agencies' compliance.

I hope you find this information helpful as the Senate considers the FY 2009 National Defense Authorization Act.

Sincerely,



Henry A. Waxman  
Chairman

Enclosure

cc: Tom Davis  
Ranking Minority Member

## **Timeline of Congress' Consideration and Adoption of Section 526 of the Energy Independence and Security Act of 2007**

### **June 7, 2007**

Chairman Waxman introduces H.R. 2635, the Carbon Neutral Government Act of 2007. The bill includes section 207, Procurement and Acquisition of Alternative Fuels, which is identical to section 526 of the Energy Independence and Security Act of 2007 as enacted.

#### ***SEC. 207. PROCUREMENT AND ACQUISITION OF ALTERNATIVE FUELS.***

*No Federal agency shall enter into a contract for procurement of an alternative or synthetic fuel, including a fuel produced from non-conventional petroleum sources, for any mobility-related use, other than for research or testing, unless the contract specifies that the lifecycle greenhouse gas emissions associated with the production and combustion of the fuel supplied under the contract must, on an ongoing basis, be less than or equal to such emissions from the equivalent conventional fuel produced from conventional petroleum sources.*

### **June 7, 2007**

H.R. 2635 is referred to the following House committees: Oversight and Government Reform; Energy and Commerce; Armed Services; Transportation and Infrastructure; Natural Resources; and Agriculture.

### **June 12, 2007**

The House Committee on Oversight and Government Reform marks up H.R. 2635 and orders H.R. 2635 to be reported as amended by voice vote, with no changes to section 207.

### **July 30, 2007**

H.R. 3221, the New Direction for Energy Independence, National Security, and Consumer Protection Act (the comprehensive House energy bill), is introduced in the House, incorporating H.R. 2635 as Title VI. Section 207 is incorporated as section 6207 with no changes.

### **August 3, 2007**

The report of H.R. 2635 as amended is ordered to be printed, H. Rept. 110-297, Part I, with no changes to section 207.

H.R. 2635 is discharged by the following House committees: Energy and Commerce; Armed Services; Transportation and Infrastructure; Natural Resources; and Agriculture.

### **August 4, 2007**

H.R. 3221 is passed by the House with no changes to section 6207.

**December 6, 2007**

The text of H.R. 3221 with Senate amendments is passed by the House as H.R. 6. Section 6207 is incorporated in H.R. 6 as section 526, with no changes.

**December 13, 2007**

H.R. 6 with an amendment is passed by the Senate, with no changes to section 526.

**December 18, 2007**

H.R. 6, as further amended by the Senate, is passed by the House, with no changes to section 526.

**December 19, 2007**

H.R. 6 is signed by the President.