



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

July 27, 2012

To: Members of the Energy and Commerce Committee

From: Energy and Commerce Committee Staff

Re: Markup of 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”; and, H.R. 6131, a bill to extend the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006, and for other purposes (SAFE WEB Act).

On July 31, 2012, at 4:00 pm in 2123 Rayburn House Office Building, the Committee on Energy and Commerce will meet in open markup session to consider the following:

- 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).

The Committee will reconvene on August 1, 2012 at 10:00 am, in room 2123 Rayburn House Office Building.

Members must submit any amendments they may have two hours before they are offered during the markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to an amendment’s parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

I. H.R. 6213, NO MORE SOLYNDRAS ACT

Mr. Upton and Mr. Stearns released a discussion draft of the “No More Solyndras Act” on July 9, 2012. On July 12, 2012, the Subcommittee on Energy and Power held a legislative hearing on the discussion draft. A revised draft was released on July 16, 2012. On July 25, 2012, the Subcommittee on Energy and Power favorably reported the discussion draft, as amended, to the full Committee. On July 26, 2012, H.R. 6213, the “No More Solyndras Act” was introduced by Mr. Upton and Mr. Stearns.

H.R. 6213, the “No More Solyndras Act,” contains the following provisions:

Section 1: Provides the short title of “No More Solyndras Act.”

Section 2: Sets forth findings regarding the Department of Energy Loan Guarantee Program under Title XVII of the Energy Policy Act of 2005, and highlights key findings of the Energy and Commerce Committee’s investigation into the loan guarantee issued to Solyndra.

Section 3: Section 3(a) prohibits DOE from issuing any loan guarantees for applications submitted after December 31, 2011.

Section 3(b) provides that loan guarantee applications submitted prior to December 31, 2011, remain eligible to receive a DOE loan guarantee if certain conditions are satisfied, including:

- The Secretary of the Treasury (Treasury) must provide a written recommendation to DOE on the merits of the guarantee.
- If DOE makes a guarantee that does not conform to a Treasury recommendation, DOE must identify in a report to Congress its reasons for deviating from the Treasury recommendation.

Section 3(c) provides that for any new guarantee issued, DOE must report to Congress on: (i) the review and decision-making process utilized by DOE in issuing the guarantee; (ii) the terms of the guarantee; (iii) the recipient; and (iv) the technology and project.

Section 4: Prohibits DOE from restructuring the terms of any guarantee unless it first consults with Treasury and prohibits the subordination of U.S. taxpayer dollars to any other financing.

Section 5: Subjects senior federal employees and federal appointees to remedial action, including suspension without pay and removal, for violations of any requirements of the Title XVII loan guarantee program.

II. H.R. 6190, ASTHMA INHALERS RELIEF ACT OF 2012

A discussion draft of H.R. __, the “Asthma Inhalers Relief Act of 2012,” was released on July 11, 2012. On July 18, 2012, the Subcommittee on Energy and Power held a legislative hearing. On July 18 and 19, the Subcommittee forwarded the legislation, as amended, to the full Committee. On July 25, 2012, Mr. Burgess, together with other Members, introduced H.R. 6190, the “Asthma Inhalers Relief Act of 2012.” H.R. 6190 contains the following provisions:

Section 1: This section provides the short title of “Asthma Inhalers Relief Act of 2012.”

Section 2: This section addresses the distribution, sale and consumption of remaining inventories of over-the counter chlorofluorocarbon (CFC) epinephrine inhalers.

Section 2(a) directs the Administrator of the Environmental Protection Agency to allow the distribution, sale, and consumption of remaining inventories of such inhalers, refrain from taking any enforcement action against any distributor or seller on the basis of any Federal law implementing the Montreal Protocol, and issue a No Action Assurance Letter to any requesting distributor or seller stating the agency will not initiate such an enforcement action.

Section 2(b) clarifies that nothing in the legislation should be construed to limit the authority of the Food and Drug Administration, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), to ensure the safety and effectiveness of such inhalers.

Section 2(c) provides the following definitions:

- (1) "CFC epinephrine inhaler" means any epinephrine inhaler containing CFCs that was manufactured and classified as over-the-counter prior to January 2, 2012;
- (2) "Federal law implementing the Montreal Protocol" means any provision of title VI of the Clean Air Act or other federal law implementing the Montreal Protocol, including the regulation entitled "Use of Ozone-Depleting Substances; Removal of Essential-Use Designation (Epinephrine)" published at 73 Fed. Reg. 69532 (November 19, 2008);
- (3) "Montreal Protocol" has the meaning given in section 601 of the Clean Air Act; and,
- (4) "Over-the-counter" means not subject to section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1)) or otherwise not required to be dispensed only upon issuance of a prescription.

Section 2(d) provides that the Act shall cease to be effective on August 1, 2013.

III. H.R. 6194, U.S. AGRICULTURAL SECTOR RELIEF ACT OF 2012

A discussion draft of H.R. __, the "U.S. Agricultural Sector Relief Act of 2012," was released on July 11, 2012. On July 18, 2012, the Subcommittee on Energy and Power held a legislative hearing on the proposed legislation. On July 18 and 19, 2012 the Subcommittee on Energy and Power forwarded the discussion draft, as amended, to the full Committee. On July 25, 2012, Mr. Gingrey and other Members introduced H.R. 6194.

H.R. 6194 contains the following provisions:

Section 1: This section provides the short title of "U.S. Agricultural Sector Relief Act of 2012."

Section 2: This section amends section 604(h) of the Clean Air Act relating to the phase-out of methyl bromide under the Montreal Protocol treaty.

Section 2(a) directs the Environmental Protection Agency Administrator (i) for each calendar year, to take all appropriate actions within the agency's authority to seek a critical use exemption under

the treaty for the full amount of methyl bromide necessary for approved critical uses; (ii) to not deny or reduce an application unless the Administrator has substantial evidence, provided to the applicant in writing, establishing there is a technically and economically feasible alternative; and (iii) in evaluating any potential alternatives, to consider the cost, commercial availability, and demonstrated effectiveness of the alternative, and consider any state or local regulations that may restrict its use.

Section 2(a) also directs that the Administrator allow for the use of methyl bromide in response to emergency events, in an amount necessary up to 20 metric tons. Section 2(a) further provides that the aggregate amount of methyl bromide allowed for use in response to emergency events in the United States in a calendar year shall not exceed the total amount authorized by the Parties to the Montreal Protocol for the United States for critical uses in 2011.

Section 2(a) also directs the Administrator to take all appropriate actions to ensure sufficient quantities of methyl bromide are available for research on methyl bromide alternatives.

Section 2(a) also directs that when an alternative is removed from the U.S. market, the Administrator review and take action as appropriate to adjust any critical use nomination submitted to the Parties to the Montreal Protocol to address the shortfall.

Section 2(a) also provides the following definitions:

- (1) The term “approved critical use” means approved critical uses found in Appendix L to subpart A of part 82 of title 40, Code of Federal Regulations, as in effect on January 1, 2005;
- (2) The term “critical use” means a circumstance in which (i) there are no technically and economically feasible methyl bromide alternatives or substitutes acceptable from the standpoint of environment and health and are suitable to the crops and circumstances involved; and (ii) the lack of methyl bromide for a particular use would result in significant market disruption;
- (3) The term “emergency event” means a situation at a farm, nursery, food processing facility, or commodities storage facility that requires the use of methyl bromide to control a pest or disease, and for which there is no critical use exemption in effect, or insufficient quantities of methyl bromide available under an existing critical use exemption, for such site.

Section 2(b) directs the Administrator, in consultation with the Secretary of Agriculture, to issue final regulations relating to emergency events, including in the regulations criteria for identifying an emergency event and provisions to ensure the timely approval or disapproval of emergency event applications.

IV. S. 710, HAZARDOUS WASTE ELECTRONIC MANIFEST ESTABLISHMENT ACT

S. 710 was introduced by Senator Thune (SD) on March 31, 2011, and passed the Senate on August 2, 2011, by unanimous consent. On June 21, 2012, the Subcommittee on Environment and the Economy held a hearing on the bill. The Subcommittee forwarded S. 710, as amended, to the full Committee on July 26, 2012.

The amendment in the nature of a substitute adopted by the Subcommittee would:

- (1) Preserves the purpose of S. 710, to create a system by which hazardous waste manifests may be submitted, stored, and accessed electronically;
- (2) Converts funding for the system from mandatory to discretionary;
- (3) Strikes the language in S. 710 that required the winning contractor to front the costs of building the electronic manifest system, which would be recouped from later fees; and,
- (4) Authorizes appropriations of \$2 million, for each of fiscal years 2013-2015, for start-up activities, fully offset through the collection of user fees.

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

The Subcommittee on Commerce, Manufacturing, and Trade held a hearing on July 12, 2012, on draft legislation to reauthorize the U.S. SAFE WEB Act of 2006. The Subcommittee received testimony from the Federal Trade Commission. On July 17, 2012, Chairman Bono Mack and Ranking Member Butterfield introduced H.R. 6131 to reauthorize the U.S. SAFE Web Act of 2006. The text of H.R. 6131 is the same as the text of the draft legislation for which the Subcommittee held a hearing on July 12, 2012.

Background

In the early 2000s, the Federal Trade Commission (FTC) began to highlight the growing problems the agency encountered in effectively combatting Internet scams and fraud being perpetrated against U.S. citizens by foreign operators. In 2005, an estimated 20 percent of consumer complaints the FTC received involved fraud originating outside the United States. Additionally, according to the FTC's analysis of consumer complaints from the Consumer Sentinel Network, consumers suffered losses to foreign companies of almost \$219 million in 2006.

The FTC identified limitations in its authority relative to that of other U.S. regulators. Of greatest importance was the Commission's lack of authority to share information with foreign law enforcers. In order to expand its kit of administrative tools, the FTC sent Congress legislative recommendations in 2005 seeking additional authorities. Congress passed the U.S. SAFE WEB Act on December 6, 2006, and it was signed into law on December 22, 2006 (P.L. 109-455).

Pursuant to the Act, the FTC issued a report, "The U.S. SAFE WEB Act: The First Three Years," in December 2009 detailing its use of and experience with the authority granted by the Act. The FTC reported that, over the three year period of 2006-2008, it received 97,287, 86,564, and 76,835 cross-border complaints, respectively. The FTC also reported that it had shared compelled or confidential information in response to 38 requests from 14 foreign agencies in 6 countries resulting in

several enforcement proceedings.

U.S. SAFE WEB Summary

U.S. SAFE WEB amends the FTC Act to authorize the Commission to:

- (1) Share information involving cross border fraud with foreign consumer protection agencies;
- (2) Secure confidential information from those foreign consumer protection agencies by protecting confidential information from public disclosure (that otherwise would not be shared by many foreign law enforcers);
- (3) Take fraud-based legal action by amending the “unfair or deceptive acts or practices” to include acts involving foreign commerce or material misconduct within the U.S.;
- (4) Seek redress on behalf of foreign consumers victimized by U.S.-based wrong-doers; and,
- (5) Make criminal referrals for cross-border criminal activity when violations of FTC law also violate U.S. criminal law (some foreign agencies address consumer fraud as a criminal, rather than civil, law enforcement issue).

H.R. 6131 Summary

The Act and its grant of authorities to the FTC will expire on December 22, 2013, without reauthorization. H.R. 6131 reauthorizes U.S. SAFE WEB beyond 2013 by amending Section 13’s sunset date. The amended Section 13 reauthorizes U.S. SAFE WEB for an additional seven years (the initial authorization period) by changing the existing expiration date of December 22, 2013, to the end of Fiscal Year 2020 (September 30, 2020). Additionally, it specifies that the provisions of the Act will cease to be effective after the date of expiration absent further reauthorization.

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If you have any questions regarding H.R. 6194, the “U.S. Agricultural Sector Relief Act of 2012,” or H.R. 6190, the “Asthma Inhalers Relief Act,” please contact Mary Neumayr; regarding H.R. 6213, the “No More Solyndras Act,” please contact Patrick Currier; regarding S. 710, the “Hazardous Waste Electronic Manifest Establishment Act,” as amended, please contact David McCarthy or Jerry Couri; and regarding H.R. 6131, a bill to extend the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers Beyond Borders Act of 2006 (SAFE WEB Act), please contact Gib Mullan or Brian McCullough at (202) 225-2927.