



# THE COMMITTEE ON ENERGY AND COMMERCE

## MEMORANDUM

July 16, 2012

TO: Members, Subcommittee on Energy and Power

FROM: Committee Staff

RE: Subcommittee Markup of H.R. \_\_\_\_\_, the “U.S. Agricultural Sector Relief Act of 2012,” H.R. \_\_\_\_\_, the “Asthma Inhalers Relief Act of 2012,” and H.R. \_\_\_\_\_, the “No More Solyndras Act”

On Wednesday, July 18, 2012, at 4:00 p.m. in room 2123 Rayburn House Office Building, the Subcommittee on Energy and Power will meet in open markup session for opening statements only to consider the following:

- H.R. \_\_\_\_\_, the “U.S. Agricultural Sector Relief Act of 2012”;
- H.R. \_\_\_\_\_, the “Asthma Inhalers Relief Act of 2012”; and,
- H.R. \_\_\_\_\_, the “No More Solyndras Act.”

The Subcommittee will reconvene on Thursday, July 19, 2012, at 10:00 a.m. in 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](mailto: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. 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 will hold a legislative hearing on the proposed legislation.

H.R. \_\_\_\_\_, the “U.S. Agricultural Sector Relief Act of 2012,” 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 on Substances That Deplete the Ozone Layer (Montreal Protocol).

Section 2(a) directs that the EPA Administrator (i) for each calendar year, 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) shall 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, shall 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 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 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.

## **II. 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 will hold a legislative hearing on the proposed legislation.

H.R. \_\_\_\_, the "Asthma Inhalers Relief Act of 2012," 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 EPA Administrator 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. NO MORE SOLYNDRAS ACT**

A discussion draft of H.R. \_\_\_\_, the “No More Solyndras Act,” was released on July 9, 2012. A revised discussion draft was released on July 16, 2012.

H.R. \_\_\_\_, 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. *The revised discussion draft amends the findings to reflect that DOE has issued conditional commitments for four projects totaling \$4.4 billion under the section 1705 program, according to the Government Accountability Office. The revised discussion draft also amends the findings to*

*note that Abound Solar has become the third section 1705 loan guarantee recipient to declare bankruptcy.*

**Section 3:**

- Prohibits DOE from issuing any loan guarantees for applications submitted after December 31, 2011.
- 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.
- 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.
- Prohibits the subordination of U.S. taxpayer dollars to any other financing.
- *The revised discussion draft amends the section 4 subtitle to read: “Restating the Restructuring of Loan Guarantees.”*

**IV. STAFF CONTACTS**

If you have any questions regarding the “U.S. Agricultural Sector Relief Act of 2012” or “Asthma Inhalers Relief Act of 2012,” please contact Mary Neumayr at (202) 225-2927. If you have any questions regarding the “No more Solyndras Act,” please contact Patrick Currier at (202) 225-2927.