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DCMN BURRELL

MARKUP ON:

H.R. 6213, THE "NO MORE SOLYNDRAS ACT";

H.R. 6190, THE "ASTHMA INHALERS RELIEF ACT OF 2012";

H.R. 6194, THE "U.S. AGRICULTURAL SECTOR RELIEF ACT OF 2012";

S. 710, THE "HAZARDOUS WASTE ELECTRONIC MANIFEST ESTABLISHMENT ACT", AS AMENDED; AND

H.R. 6131, A BILL TO EXTEND THE UNDERTAKING SPAM, SPYWARE, AND FRAUD ENFORCEMENT WITH ENFORCERS BEYOND BORDERS ACT OF 2006 (SAFE WEB ACT)

TUESDAY, JULY 31, 2012

House of Representatives,

Committee on Energy and Commerce,

Washington, D.C.

The committee met, pursuant to call, at 4:11 p.m., in Room 2123, Rayburn House Office Building, Hon. Fred Upton [chairman of the committee] presiding.

Present: Representatives Upton, Burgess, Olson, Markey,

Pallone, Green, and Butterfield.

Staff Present: Nick Abraham, Legislative Clerk; Paige Anderson, CMT Coordinator; Gary Andres, Staff Director; Charlotte Baker, Press Secretary; Mike Bloomquist, General Counsel; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Jerry Couri, Senior Environmental Policy Advisor; Patrick Currier, Counsel, Energy and Power; Paul Edattel, Professional Staff Member, Health; Mike Gruber, Senior Policy Advisor; Kirby Howard, Legislative Clerk; Peter Kielty, Associate Counsel; Heidi King, Chief Economist; Ben Lieberman, Counsel, Energy and Power; Ryan Long, Chief Counsel, Health; Alexa Marrero, Deputy Staff Director; David McCarthy, Chief Counsel, Environment/Economy; Brian McCullough, Senior Professional Staff Member, CMT; Gib Mullan, Chief Counsel, CMT; Mary Neumayr, Senior Energy Counsel; Katie Novaria, Legislative Clerk; Andrew Powaleny, Deputy Press Secretary; Charlotte Savercool, Executive Assistant; Shannon Weinberg Taylor, Counsel, CMT; Lyn Walker, Coordinator, Admin/Human Resources; Matt Bravo, Floor Assistant, Majority Leader; Michelle Ash, Minority Chief Counsel, Commerce, Manufacturing, and Trade; Phil Barnett, Minority Staff Director; Jen Berenholz, Minority Chief Clerk; Jacqueline Cohen, Minority Counsel; Greg Dotson, Minority Energy and Environment Staff Director; Felipe Mendoza, Minority Senior Counsel; and Will Wallace, Minority Policy Analyst.

The Chairman. The meeting will come to order. Good afternoon, welcome. A quick announcement before we begin. It is my understanding that both sides are in agreement on S. 710, the Hazardous Waste Electronic Manifest Establishment Act, and H.R. 6131, the SAFE WEB Act, and if that is the case, it is my intention to call up those bills after all of the opening statements and quickly move to a vote, a voice vote. I will then call up H.R. 6213, the No More Solyndras Act, and recess the markup until 10 o'clock tomorrow morning.

Do I hear any thoughts? Hearing none, with that out of the way, I will recognize myself for an opening statement for 5 minutes. And I am going to ask that my full statement be made a part of the record.

Today we will begin consideration of five bills that reflect a broad range of issues before the Energy and Commerce Committee. We will begin this afternoon with S. 710, the Hazardous Waste Electronic Manifest Establishment Act, and H.R. 6131, which extends the U.S. SAFE WEB Act.

With S. 710, we are establishing a framework to replace paper manifests for hazardous waste transport into an electronic reporting system, one that saves money and man-hours for users while making the data significantly easier to access. It is a common sense bill that comes without cost to the taxpayers.

Likewise, H.R. 6131 is a straightforward measure to extend a law that is working well to protect the interests of Americans using the Internet. The 2006 SAFE WEB Act allows the FTC to share information involving cross-border fraud with foreign law enforcement agencies and

take other steps to combat foreign-originated Internet fraud and scams, and I am pleased to be extending it as well.

We will proceed to consideration of both these measures after the opening statements. Then tomorrow morning we will reconvene to address three more bills.

H.R. 6213, the No More Solyndras Act, is a prime example of how our committee can identify waste, fraud, and abuse, and take legislative steps to ensure that it never happens again. The No More Solyndras Act takes two important steps to wind down the Title XVII loan guarantee program and protect taxpayers in the process. First, it makes clear that no new applicants shall be accepted. The program that brought us stimulus-backed Solyndra is effectively closed down, and for those participants that have already applied to the program and received varying levels of commitment from the government, we institute tough new safeguards and accountability measures so that the warning flags can no longer be ignored.

The final two bills that we will take up tomorrow apply the common sense test to EPA activities to protect consumers and our agriculture sector. H.R. 6190, the Asthma Inhalers Relief Act, would temporarily allow existing supplies of an over-the-counter asthma inhaler to be sold without EPA penalty. We heard from the FDA that this product was not taken off the shelves for health reasons, it was taken off the shelves because of the EPA's unwillingness to grant a brief window of flexibility for patients to access existing supplies. Temporarily allowing patients to access the remaining stock is a simple solution.

Finally, H.R. 6194, the U.S. Agriculture Sector Relief Act calls on EPA to secure the critical use exemptions that our Nation is entitled to so that farmers who demonstrate a need can access the crop fumigant known as methyl bromide.

I thank my colleagues for their efforts as we move forward on these five important measures, and I would yield 5 minutes for an opening statement to the gentleman from Massachusetts, Mr. Markey.

[The prepared statement of the chairman follows:]

******** COMMITTEE INSERT ********

Mr. Markey. I thank you very much. And I come here to talk of the loan guarantee program. The bill that we are taking up is one of the greatest political frauds of all time. It is a monument to the Republican-led worst environmental Congress in history. It is a monument to the complete and total takeover of the Republican Party's energy agenda by big coal and big oil. If cynicism were an Olympic sport, the GOP would win the gold.

Republicans have wasted almost a year of taxpayers' time dancing on the grave of the Solyndra loan guarantee. They have said that the Department moved too fast, too carelessly, even illegally when it granted Solyndra's loan guarantee. They have even alleged that the Obama administration's funding for renewable energy was motivated by political cronyism and that the funds were used to outsource jobs. Republicans seem to have forgotten that the loan guarantee program was created at 2:30 a.m. in the morning in this room when the Republican co-chairs of that conference offered an amendment during the energy bill conference to find some way for the Federal Government to fund the nuclear power plants that Wall Street found too risky to invest in.

I unsuccessfully offered an amendment to strike the Domenici language, but in the end the DOE loan guarantee program was a creation of House and Senate Republicans, but it wasn't enough for the nuclear industry. Oh, no. The nuclear industry wanted more, the Nuclear Energy Institute even urged DOE to change its regulations so that private investors could get paid back before taxpayers in the case of

default. The very thing DOE agreed to do to try to salvage the Solyndra loan guarantee is what the Nuclear Energy Institute asked them to do.

So what caused this change of heart? What happened is that President Obama took office and decided to pursue a real all-of-the-above energy strategy that would support both renewable energy and nuclear power, and the nuclear industry and the coal industry recoiled in terror. They don't want any real competition. They don't like the fact that new wind power is cheaper than new coal or nuclear plants. They are scared to death that solar deployments will continue doubling every year. So when one solar company that received a loan guarantee got into financial trouble, the Republicans smelled blood.

Republicans claim that the No More Solyndras Act will put an end to the DOE loan guarantee program. They claim that this bill will ensure taxpayers are never again on the hook for risky government bets, but they have ignored one very inconvenient truth. This bill should actually be called the $76.5 Billion for Nuclear Solyndras Act of 2012 because that is how much money that all of the nuclear loan guarantee applications are currently at the Department of Energy are worth. That includes loan guarantees for companies that are almost bankrupt and loan guarantees for companies whose projects are already a billion dollars over budget. Nothing in this bill will prevent the Department of Energy from approving any of these applications.

It is time we have some truth in GOP advertising. This bill does not end the loan guarantee program. It does not prevent DOE from making awards to the riskiest companies with the riskiest of projects. If

Republicans want to end the loan guarantee program, they should be acting on a different piece of legislation, and for the chairman to say that this program is effectively closed down with the exception of $76 billion in loans to nuclear companies, it is like saying I am on a diet except for the five hot fudge sundaes with whipped cream I am going to be consuming each day for the next 2 years. That is no diet. That is just absolutely cynicism that you can sell the killing of wind and solar and propping up with all of this government largesse the nuclear industry and pretending that you are ending a dangerous loan guarantee by only now loaning to the most dangerous projects, the nuclear projects that are out there.

Thank you.

[The prepared statement of Mr. Markey follows:]

******** COMMITTEE INSERT ********

The Chairman. The chair would recognize the gentleman from Texas for an opening statement.

Mr. Olson. Thank you, Mr. Chairman, for bringing these important bills before the full committee. As a whole, these bills represent the commitment we made to our constituents, our bosses, that we would fight to end wasteful government spending, cut the bureaucratic red tape stifling job creation, and provide a stable environment for our businesses to grow and thrive. Despite what the Senate Majority Leader said a few weeks ago, the private sector is not doing just fine with the policies in place today, and Americans can see through this claim, and every family businessman I talked to back home last Friday was insulted that our President said these words about family businesses, If you have got a business, you didn't build that, somebody else did. They were demeaned by those comments. The Democrat leadership of Washington is out of touch with the American people. The American people know that government spending has gotten too large, and the current rate of spending is unsustainable. Washington's spending problem is negatively impacting their businesses and their ability to grow. They rightfully expect us to do something about it, and today this committee is taking three steps to deliver.

The No More Solyndras Act will end the charade of big government wasting taxpayers' money by pouring it into risky projects that are doomed to fail. The Asthma Inhalers Relief Act and the Agriculture Sectors Relief Act will reel in an out-of-control EPA eager to phase out critical products that Americans rely on every single day, and the

Hazardous Waste Electronics Establishment Act, which apparently is going to be passed unanimously, will streamline a burdensome filing system, saving money and improving public safety.

Mr. Chairman, I am pleased to see this committee moving in the right direction with meaningful bipartisan legislation. I hope the Senate will follow our lead. I urge my colleagues to support this bill and yield back the balance of my time.

[The prepared statement of Mr. Olson follows:]

******** COMMITTEE INSERT ********

The Chairman. The chair would recognize the gentleman from New Jersey for an opening statement.

Mr. Pallone. Thank you, Mr. Chairman. I am going to keep my remarks brief, but it is critical that I voice my opposition for the record to the inclusion of H.R. 6190, the Asthma Inhalers Relief Act of 2012, on the list of bills being marked up today. Upon notice of the markup, my staff and I reviewed the information regarding the bill in this process and determined that the Health Subcommittee membership should have been given an opportunity to review the merits of the bill at a hearing. I asked Chairman Pitts today that the bill be removed from the docket, and I will reiterate that request of you, Mr. Chairman.

The bill before us would overturn an FDA 2008 rulemaking that determined that Primatene Mist is not essential and would be taken off the market at the end of 2011. Primatene Mist has been off the market since the end of last year. However, Armstrong, the maker of Primatene Mist, has an inventory of leftover Primatene Mist, and Representative Burgess' legislation would allow Armstrong to sell its remaining inventory. Representative Whitfield held the legislative hearing on this proposal in the Energy and Power Subcommittee, and although he invited the EPA to submit written testimony, he did not invite the FDA to testify. In addition, the testimony at the hearing centered on the question of whether patients would benefit from access to the remaining inventory of Primatene Mist. In fact, no testimony was received from an environmental stakeholder on the bill.

At the hearing the American Thoracic Society opposed the bill,

the American Lung Association, and a range of physician and patient advocacy groups submitted letters opposing the bill as well, and the majority had a single doctor testifying in favor of the bill. To that regard, I would like to enter into the record a letter from a group of medical and public health organizations who have written in strong opposition to allowing this product to return to the market. I don't know, have -- you have seen it. So I would ask that that be entered into the record, Mr. Chairman.

The Chairman. Without objection.

[The letter follows:]

******** COMMITTEE INSERT ********

Mr. Pallone. Meanwhile, Mr. Chairman, last week FDA provided a Member-level briefing on the issue, which due to the last minute nature of the briefing and it being a get-away day, the meeting had little participation. In fact, I was forced to miss it due to scheduling conflicts. At that meeting, however, Members should know that FDA staff expressed serious concerns about the legislation and its potential impacts on patients, yet those concerns unfortunately are not a part of any official committee record.

So as you can see, my point, Mr. Chairman, is that this clearly is a health issue regardless of the text of the bill. I know the bill references the Clean Air Act, but I think that it is clear from the testimony that this is a health issue, and I believe the committee should not report the bill until the Health Subcommittee can hold a hearing on it and hear on the record specifically from the FDA.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

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The Chairman. The chair would recognize the gentleman from Texas, Dr. Burgess, for 3 minutes for an opening statement.

Dr. Burgess. I thank the chairman for the recognition. I would ask unanimous consent that my entire statement be made a part of the record, and I am going to confine my remarks to H.R. 6190, the Asthma Inhaler Relief Act.

You know, Mr. Chairman, in many ways I wish we didn't even have to consider this. I wish it had been possible to work with the Food and Drug Administration, the Environmental Protection Agency, but our requests to those agencies were ignored for well over a year's time, and it was only because we brought this legislation to the subcommittee that we were able to get any attention from the Federal agencies at all, and the gentleman is quite correct, the Food and Drug Administration was here at this very table last week before the legislative week ended. I have got to tell you, Mr. Chairman, I was just stunned by the level of administrative arrogance that was displayed at this table. Now, the gentleman has a question about the safety of inhaled epinephrine. Inhaled epinephrine, racemic epinephrine has been available to asthma patients for 60 years. If the Food and Drug Administration thought this product was defective or dangerous, then they have an obligation to withdraw it from the market, but they have not done that. There is no procedure that the FDA is following right now to remove the product from the market, and I have got to tell you, Mr. Chairman, I am still mystified as to why this particular product has come under such intense and withering

criticism from the administration. It really makes no sense. We are talking about an asthma patient having access to a rescue inhaler in the wee hours of the morning without a prescription. What is so hard about that?

Now, some have argued on the other side that, hey, look, we have got these new aerators that are going to become available, and they will be able to use epinephrine without any propellant at all, and you just have a perfume bottle that you squeeze. That is great. When are those going to be available? How come they are not available now? The fact of the matter is that the letter provided to this committee from the company that has one of those nebulizers that is going to come on the market thinks they will have it in August or September. But even then it will only be limited distribution. What is wrong? What is wrong with allowing the existing stock of CFC-containing asthma inhalers to be available to asthma patients until we do have a replacement? The overlap would, in fact, be very, very small if we allowed these products to continue to be sold between now and August of next year. At that time the new company ramps up its nebulizer product, has it available in more and more pharmacies, and asthma patients don't suffer. But the fact of the matter is there is 3 million people that depend on an over-the-counter asthma inhaler product in order to relieve their symptoms from time to time. These are not people that are on chronic treatment with asthma with Primatene inhalers, these are people who use this as a rescue inhaler when they have a problem.

Now, some people may say that it is up to that individual to establish a relationship with a physician or a clinic and maintain a prescription. Well, that would be great if everything always worked out, but it doesn't. This is like having a rescue, a life saver, a life preserver for that asthma patient in the middle of the night where they are able to go purchase a product that is perfectly legal over the counter and treat their symptoms. It has been going on for 50 or 60 years. I don't know why we have to bring a stop to it now, and I will yield back the balance of my time.

[The prepared statement of Dr. Burgess follows:]

******** COMMITTEE INSERT ********

The Chairman. The gentleman's time has expired. The chair would recognize the gentleman from Texas for an opening statement for 5 minutes.

Mr. Green. Thank you, Mr. Chairman, for holding the markup today, and I want to start by stating my strong support for our amendment to S. 710, the Hazardous Waste Electronic Manifest Establishment Act. I have long advocated the establishment of e-manifest system, and I am pleased that not only the Environment and Economy Subcommittee passed the legislation that would create this system, but that we worked on this bill in a bipartisan and transparent manner. I want to thank Chairman Shimkus and Ranking Member Waxman's staff for working with us on this. It is not very often that not only we agree on a product but that both the industry and the environmental community agree on it as well.

The benefits of an electronic manifest are obvious, ranging from reduced paperwork and administrative burdens to millions of dollars that such a system could save. More importantly, though, with e-manifest we will ensure that hazardous waste is successfully tracked and managed from its generation to its final destination. This is a good bill, and I hope we quickly move it on to the floor. With the Senate having passed their bill last August, time is of the essence, and the e-manifest bill stands in stark contrast to the so-called No More Solyndras Act. The majority has an opportunity to work in a bipartisan manner to actually fix the problems with the loan guarantee program. I offered an amendment last week that was supported by some

of my Republican colleagues that would allow this program to be fixed. Under the current draft, the Department of Energy must send loan guarantees to applicants from no later than last year. This bill is a no win. Some want to end the loan guarantee program entirely, but the current bill doesn't do that. Others want to reform the program so that it will be well functioning and ensures the government is a good caretaker of the taxpayers' money. This bill also doesn't do that. Instead, the bill is requiring the money to be spent inefficiently, not on technology that is emerging today or tomorrow but on technology that could have been funded last year. It is possible that this is the best way to spend the money, but this bill hamstrings the government from making better investments that might mean more security for the taxpayer just because of the date stamp on the envelope.

This is not responsible legislating. I urge this committee to work together as we did on the e-manifest and SAFE WEB bills to pass a Solyndra bill out of this committee that would actually protect the taxpayers and provide common sense policy for the executive branch to follow. Again, I thank you, and I yield back my time.

[The prepared statement of Mr. Green follows:]

******** COMMITTEE INSERT ********

The Chairman. The gentleman yields back. The chair would recognize the gentleman from North Carolina, Mr. Butterfield, for an opening statement for 5 minutes.

Mr. Butterfield. Thank you, Chairman Upton, for holding today's markup on several pieces of legislation related to energy, environment, and consumer protection issues. In an effort to expedite today's opening statements, I will only discuss two of them.

Shortly following these opening statements we will begin consideration of H.R. 6131, the U.S. SAFE WEB Act. I join my good friend Chairman Bono Mack in working in a bipartisan fashion to introduce this bill that will reauthorize the program for an additional 7 years. There is strong support for SAFE WEB among our colleagues from both sides of the aisle. The law provides the Federal Trade Commission with expanded and enhanced authorities in order to combat cross-border spyware and spam attacks against U.S. citizens as well as helping to protect against phony Internet rip-offs and telemarketing scams. The enhanced authority has empowered the FTC to better protect American consumers through robust cross-border information sharing, investigative assistance, and coalition building with our foreign partners. In a 2009 report to Congress, the FTC noted the significant role the act has played in facilitating cross-border cooperation in investigations and enforcement proceedings along with the growing need for continued cooperation to combat new and existing global fraud.

Simply put, Mr. Chairman, the expanded authorities are working to protect the American people. While I support these important

consumer protection provisions being extended, I join with the chorus of all of the current FTC commissioners of both political parties in calling for this reauthorization to be continued in perpetuity.

Switching gears now for a moment, I also support Senate bill 710, the Hazardous Waste Electronic Manifest Act. I support this common sense bill and am pleased that this electronic system is finally coming to fruition. Since 2001 the EPA has proposed a nearly paperless manifest system which could reduce the paperwork burden on States and industry by over $190 million per year. I support improving the hazardous waste manifest system to an electronic-based system that will reduce the burden on industry and State and Federal Government and save hundreds of millions of dollars each year.

About 6 years ago in the town of Apex, North Carolina, which is actually located in Congressman David Price's district, that town was rocked with a series of powerful explosions at the town's environmental quality company facility where they consolidated hazardous waste for transfer and disposal. First responders arrived on the scene quickly, but the paper manifests stating what kind of hazardous waste was on site and where it was located were engulfed with the rest of the facility. It became clear to Congressman David Price that paper manifests were worthless if they were inaccessible in an emergency situation. To that end, in the 111th Congress Congressman Price introduced the Hazardous Waste Electronic Manifest Establishment Act to attempt to address this very issue. I appreciate Congressman David Price's work on this very important matter, and I know he shares our

view that this legislation is of critical importance to the safety of all Americans.

I thank you for the time, Mr. Chairman, and I yield back.

[The prepared statement of Mr. Butterfield follows:]

******** COMMITTEE INSERT ********

The Chairman. The gentleman yields back. Seeing no other members wishing to make an opening statement, the chair would call up S. 710 and ask the clerk to report.

The Clerk. S. 710, as reported by the Subcommittee on Environment and the Economy on July 26, 2012.

[The bill S. 710 follows:]

******** INSERT 1-1 ********

The Chairman. And without objection, the first reading of the bill is dispensed with and will be open for amendment at any point. So ordered. And I would ask unanimous consent to put in three letters of support for the legislation into the record. Without objection.

[The letters follow:]

******** COMMITTEE INSERT ********

The Chairman. And, Mr. Green, do you wish to say anything?

Mr. Green. No, Mr. Chairman. I appreciate you moving at least two of these bills pretty quickly.

The Chairman. Very quickly. Seeing no amendments, the question now occurs on favorably reporting S. 710, as amended, to the House.

All those in favor will say aye.

Those opposed say no.

The ayes appear to have it. The ayes have it, and the bill is favorably reported.

The chair now calls up H.R. 6131 and asks the clerk to report.

The Clerk. H.R. 6131, to extend the Undertaking Spam, Spyware and Fraud Enforcement With Enforcers Beyond Borders Act of 2006 and for other purposes.

[The bill H.R. 6131 follows:]

******** INSERT 1-2 ********

The Chairman. And without objection, the first reading of the bill is dispensed with and will be open for amendment at any point. So ordered.

Are there any amendments?

Seeing none, the question now occurs on favorably reporting H.R. 6131 to the House.

All those in favor will say aye.

Those opposed say no.

The ayes appear to have it. The ayes have it, and the bill is favorably reported.

The chair now calls up H.R. 6213 and asks the clerk to report.

The Clerk. H.R. 6213, to limit further taxpayer exposure from the loan guarantee program established under title XVII of the Energy Policy Act of 2005.

[The bill H.R. 6213 follows:]

******** INSERT 1-3 ********

The Chairman. Without objection, the first reading of the bill is dispensed with. It will be open for amendment at any point. So ordered.

And without objection, the staff is authorized to make technical and conforming changes to all of the bills approved by the committee today, the two earlier ones. So ordered.

So for the information of the members, we are now on H.R. 6213. The committee, as announced earlier, will reconvene tomorrow at 10 a.m., and I will remind members that the chair will give priority recognition to amendments offered on a bipartisan basis. I look forward to seeing all of you and then some tomorrow.

Without objection, the committee stands in recess.

[Whereupon, at 4:39 p.m., the committee was recessed, to reconvene at 10:00 a.m., Wednesday, August 1, 2012.]