

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, Jr., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
ALBERT R. WYNN, MARYLAND
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
TOM ALLEN, MAINE
JAN SCHAKOWSKY, ILLINOIS
HILDA L. SOLIS, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
DARLENE HOOLEY, OREGON
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA

ONE HUNDRED TENTH CONGRESS

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

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER
RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
BARBARA CUBIN, WYOMING
JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN B. SHADEGG, ARIZONA
CHARLES W. "CHIP" PICKERING, MISSISSIPPI
VITO FOSSELLA, NEW YORK
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE FERGUSON, NEW JERSEY
MIKE ROGERS, MICHIGAN
SUE MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE

March 5, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
GREGG A. ROTHSCHILD, CHIEF COUNSEL

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

The Honorable Michael O. Leavitt
Page 2

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