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ONE HUNDRED TENTH CONGRESS

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

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March 5, 2008

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The Honorable Michael O. Leavitt  
Secretary  
U. S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Leavitt:

Thank you for your letter of February 29, 2008, responding to our offer of a compromise solution to your February 11, 2008, refusal to comply with our subpoena. While we are pleased that your response is a positive first step in resolving this impasse, we are disappointed that it does not appear to adequately address certain outstanding areas of contention.

Nevertheless, in the spirit of comity, reserving all our rights and privileges to enforce the subpoena and obtain all of the requested information, we agree to accept your offer of Committee access to the briefing book in a reading room setting within Department facilities at a mutually agreeable time. In doing so, it is our understanding that the staff will be able to take notes and the Committee's ability to use such material at a later date or to demand its entire production is in no way limited.

We also agree to your offer of access to the Food and Drug Administration (FDA) staff responsible for preparing the briefing materials and briefing the Commissioner. To carry out this part of the agreement, please provide the names of all the FDA staff responsible and/or involved in the preparation of the briefing book and supporting materials. The Committee reserves the right to interview any or all of these individuals before or after a review of all the materials and in a manner that preserves the integrity of the oversight process by limiting the attendees to the witness and his or her legal representative.

With respect to all non-briefing book documents responsive to the Committee's February 1, 2008, subpoena, we expect that these documents have been gathered and will be made available for our review in the same manner as the briefing book. Pending further discussion of

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details among staffs, the Committee reserves its prerogative on the timing and manner of how best to proceed with the viewing of these documents.

Your letter did not clearly address the reproduction of the briefing book or supporting documents. Realistically, we expect some documents that are viewed will need to be produced, and as part of the accommodation process, Health and Human Services will agree to produce these documents. As we proceed with this process, access to the briefing book and to FDA staff may assist the Committee in identifying those documents, if any, relevant to our investigation that we determine need to be produced to the Committee.

In the interest of reaching an agreement on the framework of accommodation, please respond that you are in accord with what this letter outlines by no later than close of business on Friday, March 7, 2008, so that we can begin to arrange the details for carrying out our agreement as soon as possible.

Sincerely,




John D. Dingell  
Chairman



Joe Barton  
Ranking Member



Bart Stupak  
Chairman  
Subcommittee on Oversight and Investigations



John Shimkus  
Ranking Member  
Subcommittee on Oversight and Investigations