This is a preliminary transcript of a Committee hearing. It has not yet been subject to a review process to ensure that the statements within are appropriately attributed to the witness or member of Congress who made them, to determine whether there are any inconsistencies between the statement within and what was actually said at the proceeding, or to make any other corrections to ensure the accuracy of the record.

{York Stenographic Services, Inc.}

RPTS MEYERS

HIF200.032

MARKUP ON DISCUSSION DRAFT OF H.R. ____, THE ``U.S. AGRICULTURAL SECTOR RELIEF ACT'';

DISCUSSION DRAFT OF H.R. ____, THE ``ASTHMA INHALERS RELIEF ACT OF 2012''; AND

DISCUSSION DRAFT OF H.R. ____, THE ``NO MORE SOLYNDRAS ACT''

WEDNESDAY, JULY 18, 2012

House of Representatives,

Subcommittee on Energy and Power

Committee on Energy and Commerce

Washington, D.C.

The Subcommittee met, pursuant to call, at 4:05 p.m., in Room 2123 of the Rayburn House Office Building, Hon. Ed Whitfield [Chairman of the Subcommittee] presiding.

Members present: Representatives Whitfield, Burgess, Scalise, Barton, Upton (ex officio), Rush, Green and Waxman

(ex officio).

Staff present: Charlotte Baker, Press Secretary; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Maryam Brown, Chief Counsel, Energy and Power; Allison Busbee, Legislative Clerk; Patrick Currier, Counsel, Energy and Power; Cory Hicks, Policy Coordinator, Energy and Power; Peter Kielty, Associate Counsel; Heidi King, Chief Economist; Mary Neumayr, Senior Energy Counsel; Jeff Baran, Democratic Senior Counsel; Jen Berenholz, Democratic Chief Clerk; Elizabeth Letter, Democratic Assistant Press Secretary; and Roger Sherman, Democratic Chief Counsel.

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Mr. {Whitfield.} I would like to call this markup to order.

Today we have the opening statements for the markup of the U.S. Agricultural Sector Relief Act of 2012 and the Asthma Inhaler Relief Act of 2012, and the No More Solyndras Act. I had actually forgotten about the No More Solyndras Act. So we have three pieces of legislation that we are going to be marking up, and we are going to do the opening statements today. So at this time I would recognize myself for the purpose of an opening statement.

This morning earlier today, we had a hearing on the first two pieces of legislation, and on the U.S. Agricultural Sector Relief Act of 2012, we heard from four representatives of agricultural groups, one from Michigan, one from Florida and two from California, as well as a witness for the Natural Resources Defense Council, Mr. Doniger, and the testimony was about the access to methyl bromide, which has been banned in the United States because of the agreement the United States has as a signatory to the Montreal Protocol.

The witnesses this morning testified that they really did not have any adequate substitute for methyl bromide, and while all of them had important testimony, the one piece of testimony that really stood out for me was when the

representative of the strawberry association pointed out that the California Department of Food and Agriculture commissioned a report, which concluded that the lack of methyl bromide or a viable alternative could mean that California communities will lose over $1.5 billion annually and more than 23,000 jobs. This legislation allows for the continued use of what we call the critical-use application to the Montreal Protocol to allow the continued use of methyl bromide in certain situations.

The second bill, the Asthma Inhalers Relief Act, we have a company that still has about a million units of Primatene Mist in storage. They have been unable to sell Primatene Mist, and it has been the only non-prescription drug or medicine on the market to deal with asthma and the company if they are allowed the opportunity to distribute this medicine again, they will not receive any profit from the sale of it but will donate it to charity.

And so the issue becomes, we have heard some testimony today from physicians who say that it really is not safe. From my perspective, it is a medicine that has been in the marketplace for about 40 years. It is the only medicine available today to deal with asthma without a prescription. And so this bill would allow those one million units to be distributed in hopes that at the end of that time there would

be another non-prescription drug that would be approved by the FDA to help people deal with asthma.

And then the third bill is the No More Solyndras Act. I think all of us are quite familiar with the purpose of this legislation and that is to prevent any further Solyndras from taking place on loan guarantees or grants from the Department of Energy and require the Treasury Department to have more input before those kinds of loan guarantees are awarded again.

I yield back the balance of my time.

[The prepared statement of Mr. Whitfield follows:]

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Mr. {Whitfield.} At this point I would like to recognize the gentleman from Illinois, Mr. Rush, for his opening statement.

Mr. {Rush.} Thank you, Mr. Chairman.

Mr. Chairman, as you know, it has been just over 2 hours ago when we held a hearing on two of three bills that we are marking up today, the Agricultural Sector Relief Act and the Asthma Inhalers Relief Act.

Members on both sides of the aisle urged the subcommittee to hold another hearing so that we can hear from and ask questions of Administration witnesses. During our discussion on the Agricultural Relief Act, we heard contradictory statements from panelists over whether or not there was indeed an alternative to methyl bromide in the cultivation of growing crops. While some witnesses were adamant that there were no other viable substitutes for methyl bromide, I entered into the record letters from farmers who insisted that they had found alternatives, which were healthier and less damaging to the environment.

Unfortunately, Mr. Chairman, due to the haste in which we are having this markup, the members will not have the opportunity to hear directly from and to have their questions answered by the very experts in the agencies of jurisdiction

including the EPA and the USDA, who are responsible for overseeing these programs before the members of this committee decide on how we will vote on the pending legislation.

Mr. Chairman, additionally, it literally feels like just minutes ago we were here in this very same room listening to witnesses give competing testimony over whether or not Primatene Mist, the drug at the center of the Asthma Relief Act, is unhealthy for over-the-counter use. While one doctor asserted that she had concerns stemming from side effects related to cardiac issues, among others, another doctor on the panel told us that he was pretty fine, he was okay with using the drug for emergency asthma attacks.

Mr. Chairman, on an issue so important to the health and well-being of our constituents, it would seem to me that members of this subcommittee would indeed benefit greatly by hearing testimony from expert agency witnesses from the FDA and the EPA on these important matters.

So I ask you again, Mr. Chairman, what is the rush? Why is there a fire being shouted in the theater on these particular matters? Why is it more important to get these bills through the subcommittee quickly rather than getting all the facts and doing all of our due diligence to make sure that we get these bills done correctly?

Mr. Chairman, I have often extended a hand of assistance and friendship to you and to the ranking member of the full committee, and Mr. Waxman's also in assuring that EPA, USDA, FDA and any other relevant agency representatives will respond in a timely manner to a request to appear before this subcommittee to discuss these bills. If the idea is to truly address these issues and to provide legislative relief for the parties that will be affected by these bills, then I would submit that there is relatively small chance that any of these bills that we are debating and discussing and marking up today will get through the Senate or that either of these bills will be signed into law by the President.

So why don't we do the necessary legwork and the preliminary legwork to make sure that we are at least hearing from all the experts who are indeed responsible for implementing and overseeing these various programs before hastily marking up these bills?

Mr. Chairman, in conclusion, I would just like for the record to show that I am against this speedy, expedited process of bringing these bills to markup without hearing from some of the most relevant managers of these programs, and that is those individuals at the EPA and the FDA.

With that, I yield back the balance of my time.

[The prepared statement of Mr. Rush follows:]

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Mr. {Whitfield.} Thank you very much, Mr. Rush.

At this time I will recognize the gentleman from Texas, Mr. Barton, for a 5-minute opening statement.

Mr. {Barton.} Thank you, Mr. Chairman, and let me say on the record that I think you are to be commended and Mr. Upton is to be commended for, one, having legislative hearings on these bills, and two, scheduling a subcommittee markup on these bills.

I am not quite where Mr. Rush is, that this is speedy, but I think it is a good thing the committee is using regular order and actually going through a process that all members have a chance to have input to and be participating in the hearing and then hopefully in the open markup that begins tomorrow, so I think that is a good thing, not a bad thing.

We have got three bills that are going to be before the subcommittee tomorrow. The Agriculture Relief Act, I am supportive without any changes. I think that is a good piece of legislation. I know that it could be changed and perhaps tomorrow there will be amendments to it, but as is, I would vote for it.

On the Asthma Inhaler Relief Act of 2012, as I said at the legislative hearing, no good deed goes unpunished, and the chief sponsor, Dr. Burgess, is simply trying to make

available to average Americans an over-the-counter drug that has been in use for 50 years and is in the warehouse but can't be sold because of an act of Congress and subsequent to that a decision by the executive branch to take those products off the market. There are two issues in play. One is a political-correctness issue dealing with hydrofluorocarbons and the other is an issue of, if I say this right, efficacious? How close am I? Efficacy issue. Close enough. And apparently there is a real debate whether the active medicinal drug in the Primatene Mist is efficacious or not, but since it has been on the market, I come down that we should allow it to be, but more importantly, we should allow those that have already been manufactured to be sold before they expire. But the more important there, as Dr. Burgess pointed out in the hearing this morning, is that there is really no excuse for EPA and FDA not having an over-the-counter remedy available for customers and consumers today. You wouldn't need to sell the Primatene inhaler if they had made available an over-the-counter alternative, which they have not done.

On the last bill, the No More Solyndras Act, I am very supportive of the underlying intent of the bill. I do think that we need to reform the loan program that is in existence today. I think those parts of the bill that deal with making

it absolutely clear that subordination is not allowed and it is my understanding that Dr. Burgess is going to have an amendment on some penalties if they do subordinate, which I will be supportive of.

Where I am a little bit different than the bill as currently drafted is, I don't see a reason to totally repeal the existing loan program for alternative-energy projects, the 1703/1705. So I am working with the chairman and other interested members on an amendment that would stop any new loans from going forward subject to report by the Secretary of the Energy Department back to this committee and to the Senate Energy Committee that either the program should go forward with reforms or the program should be terminated, and if the Secretary does not issue such a report by time certain in the next Congress, then the program would be terminated. Again, that is a work in progress, Mr. Chairman, and there are members looking at it, but we hope by markup tomorrow to have an amendment that both sides have agreed upon in that area. But bottom line, the fact that this subcommittee is acting to prevent any more Solyndras is a good thing, not a bad thing, and I am very supportive of us legislating in this area.

And with that, I again thank the subcommittee chairman for his leadership and I yield back my time.

[The prepared statement of Mr. Barton follows:]

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Mr. {Whitfield.} Thank you very much.

At this time I recognize the gentleman from California, Mr. Waxman, for an opening statement.

Mr. {Waxman.} Thank you, Mr. Chairman.

We are considering three bills that have not been thought through. Each would have unintended consequences and none of the bills offer real solutions to the problems they purport to address.

The first bill is the No More Solyndras Act. This is not serious legislation. It is a political bill that is designed to keep Solyndra in the news. It is our job to recognize that families across America are suffering from record droughts, wildfires, storms and floods that have been linked to climate change, and it is our responsibility to develop responsible policies to reduce the carbon emissions that are causing these woes, but we are failing miserably at these responsibilities.

Under the Solyndra legislation, tens of billions of dollars of loan guarantees will be issued in the years to come. They don't stop the program but they freeze the projects that could apply for these funds so those that are already on the list, new breakthrough technologies, would not even be eligible. Creating a legislative winners list of

projects eligible for loan guarantees is not the way to reform this program.

The other two bills would undermine the effectiveness of the Montreal Protocol. One bill would increase the use of methyl bromide, a pesticide that is a powerful ozone-depleting chemical. Methyl bromide has been banned since 2005. But there is a mechanism in the law for critical-use exemptions, and each year growers apply for exemptions. EPA analyzes those applications with the help of USDA and the U.S. government requests critical-use exemptions under the Montreal Protocol. This process is in place, and since 2005, the level of critical-use exemptions requested by the United States and granted through the Montreal Protocol has decreased dramatically. That is what is supposed to happen.

The bill reverses all the progress that has been made. Instead of requiring growers to justify continued use of methyl bromide, the bill reverses the presumption and places the burden of proof on EPA. The bill also freezes into law an outdated list of approved critical uses. Sectors that have completely phased out the use of methyl bromide during the last 7 years like golf courses, would be permitted to use methyl bromide again, and the bill creates a gaping emergency event loophole.

I have concerns about the Primatene Mist bill.

Primatene Mist is an over-the-counter epinephrine inhaler from the 1960s. It was phased out at the end of 2011 and has been off the shelves for over 6 months. The bill would take the extraordinary action of putting Primatene Mist back on the shelves so its manufacturer could sell off its remaining inventory, which should take place, they tell us, in 9 months. Taking that kind of action might make sense if the inhaler was necessary for public health but we have heard testimony earlier today that medical and public-health organizations oppose the use of Primatene Mist because it is not safe or recommended for treating asthma. That is what the American Thoracic Society and the Asthma and Allergy Foundation of America have told us. We had a doctor on the panel who testified, I am sure at the request of the manufacturer, who also had a chance to testify with a different point of view, but companies that already made their necessary investments to develop CFC-free inhalers say that there is no justification for this bill because it provides special treatment to a single company.

Now, I know people say that this is the only over-the-counter inhaler. Well, we only get an over-the-counter inhaler if a company wants to sell an over-the-counter inhaler. FDA can't provide it for us. And it is not convincing to me that we ought to allow an over-the-counter

inhaler if it is not doing what it should be doing if there are better treatments and if the people involved in dealing with asthma medically say they don't think they ought to have this drug out there because it has some serious consequences for heart attacks particularly.

So I am not ready to support that bill. I don't see the argument for it and at this point I am going to oppose it, but I do think Mr. Rush makes a good point. Let us get more information. Why do we have to be so speedy or why do we have to rush? I agree with Mr. Rush. There is no rush that should force us to move forward without fully understanding the consequences of what we are doing.

I thank the chairman for this opportunity to make an opening statement, and I look forward to the markup.

[The prepared statement of Mr. Waxman follows:]

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Mr. {Whitfield.} Thank you, Mr. Waxman.

At this time I will recognize for 3 minutes the gentleman from Texas and the sponsor of the Primatene Mist bill, Dr. Burgess.

Dr. {Burgess.} I thank the chairman for the recognition.

The whole issue of the over-the-counter epinephrine multi-dose inhaler is not that it was gradually withdrawn from the market, it was abruptly withdrawn. It was withdrawn on December 31st of last year, and it wasn't withdrawn because of any medical considerations despite the fact that we heard testimony to that fact today. It was withdrawn because it contained as a propellant for the epinephrine to get it into the lungs, to deliver into the lungs of the asthmatic patient who is in crisis, a compound called chlorofluorocarbon, which I understand was supposed to be removed under the Montreal Protocol.

Look, I have got no problem if they took the chlorofluorocarbons out of my underarm deodorant or my hair spray but we are talking about a medication that was efficacious for asthmatics. It was inexpensive. We had some discussion on the panel this morning, but I will just tell you, as someone who buys these medicines on a somewhat

regular basis, the HFA-containing albuterol inhaler costs about $55. For two of the Primatene inhalers, which incidentally last longer than an HFA inhaler, for two of those inhalers, it is $32. In other words, a $32 investment can pretty much take care of whatever needs an occasional asthmatic such as myself might encounter for almost a year's time. That is a pretty good bargain, and we hear from people all the time that we need to be cost-effective in our medical treatments. This sounds pretty cost-effective.

Now, there was an elaborate game of hide the bill this morning, and it has been going on for months, been going on for over a year actually, and quite frankly, it just needs to stop. If the Environmental Protection Agency has a problem with the medical indication of using inhaled epinephrine, then they need to say so. If the Food and Drug Administration has a problem with the use of inhaled epinephrine for the treatment of asthmatics, then it needs to say so. But this nonsensical finger pointing of one federal agency at the other, refusing to answer any questions when submitted over and over again in writing, asking direct questions when they are here at the witness table in both our Health Subcommittee, in the Energy Subcommittee, in the Oversight and Investigation Subcommittee where they are sworn to testify under oath, it makes no sense that there has been

this elaborate deception on the part of the federal agencies. Come clean with us. Tell us why it is you feel this way. It is necessary for this legislation to go forward. There has been plenty of time for the affected agencies to actually divulge their information to us but they choose not to. I think the legislation is going to go a long way towards helping asthmatic patients in this country. It is high time it happened. It probably should have happened last December before the ban went into place. But nevertheless, we can correct that defect now.

I urge people to look at this seriously and support the legislation when we mark it up tomorrow, and I will yield back the balance of my time.

[The prepared statement of Dr. Burgess follows:]

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Mr. {Whitfield.} Thank you, Dr. Burgess.

At this time I will recognize the gentleman from Texas, Mr. Green, for a 3-minute opening statement.

Mr. {Green.} Thank you, Mr. Chairman, for the time.

I have been involved in the Solyndra oversight process since our first hearing. From early in this process, I was disappointed in some of the decisions by the Administration. As we conducted our oversight, it became obvious to me that the fervor to save the deal overshadowed the opinions of many that Solyndra was a sinking ship. The fervor led to bad decisions, most notably to subordinate the federal government's stake in the investment to that of private outside investors. Contrary to the testimony of at least one witness last week, there has been no evidence brought in front of our committee that political favoritism played any role in the Solyndra process. Instead, there have been many documents indicating that rushed decisions. Sloppiness and wishful thinking determined the outcome. No Administration, Democratic or Republican, is immune from making mistakes, and on a side note, I remember about 6 or 7 years ago under President Bush's Administration the IRS spent hundreds of millions of dollars for a computer system that we couldn't use. So I think we have a problem with buying things in our

government.

The insistence by the majority of continued insinuating criminal activity, cronyism and the continuous scoring partisan points is reckless. We are sitting here today with an actual opportunity to fix the problem with the loan guarantee program but the majority insists on bringing up a bill filled with unnecessary rhetoric and gutting a program they once championed. The next step on Solyndra is a simple one: completely close the door on subordination and direct the Department of Energy to implement procedures that would prevent the mistakes that occurred from happening again. We don't need pages of findings and we don't need to sunset a program that has enormous potential.

The bill before us today will prevent any of the remaining loan guarantees from going toward new, innovative technologies. Under the Republican plan, the biggest qualifying factor will become when the application was postmarked, not the content of the application. Energy industries will lose potential transformative funding because of an overreaction to Solyndra. If the Republicans want to eliminate the program, eliminate it. I don't support that approach, but at least we are not hamstringing a program and force use to spend money inefficiently. It will not just be renewable-energy technology that suffers. Potential

innovations in oil and gas and nuclear are also at stake as well.

This program is a good idea that I supported when the Republicans developed it in 2005 energy law and it is still a good idea today. We need to reform it, not disable it.

I yield back.

[The prepared statement of Mr. Green follows:]

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Mr. {Whitfield.} At this time I recognize the gentleman from Louisiana, Mr. Scalise, for a 3-minute opening statement.

Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate you bringing these bills forward to protect taxpayer money and to protect jobs as we are seeing are under assault by the Obama Administration on so many different fronts.

You know, as it relates to the bill to prevent more Solyndras, we just had a hearing recently in this committee where the new head of the loan program came forward and basically acknowledged that he is willing to continue to put taxpayers in the back of the line if he does a subordinate of a loan in spite of the fact that the law doesn't give him that authority, and even the Treasury Department back during Solyndra raised red flags and said you ought to talk to the Justice Department before doing it because it is probably something you can't do, and yet he is going to continue to double down on that failed policy that not only got us Solyndra, but as we have seen, we got Beacon Power went bankrupt. You have also got, just today we heard, a new solar company, Amonix, just announced that they are shutting down their Nevada plant after getting $15 million from the Obama Administration and yet they want to continue going

forward with this and they will criticize us when we are saying enough is enough. Let us start protecting the taxpayers and stopping these Solyndras from going forward.

Clearly, we know the Obama Administration wants to keep doing them. They want to even keep putting the taxpayers in the back of the line when such a dismal failure like Solyndra showed half a billion dollars of taxpayer money could be lost.

We saw what happened with, earlier today we had a hearing in relation to this pesticide that EPA is trying to block. Look, I represent strawberry farmers in Ponchatoula, Louisiana, that would be at risk. We had California farmers, we had Michigan farmers come here and testify that we could lose thousands of American jobs, and oh, by the way, there are developing nations that still allow these pesticides to be used. They are going to get our jobs. So now more jobs would be exported by the exporter in chief who is running this country and continue to run jobs out of the country with these crazy policies that have nothing to do with safety.

You know, as Mr. Burgess has pointed out, you know, you have got a great product for asthma that is at risk right here with these policies. I mean, it just one after the other of continued radical regulations being brought forward by this Administration, and we have already seen the results.

It is not like we are trying to take a preemptive strike. We have seen billions of dollars of taxpayer money lost. We have seen millions of jobs leave our country, and we are saying enough is enough and yet there are still people that are trying to block this. They want to keep going forward, you know, and then the President comes out just recently with this latest tax increase proposal, and this is after in 2009 the President said you don't raise taxes because that would just suck up, take more demand out of the economy and put businesses in a further hole. That was in 2009. Well, now he wants to raise those same taxes that he said would kill jobs, and in fact, we just got a report that came out through the National Federation of Independent Businesses that shows that 700,000 jobs would be lost if the President got his tax increase. You just see one after the other. It is Solyndra versus Keystone. We want Keystone to create jobs. The President wants more Solyndras to run more money and more jobs out of this country. We can't afford to do it. It is time we stop and pass these bills.

Thank you, Mr. Chairman. I yield back the balance of my time.

[The prepared statement of Mr. Scalise follows:]

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Mr. {Whitfield.} Thank you.

I would remind everyone that members' opening statements will be made part of the record pursuant to committee rules, and I do have Mr. Upton's statement that also will be part of the record.

[The prepared statement of Mr. Upton follows:]

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Mr. {Whitfield.} I see no others here to make an opening statement.

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H.R. ____

Mr. {Whitfield.} At this point the chair would call up the Asthma Inhalers Relief Act of 2012 and ask the clerk to report.

The {Clerk.} Discussion draft to direct the Administrator of the Environmental Protection Agency to allow for the distribution, sale and consumption in the United States of remaining inventories of over-the-counter CFC epinephrine inhalers.

[H.R. ____ follows:]

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Mr. {Whitfield.} Without objection, the first reading of the bill is dispensed with and the bill will be open for amendments at any point. So ordered.

For the information of members, we will now be on the Asthma Inhalers Relief Act of 2012, the markup. The subcommittee will reconvene tomorrow at 10 a.m., and I would remind members that the chair will give priority recognition to amendments offered on a bipartisan basis and I look forward to seeing all of you tomorrow, and particularly you, Mr. Rush. I look forward to being with you all day tomorrow.

Did you have a comment, Mr. Rush?

Mr. {Rush.} Mr. Chairman, since we have been here all day on matters of importance to you and to industry, might I suggest that you take the full committee out to dinner tonight and that you provide breakfast tomorrow, and that would at least show us that you are grateful to us for spending all of today and all of tomorrow in the power of your presence.

Mr. {Whitfield.} Well, I appreciate that very much, that you brought that to my attention, and I don't know if I will take every member because there are not many here but I will take you.

Mr. {Rush.} I can round them up, Mr. Chairman.

Mr. {Whitfield.} Thank you, sir.

And without objection, the subcommittee will stand in recess.

[Whereupon, at 4:38 p.m., the subcommittee recessed, to reconvene at 10:00 a.m., Thursday, July 19, 2012.]